4-27-93
Vol. 58 No. 79

federal register

Tuesday
April 27, 1993

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

4-27-93
Vol. 58 No. 79
Pages 25537-25772

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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and Philadelphia, PA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 12 and June 15 at 9:00 am
WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

PHILADELPHIA, PA

WHEN: May 25, at 1:00 pm
WHERE: William J. Green, Jr. Federal Building, Conference Room 6306–10, 600 Arch St. Philadelphia, PA
RESERVATIONS: Federal Information Center 1–800–347–1997

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Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Proclamation 6547 of April 22, 1993

National Credit Education Week, 1993

By the President of the United States of America

A Proclamation

Consumer credit is an integral part of the free enterprise economy of the United States. The vast array of credit products has expanded opportunities for consumers. At the same time, this trend has increased consumers' need for simple, understandable information about their options. Informed consumers who know their choices, rights, and responsibilities are better able to choose and use credit wisely. The prudent use of credit increases economic stability and enhances market competition.

The theme of this year's observance, "Good Credit—Unlimited Opportunities," recognizes that consumers, with careful budgeting and planning, can benefit from increased choices and opportunities in today's marketplace. Credit education is crucial to helping the public use credit wisely and responsibly. A good credit record can help a consumer obtain a job, finance a child's education, and obtain a mortgage to buy a home.

Tests of adults and high school students across the Nation show that consumers in the United States are not prepared adequately to deal with complex consumer credit choices. Even though the rights of consumers in credit transactions are guaranteed in Federal and State laws, most consumers have little understanding of their rights or of the agencies responsible for protecting these rights. Consumers clearly can benefit a great deal from expanded consumer credit education efforts.

In recognition of the importance of the prudent use of credit, the Congress, by Public Law 102–483, has designated the week beginning April 18, 1993, as "National Credit Education Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning April 18, 1993, as National Credit Education Week. I encourage all Americans—particularly business people, educators, public officials, consumer advocates, community organizations, and members of the media—to observe this week with appropriate programs and activities to educate and inform consumers about their credit rights and responsibilities and about the benefits of the wise use of credit.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of April, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93–9931
Filed 4–23–93; 12:18 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6548 of April 23, 1993

Nancy Moore Thurmond National Organ and Tissue Donor Awareness Week, 1993

By the President of the United States of America

A Proclamation

On April 14, 1993, the promising life of Nancy Moore Thurmond was taken in an auto accident. In the heartbreaking moments after her death, Nancy's parents, Senator Strom Thurmond and his wife Nancy, made the decision that their daughter's organs should be donated to others. Through this selfless act, the Thurmonds redeemed the promise of Nancy Moore Thurmond's youth and helped to sustain the lives of other human beings. In memory of Nancy, we commit ourselves this week to understanding what the donation of organs can mean.

In the history of medicine, few advances have been more awe-inspiring than successful organ and tissue transplants. In recent years we have seen the miracle of terminally ill patients receiving a second chance at life with a new heart, liver, lung, or kidney. We have seen children with leukemia regain their health through bone marrow transplants; we have witnessed the restoration of sight to the blind through new corneas; and we have seen thousands of Americans resuming normal lives after receiving a transplanted organ or tissue. But many others still wait, and many die waiting for a suitable organ to become available.

Today there are more than 30,000 patients on the national transplant waiting list, and a new patient is added to the list every 20 minutes. The need for organs far surpasses the number donated each year. We must increase public awareness of the successes of transplantation and the urgent need for increased donation. The American public needs to know that by completing an organ donor card and carrying it, and by making their families aware of their wishes to donate, they may give the gift of life to others.

Americans are a caring and giving people. Many Americans who have lost their loved ones in tragic accidents have found some measure of comfort in knowing that despite their loss, others may live. The Thurmond family can take solace in the knowledge that their beautiful daughter, Nancy Moore Thurmond, gave life to others.

To honor Nancy Moore Thurmond, and to focus public attention on the desperate need for organ donors, the Congress, by Senate Joint Resolution 66, has designated the week beginning April 18, 1993, as "Nancy Moore Thurmond National Organ and Tissue Donor Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of April 18 through April 24, 1993, as Nancy Moore Thurmond National Organ and Tissue Donor Awareness Week. I urge all health care professionals, educators, the media, public and private organizations concerned with organ donation and transplantation, and all Americans to join me in supporting this humanitarian action. In the memory of their loved ones, and in the life they have shared with others, Nancy Thurmond and all other organ donors will live on.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of April, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93–10002
Filed 4–23–93; 4:28 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6549 of April 23, 1993

Cancer Control Month, 1993

By the President of the United States of America

A Proclamation

Last year, more than 1.1 million Americans were likely to develop cancer. Another 520,000 were likely to die from the disease.

Cancer remains the second leading cause of death among women in the United States, accounting for approximately 245,000 deaths in 1992. Breast cancer is now the leading cause of death in women ages 40 to 44. Prostate cancer accounted for approximately 132,000 new cases of cancer in men in 1992 and is second only to lung cancer as the leading cause of death for men. No one of any race, age, gender, or socioeconomic status is immune to the many forms of this deadly disease.

The National Cancer Institute, through its nationwide Cancer Information Service, and the American Cancer Society, through its national programs and many local offices, reach millions of people with information about disease prevention. Community service and outreach efforts promote early detection of breast and cervical cancer and increase awareness of the risks of skin cancer.

Every American should understand that the ability to destroy cancer relies on detection in its early stages. Outreach efforts are also vital in informing our citizens of the dangers of tobacco use, of the importance of a healthy diet, and of the need to maintain a desirable weight.

Fewer Americans smoke now than in 1965, and between 1964 and 1987, three-quarters of a million smoking-related deaths were avoided. The general population has become increasingly aware of the dangers of environmental exposure, poor dietary habits, and not seeking periodic examinations for early detection and treatment.

We are fortunate to live at a time when early detection techniques are improving rapidly. By investing in science and technologies, we all will benefit from medical and scientific advances in disease prevention and treatment. Even the development of a vaccine to prevent cancer may be possible in the future.

Although significant progress has been made in combatting the disease, we must renew our commitment to the work that still must be done. Through an integrated system of public education and research, we can constantly improve cancer prevention and control.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 150) requesting the President to issue an annual proclamation declaring April as "Cancer Control Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the month of April 1993 as Cancer Control Month. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other areas under the American flag to issue similar proclamations. I also ask health care professionals, private industry, community groups, insurance companies, and all other interested organizations and

individual citizens to unite to publicly reaffirm our Nation's continuing commitment to controlling cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of April, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93–10003
Filed 4–23–93; 4:29 pm]
Billing code 3195–01–P

Editorial note: For the President's remarks at the American National Cancer Society Courage Awards presentation ceremony, see issue 16 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
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FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to or deletions from the previous OTC List. There are no additions to or deletions from the previous Foreign List. Both Lists were last published on February 1, 1993 (58 FR 6602) and effective on February 10, 1993.

EFFECTIVE DATE: May 10, 1993.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to or deletions from the OTC List. This supersedes the last OTC List which was effective February 8, 1993. Additions and deletions to the OTC List were last published on February 1, 1993 (58 FR 6602). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

There are no new additions, deletions or changes to the Board's Foreign List, which was last published February 1, 1993 (58 FR 6602) and effective February 8, 1993. This notice serves as republication of that List with a new effective date of May 10, 1993. The Foreign List includes those securities that meet the criteria in Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6(a) and (b), 220.17(a), (b), (c) and (d), and 221.7(a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

Alpha 1 Biomedicals, Inc.
  Class B, warrants (expire 06–30–95)
American Steel and Wire Corporation
  $.20 par common
ARIX Corporation
  $.01 par common
B.M.J. Financial Corporation
  Rights (expire 03–15–93)
Calendar Capital, Inc.
  $.01 par common
Cherokee Inc.
  $.01 par common

Circle Fine Art Corporation
$.10 par common
Cortech, Inc.
Rights (expire 05–24–94)
Crest Industries, Inc.
$.01 par common
Everex Systems, Inc.
$.001 par common
First Federal Savings Bank (Puerto Rico)
$1.00 par common
First Seismic Corporation
$.01 par common
Green Isle Environmental Services Inc.
$.18¾ par common
Hunter Environmental Services Inc.
$.10 par common
Imagine Films Entertainment, Inc.
Warrants (expire 07–30–93)
Jefferson National Bank (New York)
$1.00 par common
Main St. & Main Inc.
Warrants (expire 09–04–96)
Millfeld Trading Co., Inc.
Class A, warrants (expire 09–04–96)
NDE Environmental Corporation
$.001 par common
NESB Corporation
$.01 par common
Old Stone Corporation
$1.00 par common, Series B, 12% preferred
Pacific International Services Corp.
No par common
Pentair Inc.
$1.50 par cumulative convertible preferred
Ramtron Holdings Limited
American Depositary Receipts
RCM Technologies Inc.
$.05 par common
Receptech Corporation
$.01 par common
Sage Analytics International Inc.
$.001 par common
Southern Educators Life Insurance Co.
$.50 par common
Tele-Communications Inc.
Series A, $1.00 par 12⅞% cumulative compounding redeemable preferred
USBancorp Inc.
Series A, $2.125 par convertible preferred
Washington Mutual Savings Bank
$1.00 par preferred stock

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

ADVO, Inc.
$.01 par common
Alden Press Company
$.01 par common
Allmerica Property & Casualty Companies, Inc.
$1.00 par capital
Applied Biosystems Inc.
No par common
Armstrong Pharmaceuticals, Inc.
$.08 par common
Clinical Homecare Ltd.
$.01 par common
Colonial Companies, Inc.
Class B, non-voting, $1.00 par common
DFSoutheastern, Inc.
$1.00 par common
Diversco, Inc.
$.01 par common
Dominion Bankshares Corporation
$5.00 par common
ELM Financial Services, Inc.
$.01 par common
Fedfirst Bancshares Inc.
$.01 par common
First Chattanooga Financial Corp.
$1.00 par common
First Federal Savings & Loan Association of Fort Myers
$.01 par common
First Federal Savings Bank (Utah)
$1.00 par common
Flagler Bank Corporation
Class A, $.10 par common
Fremont General Corporation
$1.00 par common
Genesis Health Ventures
$.02 par common
Glamis Gold Ltd.
No par common
Harmonia Bancorp Inc.
$.01 par common
Health Images, Inc.
$.01 par common
Heekin Can, Inc.
$.01 par common
Imagine Films Entertainment, Inc.
$.01 par common
Inforum, Inc.
$.01 par common
Integra Financial Corporation
$5.00 par common
KCS Energy, Inc.
$.01 par common
Lincoln Financial Corporation
No par common, $10.00 stated value
Mercantile Bancorporation Inc.
$5.00 par common
Montclair Bancorp Inc.
$.01 par common
National Savings Bank of Albany
$1.00 par common
New York Bancorp Inc.
$.01 par common
Piccadilly Cafeterias, Inc.
No par common
Pioneer Savings Bank (Washington)
$1.00 par common
Puget Sound Bancorp
$5.00 par common
Security Financial Holding Co.
$.01 par common
South Carolina Federal Corp.
$1.00 par common
United American Healthcare Corp.
No par common
Valley National Corporation
$2.50 par common

Additions to the List of Marginable OTC Stocks

Airsensors, Inc.
$.001 par common Warrants (expire 03–10–96)
Alamo Group, Inc.
$.10 par common
Alltrista Corporation
No par common
Amcor Limited
American Depositary Receipts
American Federal Bank, FSB (South Carolina)
$1.00 par common
Amtrol Inc.
$.01 par common
Applied Signal Technology, Inc.
No par common
Argosy Gaming Company
$.01 par common
Arkansas Best Corporation
Series A, $.01 par cumulative convertible exchangeable preferred
ASECO Corporation
$.01 par common
Autoimmune Inc.
$.01 par common
Avecor Cardiovascular Inc.
$.01 par common
AVID Technology, Inc.
$.01 par common
Bancfirst Corporation (Oklahoma)
$1.00 par common
Bancinsurance Corporation
No par common
BHC Financial, Inc.
$.001 par common
Biosurface Technology, Inc.
$.01 par common
BKC Semiconductor Incorporated
No par common
BOCA Research, Inc.
$.01 par common
Brock Candy Company
Class A, $.01 par common
Brock Control Systems, Inc.
No par common
Brookstone, Inc.
$.001 par common
Bruno's, Inc.
Convertible debentures (due 09–01–2009)
Campo Electronics Appliances & Computers Inc.
$.10 par common
Cannon Express, Inc.
Class B, non-voting, $.01 par common
Cascade Savings Bank, FSB (Washington)
$1.00 par common
Casino America, Inc.
$.01 par common
Casino Data Systems
No par common
Catalytica, Inc.
$.001 par common
CB Bancshares, Inc. (Hawaii)
$1.00 par common
Cell Genesys, Inc.
$.001 par common
Champion Industries, Inc.
$1.00 par common
Chesapeake Energy Corporation
$.01 par common
Chico's Fas, Inc.
$.01 par common
Cocensys, Inc.
$.001 par common
Commerce Bank (Virginia)
$.01 par common
Community Bancorp, Inc. (New York)
7.25% Series B, cumulative convertible preferred
Community Health Computing Corporation
$.001 par common
Computer Outsourcing Services, Inc.
$.01 par common
Comverse Technology, Inc.
$.01 par common
Coral Gables Fedcorp, Inc.
$.01 par common
Cree Research, Inc.
$.01 par common
Cryolife, Inc.
$.01 par common
Cyberonics, Inc.

$.01 par common
Davidson & Associates, Inc.
$10.00 par common
DF&R Restaurants, Inc.
$.01 par common
Education Alternatives, Inc.
$.01 par common
Energy Biosystems Corporation
$.01 par common
Envirotest Systems, Inc.
Class A, $.01 par common
Equicredit Corporation
$.01 par common
Ethical Holdings Limited
American Depositary Receipts
Excel Technology, Inc.
Series 1, $.001 par redeemable convertible preferred, Warrants (expire 09–30–97)
Fastcomm Communications Corporation
$.01 par common
Fed One Savings Bank, F.S.B. (West Virginia)
$.10 par common
Financial Institutions Insurance Group, Ltd.
$1.00 par common
First Family Bank, FSB (Florida)
$1.00 par common
First Federal Savings Bank of Brunswick, Georgia
$1.00 par common
First Shenango Bancorp, Inc. (Pennsylvania)
$.10 par common
First Southern Bancorp, Inc. (North Carolina)
No par common
Fossil, Inc.
$.01 par common
Framingham Savings Bank (Massachusetts)
Warrants (expire 01–31–96)
Funco, Inc.
$.01 par common
General Nutrition Companies, Inc.
$.01 par common
Gilat Satellite Networks Ltd.
Ordinary shares (NIS .01)
Global Industries, Ltd.
$.01 par common
Global Spill Management, Inc.
$.001 par common
Gupta Corporation
$.01 par common
Gymboree Corporation, The
$.001 par common
Hahn Automotive Warehouse, Inc.
$.01 par common
Hamilton Bancorp, Inc. (New York)
$.01 par common
Hollywood Park, Inc.
Depositary shares
IEC Electronics Corp.
$.01 par common
INCO Homes Corporation
$.01 par common
Incomnet Inc.
No par common
Independence Federal Savings Bank (Washington, D.C.)
$.01 par common
Independent Entertainment Group, Inc.
$.0001 par common
Intel Corporation
Warrants (expire 03–07–98)
Intelligent Surgical Lasers, Inc.
No par common
Intervisual Books, Inc.
No par common
Intuit Inc.
$.01 par common
Jackpot Enterprises, Inc.
Warrants (expire 01–31–96)
Jackson County Federal Bank, a Federal Savings Bank (Oregon)
Series A, $5.00 non-cumulative convertible preferred
Jefferson Savings Bancorp, Inc. (Missouri)
$.01 par common
JMAR Industries, Inc.
$.01 par common, Warrants (expire 02–17–98)
Kenfil Inc.
$.01 par common
Kinder-Care Learning Centers, Inc.
$.01 par common, Warrants (expire 04–01–97)
L.S.B. Bancshares, Inc. of South Carolina
$2.50 par common
Landstar System, Inc.
$.01 par common
Leasing Solutions, Inc.
No par common
Liberty Technologies, Inc.
$.01 par common
Lomak Petroleum, Inc.
$.01 par common
Lukens Medical Corporation
$.01 par common
Magal Security Systems Ltd.
Ordinary shares
Marcum Natural Gas Services, Inc.
$.01 par common
Marion Capital Holdings, Inc.
No par common
Mason-Dixon Bancshares, Inc.
$10.00 par common
Mathsoft, Inc.
$.01 par common
McGaw, Inc.
$.001 par common
Medical Resources, Inc.
$.01 par common
Microchip Technology, Inc.
$.001 par common
Molecular Dynamics, Inc.
$.01 par common
Molten Metal Technology, Inc.
$.01 par common
Mothers Work, Inc.
$.01 par common
Nathan's Famous, Inc.
$.01 par common
National Convenience Stores Incorporated
$.01 par common
NFO Research, Inc.
$.01 par common
Norand Corporation
$.01 par common
Northrim Bank (Alaska)
$1.00 par common
NSA International, Inc.
$.05 par common
NUBCO, Inc.
No par common
Orchard Supply Hardware Stores Corporation
$.01 par common
Orthologic Corporation
$.0005 par common
Pacific Sunwear of California, Inc.
$.01 par common
Parallan Computer, Inc.
No par common
Patrick Petroleum Company
Series B, $1.00 par convertible preferred
Penn Central Bancorp, Inc. (Pennsylvania)
$1.25 par common
Pennsylvania Gas and Water
Depositary preferred shares
Peoples Bancorp Inc. (Ohio)
$1.00 par common
Perceptron, Inc.
$.01 par common
Petersburg Long Distance Inc.
No par common
Philip Environmental Inc.
No par common
Physician Corporation of America
$.01 par common
Physicians Health Services, Inc.
Class A, $.01 par common
Pikeville National Corporation
$5.00 par common
PMR Corporation
$.01 par common
Powersoft Corporation
$.00167 par common
Preferred Health Care Ltd.
$.01 par common
Proxima Corporation
$.001 Par common
Quantum Corporation
6¾% convertible subordinated debentures due 2002
Recovery Engineering, Inc.
$.01 par common
Regent Bancshares Corp. (Pennsylvania)
Series A, $.10 par convertible preferred
Resound Corporation
$.01 par common
Rocky Shoes & Boots, Inc.
No par common
Roosevelt Financial Group, Inc.
6½% non cumulative convertible preferred
Rouse Company, The
Series A, convertible preferred stock
RPM, Inc.
Liquid yield option notes due 2012
S3 Incorporated
$.0001 par common
Sage Alerting Systems, Inc.
$.01 par common
Savoy Pictures Entertainment, Inc.
$.01 par common
Shaman Pharmaceuticals, Inc.
$.01 par common
Shared Technologies Inc.
$.001 par common
Shoe Carnival, Inc.
$.01 par common
Southern Energy Homes, Inc.
$.0001 par common
Specialty Paperboard, Inc.
$.001 par common
Standard Management Corporation
No par common
Staples, Inc.
5% convertible subordinated debentures
Stephan Company, The
$.01 par common
Sumitomo Bank of California, The
Depositary shares
Sun Bancorp, Inc. (Pennsylvania)
$2.50 par common
Sunrise Bancorp, Inc. (New York)
$.10 par common
Superconductor Technologies Inc.
$10.00 par common
Suprema Specialties, Inc.
$.01 par common
Tecnomatix Technologies Ltd.

Ordinary shares (NIS .01 par value)
Tencor Instruments
No par common
Tide West Oil Company
$.01 par common
Tricord Systems, Inc.
$.01 par common
U.S. Can Corporation
$.01 par common
Union Bankshares, Ltd. (Colorado)
$.0001 par common
Universal Electronics Inc.
$.01 par common
Vical Incorporated
$.01 par common
Virginia First Savings Bank, F.S.B.
$1.00 par common
Wall Data Incorporated
No par common
Washington Homes, Inc.
$.01 par common
Watson Pharmaceuticals, Inc.
$.0033 par common
WCT Communications, Inc.
No par common
Wordstar International Corporation
Warrants (expire 03–26–96)

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), April 20, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–9746 Filed 4–26–93; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–168–AD; Amendment 39–8551; AD 93–08–04]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, and –200C series airplanes, that requires structural inspections of older airplanes. This amendment is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design service goal. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the affected airplanes. This amendment relates to the recommendations of the Airworthiness Assurance Task Force assigned to review Model 737 series airplanes, which indicate that, to assure long term continued operational safety, various structural inspections should be accomplished.

DATES: Effective May 27, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2779; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, and –200C series airplanes was published in the **Federal Register** on October 30, 1992 (57 FR 49151). That action proposed to require structural inspections of older airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that a statement in the Summary section of the proposal be clarified to state that the incidents prompting issuance of this AD are due to fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their "economic design service goal" rather than their "design life goal" as stated in the proposal. The FAA concurs. The final rule has been revised accordingly.

This same commenter notes that the Discussion section of the proposal stated that certain service difficulties warranted mandatory inspections rather than mandatory modifications of the airplane, and that these service difficulties could be controlled safely by inspection alone. This commenter regards this discussion as inconsistent, since the modifications described in the service bulletins identified in the referenced Boeing Document are required by AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990). The FAA does not concur. While it is true that these service difficulties warranted mandatory inspections, as well as mandatory modifications, and that these service difficulties cannot be controlled safely by inspection alone, the subject of this AD is to require inspections only. The modifications are made mandatory by separate rulemaking action as noted by the commenter. Therefore, no change to the final rule is necessary.

One commenter requests that all references to the service bulletins identified in the Boeing Document be deleted from paragraphs (a) and (b) of the proposal, since the Boeing Document specifies fully the details for accomplishment of the inspections, as well as the thresholds for the initial inspections and the intervals for the repetitive inspections. This commenter notes that all information for the specified inspections, including thresholds and intervals, should be obtained from the Boeing Document to avoid confusion. The FAA concurs. Since the possibility for confusion exists, paragraphs (a) and (b) of the final rule have been revised to clarify that the Boeing Document is to be used as the primary source of service information.

Two commenters object to the proposed compliance times because they are too stringent. One commenter objects to the compliance times for both the initial and repetitive inspections. This commenter notes that the required inspections can be accomplished only at a maintenance facility where special equipment and trained maintenance personnel will be available during "heavy" maintenance ("C" checks), but the proposed repetitive inspection intervals do not coincide with pre-established operators' maintenance schedules. One operator objects only to the proposed initial compliance times because accomplishing the proposed inspection would impose a tremendous hardship due to of the size of its fleet. The FAA infers that the commenters request that the compliance times be extended.

The FAA concurs in part. After further review of Boeing Document Number D6–38505, "Aging Airplane Service Bulletin Structural Modification and Inspection Program," Revision F, dated April 23, 1992 (referenced in the proposal as the appropriate source of service information), the FAA now considers that the initial compliance times for five of the inspections in the Boeing Document are too stringent. This

especially is true for those cases in which the airplane has exceeded the threshold specified in the Boeing Document. Therefore, for airplanes for which the phase-in period will establish the applicable compliance time, paragraph (b)(2) of the final rule has been revised to extend the initial compliance time 15 months to provide all operators at least that amount of planning time to accomplish the required inspections. However, the FAA does not concur with the commenter's observation that the compliance times for the repetitive inspections must coincide with the operators' maintenance schedules. The FAA has determined that the compliance time for the repetitive inspections, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required inspections without compromising safety. Since maintenance schedules vary from operator to operator, there would be no assurance that the inspections will be accomplished during that time. Further, the FAA has verified that accomplishment of the proposed inspections does not necessitate a main base facility and, therefore, would not necessarily have to be carried out only during "heavy" maintenance ("C" checks).

This same commenter requests that, prior to issuance of the final rule, the Model 737 Structures Working Group (SWG) be given the opportunity to review the compliance times specified in the service bulletins identified in the Boeing Document. The FAA does not concur with this commenter's request. After conferring with the Chair and Co-Chair of the SWG, the FAA has determined that all aspects of the 16 service bulletins identified in the Boeing Document, including the compliance times specified in those service bulletins, were reviewed comprehensively at the SWG meetings conducted previously. Consequently, the FAA proceeded with rulemaking action to implement the SWG's recommendations to make mandatory the structural inspections described in those service bulletins at the times specified in the Boeing Document.

One commenter requests that repairs/modifications be accomplished in accordance with Federal Aviation Regulation (FAR) 43 because many of the repairs/modifications contained in the service bulletins identified in the Boeing Document have been deemed ineffective as permanent repairs. The commenter notes that without the flexibility afforded by FAR 43, maintenance facilities would be impacted severely and a tremendous burden would be imposed on them because of the out-of-service time necessary to accomplish the repair/modifications. The FAA does not concur. The FAA has not received any evidence to support this commenter's allegation that the permanent repairs/modifications that are specified in the service bulletins identified in the Boeing Document are ineffective in permanently repairing/modifying findings of discrepancies. After consideration of all the available information, the FAA finds that the repairs/modifications described in the service bulletins provide an acceptable level of safety. Furthermore, under the provisions of paragraph (e) of the final rule, the FAA may approve requests for alternative methods of compliance if data is submitted that substantiates that such methods would provide an acceptable level of safety.

One commenter notes that, in accordance with the recommendations of the SWG, the service bulletins identified in the Boeing Document should have been placed in either Section 4.0 (inspection only) or Section 3.0 (modification only), but not in both sections of the Boeing Document. The FAA does not concur. The FAA has reconfirmed with the SWG Chairman and Co-Chairman that the intent of the SWG was not to preclude the possibility for service bulletins to be placed in both sections of the Boeing Document. Further, the FAA has determined that long term continued operational safety for Boeing Model 737 series airplanes can be ensured best by requiring inspections (Sections 4.0), as well as modifications [(Section 3.0) required by AD 90–06–02], of these older airplanes as they approach or exceed their economic design service goal.

One commenter requests that the term "phase-in period," as used in paragraph (b)(2) of the proposal, be defined. The FAA concurs that clarification is necessary. A note has been added to paragraph (b)(2) of the final rule to state that the initial inspection may be accomplished at the allowable period when the required threshold specified in paragraph (b)(1) is imminent or has elapsed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,144 Model 737–100, –200, and –200C series airplanes of the affected design in the worldwide fleet. The FAA estimates that 464 airplanes of U.S. registry will be affected by this AD, that it will take approximately 496 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,657,920, or $27,280 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–08–04 Boeing: Amendment 39–8551. Docket 92–NM–168–AD.

Applicability: Model 737–100, –200, and –200C series airplanes, as listed in Section 4 and Appendices A.4 and B.4 of Boeing Document D6–38505, "Aging Airplane Service Bulletin Structural Modification and Inspection Program," Revision F, dated April 23, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capability of the airplane, accomplish the following:

(a) Accomplish the inspections specified in Section 4 and Appendices A.4 and B.4 of Boeing Document D6–38505, "Aging Airplane Service Bulletin Structural Modification and Inspection Program," Revision F, dated April 23, 1992, within the times specified in paragraph (b) of this AD, and thereafter at intervals not to exceed those specified in the Boeing Document for each inspection.

(b) The maximum initial inspection times for the inspections contained in Section 4 and Appendices A.4 and B.4 of Boeing Document D6–38505, "Aging Airplane Service Bulletin Structural Modification and Inspection Program," Revision F, dated April 23, 1992, shall be the later of the times specified in either paragraph (b)(1) or (b)(2) of this AD:

(1) The threshold for inspection time for the inspection specified in the Boeing Document, measured as a total (flight cycles, time-in-service, as appropriate) accumulated on the airplane; or

(2) The phase-in period for the inspection specified in the Boeing Document, measured from a date 15 months after the effective date of this AD.

Note: The "phase-in period," for the purposes of this AD, is defined as the allowable period to accomplish the initial inspection when the required threshold specified in paragraph (b)(1) of this AD is imminent or has elapsed.

(c) If any of the discrepant conditions identified in the service bulletins are found as a result of the inspections required by this AD, the corresponding corrective action specified in the service bulletins must be accomplished prior to further flight.

(d) The terminating action for each inspection required by paragraph (a) of this AD consists of the accomplishment of the modification specified in the corresponding service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with Boeing Document No. D6–38505, "Aging Airplane Service Bulletin Structural Modification and Inspection Program," Revision F, dated April 23, 1992, which contains the following list of effective pages:

Page No.	Rev sym shown on page	Date shown on page
a	F	April 23, 1992.
c, d.4, d.5, d.6, e, 2.0.1, 2.0.2, 3.0.1, 3.1.3, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 4.0.1, 4.1.1, 4.1.2, 4.2.1, 4.2.2, 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.5, 5.1.6, B.1.1, B.1.2, B.2.1, B.3.1, B.4.1.	F	(These pages are not dated.)
b, d.3, 3.1.1, A.1.1, A.1.2, A.2.1, A.3.1, A.4.1	E	(These pages are not dated.)
d.1, 3.1.2, 3.2.5, 3.3.2, 3.4.1	B	(These pages are not dated.)
d.2, f, 3.4.2, 3.5.1, 5.0.1	C	(These pages are not dated.)
1.0.1, 1.0.2, 1.0.3	Blank	(These pages are not dated.)

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 27, 1993.

Issued in Renton, Washington, on April 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–9722 Filed 4–26–93; 8:45 am]

Billing Code 4910–13–P

14 CFR Part 39

[Docket No. 92–NM–136–AD; Amendment 39–8549; AD 93–08–02]

Airworthiness Directives; Rigging Innovations, Inc., Skyhook Reserve Pilotchutes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Skyhook reserve pilotchutes, that requires testing the pilotchutes to verify their spring tension, and modification of the pilotchutes, if necessary. This amendment is prompted by an incident of total pack closure of the reserve pilotchute. The actions specified by this AD are intended to ensure safe descent of the parachutist.

DATES: Effective May 27, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Rigging Innovations, Inc., 236–C East 3rd Street, Perris, California 92570 This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mauricio J. Kuttler, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5355; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Skyhook Reserve Pilotchutes was published in the Federal Register on January 15, 1993 (58 FR 4600). That action proposed to require testing the pilotchutes to verify their spring tension, and modification of the pilotchutes, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 3,194 Skyhook reserve pilotchutes of the affected design in the worldwide fleet. The FAA estimates that 2,750 pilotchutes of U.S. registry will be affected by this AD, that it will take approximately 1.5 workhours per pilotchute to accomplish the required actions, and that the average labor rate is $55 per workhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $226,875, or $83 per pilotchute. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–08–02 Rigging Innovations, Inc.: Amendment 39–8549. Docket 92–NM–136–AD.

Applicability: Skyhook reserve pilotchutes, part number 2233-(), serial numbers 2405 through 5551, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure safe descent of the parachutist, accomplish the following:

(a) Within 120 days after the effective date of this AD, conduct a field pilotchute spring test, testing procedure TP–19F001, in accordance with Rigging Innovations Service Bulletin 1513, Revision A, dated June 22, 1992. The minimum spring tension allowable for passing the test is 18 lbs.

(1) If the pilotchute passes the test, mark "SB–1513A" on the cap in indelible ink, along with the date of the test. The pilotchute may then be returned to service.

(2) If the pilotchute fails the test, the pilotchute must be removed from service. Prior to any further use of the pilotchute, it must be modified according to Rigging Innovations Product Modification Procedure PMP–1213. Once it is modified, it may be returned to service.

(b) Within 10 days after completion of the test required by paragraph (a) of this AD, the operator must notify Rigging Innovations, Inc., of all test results. The following information is to be included: Serial number of the Skyhook pilotchute, results of the test including the tension of the spring, date of the test, and name and qualification of the person performing the test. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The test shall be done in accordance with Rigging Innovations Service Bulletin 1513, Revision A, dated June 22, 1992, which includes Attachment A to Service Bulletin 1513, Revision A, June 22, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rigging Innovations, Inc., 236–C East 3rd Street, Perris, California 92570. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 27, 1993.

Issued in Renton, Washington, on April 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–9723 Filed 4–26–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–198–AD; Amendment 39–8550; AD 93–08–03]

Airworthiness Directives; de Havilland, Inc. Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 and –300 series airplanes. This amendment requires inspection of the upper drag strut trunnion fittings of the nose landing

gear to detect cracks, inspection of the fitting attachment bolts to verify tightness, and replacement of the fittings or fasteners, if necessary. This amendment is prompted by reports of cracked trunnion fittings. The actions specified by this AD are intended to prevent failure of the upper drag strut trunnion fittings of the nose landing gear, which could lead to collapse of the nose landing gear.

DATES: Effective May 27, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 and –300 series airplanes was published in the **Federal Register** on December 29, 1992 (57 FR 61845). That action proposed to require inspection of the upper drag strut trunnion fittings of the nose landing gear to detect cracks, inspection of the fitting attachment bolts to verify tightness, and replacement of the fittings or fasteners, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Another commenter requests that the FAA clarify the requirements for fastener replacement in paragraph (a)(4) of the proposal. The commenter notes that proposed paragraph (a)(4) states, "If any fastener, replaced in accordance with this AD, is found to be loose * * *" The commenter believes that as it is currently worded, the proposal implies that only fasteners replaced previously will require subsequent repetitive inspections. The commenter does not believe that this is the intent of the proposed AD. Rather, the commenter believes that the statement should be revised to read, "If any fastener is found to be loose during repetitive inspections * * *" The FAA concurs that clarification is necessary. This AD requires an initial inspection, at which time the fasteners are checked for proper torque. If the fasteners are found to be loose, they must be replaced to ensure that no hidden damage has occurred. Subsequent inspections are required at intervals of no more than 1,000 landings. If fasteners are found to be loose during these inspections, they must be re-tightened to the proper value; they do not need to be replaced. If any fastener is not replaced during the initial inspection, then any fastener found to be loose during subsequent inspections must be re-tightened to the value specified in the service bulletin. Accordingly, paragraph (a)(4) of the final rule has been revised to state, "If any fastener is found to be loose during any repetitive inspection required by this AD, prior to further flight, tighten the bolt to the value specified in the service bulletin."

Since issuance of the proposal, de Havilland has issued Revision 'B' of DHC–8 Alert Service Bulletin S.B. A8–53–40, dated February 24, 1993. This revision of the service bulletin is essentially identical to the original issue, but provides clarified instructions for the torque check of the bolts. Transport Canada Aviation has classified this revised service bulletin as mandatory. Accordingly, the FAA has revised paragraph (a) of the final rule to cite Revision 'B' of that service bulletin as an additional source for service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 125 de Havilland Model DHC–8–100 and –300 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,875, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–08–03 De Havilland, Inc.: Amendment 39–8550. Docket 92–NM–198–AD.

Applicability: Model DHC–8–102, –103, –301, –311, and –314 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the upper drag strut trunnion fittings of the nose landing gear,

which could lead to collapse of the nose landing gear, accomplish the following:

(a) Within 500 landings after the effective date of this AD, unless accomplished within the last 500 landings, conduct a visual inspection of both upper drag strut trunnion fittings of the nose landing gear to detect cracks; and inspect the fitting attachment bolts to verify tightness; in accordance with de Havilland DHC–8 Alert Service Bulletin S.B. A8–53–40, Revision 'A', dated June 12, 1992; or Revision 'B', dated February 24, 1993.

(1) If no crack is detected in the upper drag strut trunnion fittings of the nose landing gear, and no looseness is detected in the fitting attachment bolts, repeat the inspections at intervals not to exceed 1,000 landings.

(2) If any crack is detected on either fitting, prior to further flight, replace both fittings with confirmed crack-free fittings in accordance with the service bulletin. After such replacement, the inspections required by this paragraph must continue at intervals not to exceed 1,000 landings.

(3) If any fitting attachment bolt is found to be loose during the initial inspection, prior to further flight, replace the fastener securing the fitting (nut, washer, and bolt) in accordance with the service bulletin. After such replacement, the inspections required by this paragraph must continue at intervals not to exceed 1,000 landings.

(4) If any fastener is found to be loose during any repetitive inspection required by this AD, prior to further flight, tighten the bolt to the value specified in the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections, replacements, and bolt tightening shall be done in accordance with de Havilland DHC–8 Alert Service Bulletin S.B. A8–53–40, Revision 'A', dated June 12, 1992, or de Havilland DHC–8 Alert Service Bulletin S.B. A8–53–40, Revision 'B', dated February 24, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 27, 1993.

Issued in Renton, Washington, on April 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–9724 Filed 4–26–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–191–AD; Amendment 39–8548; AD 93–08–01]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, that requires a one-time inspection to detect cracks in the lower skin near the ribs at certain wing stations, and repair, if necessary. This amendment is prompted by reports of fatigue cracks found in the lower skin at the runout of stringers 2 and 10 near wing station 6490 on two of these airplanes. The actions specified by this AD are intended to prevent reduced structural capability of the wings.

DATES: Effective May 27, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes was published in the **Federal Register** on February 2, 1993 (58 FR 6743). That action proposed to require a one-time inspection to detect cracks in the lower skin near the ribs at certain wing stations, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 58 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,570, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–08–01 Fokker: Amendment 39–8548. Docket 92–NM–191–AD.

Applicability: Model F27 series airplanes in post-Fokker Service Bulletin F27/57–9 configuration; serial numbers 10115, 10126 through 10684, inclusive; 10686, 10687, and 10689 through 10692, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural capability of the wings, accomplish the following:

(a) Inspect the lower skin at the runout of stringers 2 and 10 near wing stations 6490, 5330, and 6100 to detect cracks, in accordance with Fokker Service Bulletin F27/57–69, dated April 6, 1992, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable:

(1) For airplanes that have accumulated less than 20,000 total landings as of the effective date of this AD: Prior to the accumulation of 20,000 total landings, or within 1 year after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 20,000 or more total landings, but less than 30,000 total landings, as of the effective date of this AD: Prior to the accumulation of 30,000 total landings, or within 5 months after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated 30,000 or more total landings as of the effective date of this AD: Within 2 months after the effective date of this AD.

(b) If any crack is found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, report positive findings of cracks to Fokker, in accordance with Fokker Service Bulletin F27/57–69, dated April 6, 1992. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and report shall be done in accordance with Fokker Service Bulletin F27/57–69, dated April 6, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 27, 1993.

Issued in Renton, Washington, on April 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–9725 Filed 4–26–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–196–AD; Amendment 39–8552; AD 93–08–05]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F27 series airplanes, that requires an inspection of the noise filter capacitors mounted on the rotary flap actuator to detect damage and to determine the manufacturer and part number; and replacement, if necessary. This amendment is prompted by a recent report of damage to the aileron cable on a Model F27 series airplane, which occurred when one of two noise filter capacitors on the flap actuators became detached from its bracket, causing damage to the lower aileron cable due to electrical arcing between the capacitor and the aileron cable. The actions specified by this AD are intended to prevent reduced aileron roll control authority.

DATES: Effective May 27, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Fokker Model F27 series airplanes was published in the **Federal Register** on February 2, 1993 (58 FR 6745). That action proposed to require an inspection of the noise filter capacitors mounted on the rotary flap actuator to detect damage and to determine the manufacturer and part number; and replacement, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,375, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-08-05 Fokker: Amendment 39-8552. Docket 92-NM-196-AD.

Applicability: All Model F27 series airplanes, excluding Model F27 Mark 050 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of an aileron control cable and subsequent reduced aileron roll control authority, accomplish the following:

(a) Within 500 hours time-in-service or 2 months after the effective date of this AD, whichever occurs first, inspect the noise filter capacitors mounted on the rotary flap actuator to detect damage and to determine the manufacturer and part number, in accordance with Fokker Service Bulletin F27/27-135, dated June 1, 1992.

(1) If no damaged capacitor is found, and if no capacitor manufactured by John E. Fast Company and having part number A-16446 is installed, no further action is required by this AD.

(2) If any damaged capacitor is found, or if any capacitor manufactured by John E. Fast Company and having part number A-16446 is found, prior to further flight, replace that capacitor with either a capacitor manufactured by P.R. Mallory Company and having part number CA275X, or a capacitor manufactured by Potter Company and having part number 1136-5004, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and replacement shall be done in accordance with Fokker Service Bulletin F27/27-135, dated June 1, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 27, 1993.

Issued in Renton, Washington, on April 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-9726 Filed 4-26-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 775

[Docket No. 930344-3044]

Exports to the Science-Based Industrial Park in Hsinchu, Taiwan: Establishment of Import Certificate/Delivery Verification (IC/DV) Procedure

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to include new requirements based on the implementation of Import Certificate/Delivery Verification (IC/DV) procedures for the Science-based Industrial Park, an entity of the National Science Council of Taiwan, located in Hsinchu, Taiwan.

The authorities on Taiwan have committed to implement an island-wide COCOM-comparable export control system. The IC/DV system at the Science-based Industrial Park is an interim step toward such a system. Because of the assurances and commitments that the IC/DV procedure in the Science-based Industrial Park represent, the Office of Export Licensing expects to be able to accelerate the processing of export license applications accompanied by the Park's IC for exports to enterprises located in the Park.

DATES: *Effective date:* This rule is effective April 27, 1993.

Grace period: In lieu of the 45 day grace period provided in 15 CFR 775.10(b)(2), a 60 day grace period will apply to the requirement to obtain the Hsinchu Science-based Industrial Park Import Certificate to support an export license application. During the grace period, applications will be accepted when supported by either a Form BXA-629P (Statement by Ultimate Consignee and Purchaser) or a Hsinchu Science-based Industrial Park Import Certificate.

FOR FURTHER INFORMATION CONTACT: Rod Joseph, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 482-4253.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Export Administration (BXA) requires a foreign importer to file an International Import Certificate (IC) in support of individual validated license applications to export certain

commodities controlled for national security reasons to specified destinations. The commodities are identified by the code letter "A" following the Export Control Classification Number on the Commerce Control List, which identifies those items subject to Department of Commerce export controls. By issuing an IC, the government of the importing destination confirms that it will exercise control over the disposition of those commodities covered by an IC.

BXA also requires a Delivery Verification Certificate (DV) on a selective basis, as described in 15 CFR 775.3(i). By issuing a DV, the government of a destination to which an export has been made confirms that the exported commodities have either entered the export jurisdiction of that destination or are otherwise accounted for by the importer.

New documentation requirements and guidelines for compliance adopted by the Government of Taiwan for the Hsinchu Science-based Industrial Park warrant the inclusion of that area in the IC/DV procedure. This rule amends the EAR by adding the Hsinchu Science-based Industrial Park to the list of destinations for which International Import Certificates may be issued and by adding the name and address of the Hsinchu Science-based Industrial Park to the authorities in the list of foreign offices that administer the IC/DV systems.

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. The Import Certificate/Delivery Verification (IC/DV) requirement set forth in part 775 supersedes the requirement for Form BXA–629P, Statement by Ultimate Consignee and Purchaser (approved by the Office of Management and Budget under control number 0694–0021) to accompany certain license applications for exports and reexports (approved under OMB control numbers 0694–0005 and 0694–0010 respectively) to the Science-based Industrial Park located in Hsinchu, Taiwan. The International Import Certificate issued by the Park Administration does not constitute a collection of information under the Paperwork Reduction Act of 1989. As a result of this rule, there will be a decrease in the number of Statements by Ultimate Consignee, Form BXA–629P, and an increase in the number of Delivery Verifications, Form BXA–647P (approved by OMB under control number 0694–0016).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 775

Exports, Reporting and recordkeeping requirements.

Accordingly, part 775 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 775—[AMENDED]

1. The authority citation for 15 CFR part 775 is revised to read as follows:

Authority: Public Law 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Public Law 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Public Law 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Public Law 103–10, 107 Stat. 40); Executive Order 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; Executive Order 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); Executive Order 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); Executive Order 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (56 FR 44649, September 28, 1992); and Executive Order. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990) as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

§ 775.1 [Amended]

2. The table in § 775.1(b) is amended in entry 1 by adding "Taiwan (Hsinchu Science-based Industrial Park)," immediately after "Switzerland," in the column titled "And the country of destination is".

3. Section 775.3(b) is revised to read as follows:

§ 775.3 International import certificate and delivery verification certificate.

* * * * *

(b) *Destinations.* The following destinations are subject to the International Import Certificate/Delivery Verification Certificate requirements.[1]

Australia
Austria
Belgium
Denmark
Finland
France
Germany
Greece
Hong Kong
Ireland, Republic of
Italy
Japan
Korea, Republic of
Liechtenstein
Luxembourg
Netherlands
New Zealand
Norway
Pakistan
Portugal
Singapore
Spain
Sweden
Switzerland
Taiwan (Hsinchu Science-based Industrial Park)
Turkey
United Kingdom

Note 1: See Supplement No. 1 to this part 775 for the list of addresses in the above destinations where foreign importers may obtain International Import Certificates.

Note 2: In the case of Taiwan, only those shipments to the Hsinchu Science-based Industrial Park are subject to the IC/DV procedures described in this section. Shipments to other destinations in Taiwan continue to require a Form BXA–629P, Statement by Ultimate Consignee and Purchaser, as described in § 775.2.

Note 3: The provisions of this § 775.3 do not apply to any overseas territories of the destinations in this paragraph unless such territories are specifically listed.

* * * * *

4. Supplement No. 1 to part 775 is amended by revising the phrase "Germany, Federal Republic of" to read "Germany" under the "Country" heading and by adding a new entry for "Taiwan (Hsinchu Science-based

[1] See § 775.6 for People's Republic of China End-User Certificate requirements, § 775.7 for Indian Import Certificate requirements, and § 775.8 for Polish, Hungarian, or Czechoslovak Import Certificate requirements.

Industrial Park)" immediately after the entry for "Switzerland", to read as follows:

SUPPLEMENT NO. 1—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]

[See footnotes at end of table]

Country	IC/DV authorities	System administered [2]
* * * * * * *		
Taiwan (Hsinchu Science-based Industrial Park).	Science-based Industrial Park Administration, No. 2 Hsin Ann Road, Hsinchu, Taiwam R.O.C.	IC/DV.
* * * * * * *		

[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, suite 345, Newport Beach, California 92660–3198 or at any U.S. Department of Commerce District Office (see listing in Commerce Office Addresses section of the GPO publication entitled "U.S. Export Administration Regulations", available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402) or at the Office of Export Licensing, room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.
[2] IC—Import Certificate and/or DV—Delivery Verification.

Dated: April 20, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–9679 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM93–13–000 and Order No. 533]

Revision of Form of Notice Requirements for Rate Schedule and Tariff Filings

Issued April 21, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Commission is revising the form of notice requirements for natural gas rate and tariff filings under the Commission's regulations. The final rule establishes requirements for filing a diskette copy of the notice in order to speed the process of noticing such filings.

EFFECTIVE DATE: May 27, 1993.

ADDRESSES: Requests for Rehearing must be filed in Docket No. RM93–13–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David Tishman, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0515.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy of the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426. The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

[Order No. 553]

I. Introduction

Before Commissioners: Elizabeth Anne Moler, Chair; Jerry J. Langdon and Branko Terzic.

The Federal Energy Regulatory Commission (Commission) is revising the form of notice requirements for natural gas rate schedule and tariff filings in § 154.28 of the Commission's regulations.[1] The revised procedures establish requirements for filing a diskette copy of the notice.

II. Reporting Requirements

There will be no impact on the public reporting burden from requiring submission on a diskette of information that currently must be submitted in hard copy form.

III. Background and Discussion

Under section 4 of the Natural Gas Act every natural-gas company must file schedules showing all rates and charges from any transportation or sale of natural gas subject to the jurisdiction of the Commission and the classifications, practices, rules and regulations affecting such rates, charges and services together with all contracts in any manner relating thereto. Changes to these schedules and related contracts can be made by a natural gas company only through a filing with the Commission that gives notice of the proposed changes to the Commission and to the public. Whenever a company makes such filing the company must file a form of notice of the filing suitable for publication in the **Federal Register** in the form specified in § 154.28. In this final rule, the Commission is revising § 154.28 of its regulations to require that the company also submit a copy of its notice on a separate 3½" diskette in ASCII format marked with the name of the company and the words "notice of filing." This revision of the notice requirements of § 154.28 will enable the Commission to speed up the process by which notice of filings is provided through publication in the **Federal Register** and, especially, through the

[1] 18 CFR 154.28.

Commission Issuance Posting System (CIPS), an electronic bulletin board service that requires that text be in ASCII format in order for it to provide electronic access to the text information.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[2] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most, if not all, of the companies required to comply with this final rule are interstate pipelines which do not fall within the RFA's definition of small entity. Further, most, if not all, companies already have this material on a disk and therefore, forwarding the disk to the Commission would not be a burden.

The Commission certifies that promulgating this rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[3] require that OMB approve certain information collection requirements imposed by agency rule. Since this order does not impose new information collection requirements and has no impact on current information collections there is no need to obtain OMB approval.

VI. National Environmental Policy Act Analysis

The Commission concludes that promulgating this rule does not represent a major Federal action having significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[4] This rule is procedural in nature and does not substantially change the effect of the regulation being amended. Therefore, this rule falls within the categorical exemptions provided in the Commission's regulations.[5] Consequently, neither an environmental impact statement nor an environmental assessment is required.

VII. Administrative Findings and Effective Date

This final rule is a matter of agency organization, procedure, or practice. Since this rule does not itself alter the substantive rights or interests of any interested persons, prior notice and comment are unnecessary under section 4 of the Administrative Procedure Act.[6]

This final rule is effective on May 27, 1993.

List of subjects in 18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 154, chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 154.28 the introductory text is revised to read as follows:

§ 154.28 Form of notice for Federal Register.

The company must file a form of notice suitable for publication in the **Federal Register**. The company must also submit a copy of its notice on a separate 3½" diskette in ASCII format. Each diskette must be clearly marked with the name of the company and the words "notice of filing." The notice must be in the following form:

* * * * *

[FR Doc. 93–9782 Filed 4–26–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5, 5c, 12, 54, and 602

[T.D. 8474]

RIN 1545–AQ99

Removal of Final and Temporary Regulations Relating Primarily to Provisions of Prior Law

AGENCY: Internal Revenue Service, Treasury.

ACTION: Removal of final and temporary regulations.

SUMMARY: This document removes final and temporary regulations under 26 CFR parts 1, 5, 5c, 12, 54, and 602 relating primarily to provisions of prior law. This action is taken in response to the Regulatory Burden Reduction Initiative.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Paul C. Feinberg of the Office of the Associate Chief Counsel (Domestic), within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224, Attention: CC:DOM, (202) 622–3325, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 1992, the Internal Revenue Service published in the **Federal Register** the Request for Comments on Regulatory Burden Reduction Initiative (57 FR 11277), in which the Treasury Department and the Internal Revenue Service solicited public comment on a program to:

(1) Close certain regulations projects that are no longer needed or will not be pursued in the foreseeable future;

(2) withdraw certain proposed regulations which there are no current plans to finalize; and

(3) redesignate certain regulations as relating to prior law in light of subsequent changes to the law.

Section III of that document listed regulations identified as relating primarily to provisions of prior law. Those final and temporary regulations which did not receive any comments or which received only comments favorable to the program are removed. Accordingly, pursuant to the announcement in the **Federal Register** (57 FR 11277), this document removes the final and temporary regulations set forth below from the Code of Federal Regulations system.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Paul C. Feinberg, Office of

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[2] 5 U.S.C. 601–612.

[3] 5 CFR part 1320.

[4] 42 U.S.C. 4332.

[5] 18 CFR 380.4(a)(2)(ii).

[6] 5 U.S.C. 553(b).

Associate Chief Counsel (Domestic), within the Office of the Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.46–1 through 1.50–1

Income taxes, Investments, Reporting and recordkeeping requirements.

26 CFR 1.161–1 through 1.250–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.301–1 through 1.358–5

Income taxes, Reporting and recordkeeping requirements, Securities.

26 CFR 1.381(a)–1 through 1.383–3

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.421–1 through 1.425–1

Income taxes, Securities.

26 CFR 1.451–1 through 1.458–10

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.531–1 through 1.537–3

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.591–1 through 1.596–1

Banking, Banks, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.611–0 through 1.617–4

Income taxes, Natural resources, Reporting and recordkeeping requirements.

26 CFR 1.856–0 through 1.860–5

Income taxes, Investments, Trusts and trustees.

26 CFR 1.891–1 through 1.897–9T

Aliens, Foreign investments in United States, Income taxes.

26 CFR 1.1101–1 through 1102–3

Banking, Banks, Holding companies, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.1231–1 through 1.1297–3T

Income taxes.

26 CFR 1.1502–2 through 1.1502–27

Income taxes.

26 CFR 1.1551–1 through 1.1564–1

Reporting and recordkeeping requirements.

26 CFR 1.6031–1 through 1.6074–3

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5c

Accounting, Banking, Banks, Income taxes, Reporting and recordkeeping requirements, Savings and loan associations.

26 CFR Part 12

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 5, 5c, 12, 54, and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended in part by removing the entries for sections "1.807–1", "1.817–5", and "1.6045–3T" to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. 26 CFR part 1 is amended as set forth in the table that follows:

Section	Description of amendment
1.46–3(e)(3)(iii)	Removed and Reserved.
1.47–1(e)(4)	Removed and Reserved.
1.48–1(e)	Removed and Reserved.
1.48–1(o)	Removed and Reserved.
1.48–7	Removed.
1.48–8 (including the authority citation immediately following the section).	Removed.
1.167(j)–1 through 1.167(j)–7	Removed.
1.167(k)–1 through 1.167(k)–4	Removed.
1.185–1 through 1.185–3	Removed.
1.191–1 through 1.191–3	Removed.
1.213–2	Removed.
1.250–1	Removed.
1.301–1(n)	Removed and Reserved.
1.305–1	Removed.
1.311–1 and 1.311–2	Removed.
1.333–1 through 1.333–6	Removed.
1.334–1(c)	Removed.
1.334–2	Removed.
1.336–1	Removed.
1.337–1 through 1.337–6	Removed.
1.358–5	Removed.
1.382–0	Removed.
1.382–1A	Removed.
1.382–2A	Removed.
1.382–3A	Removed.
1.382–4A	Removed.
1.424–1 and 1.424–2	Removed.
1.453C–0T through 1.453C–10T.	Removed.
1.534–4	Removed.
1.593–9	Removed.
1.613–3, paragraphs (b) through (i) and paragraph designation (a).	Removed.
1.856–9 (including the authority citation immediately following).	Removed.
1.897–4 (including the authority citation immediately following).	Removed.
Undesignated centerheading immediately preceding § 1.1101–1 "Distributions Pursuant to Bank Holding Company Act of 1956".	Removed.
1.1101–1 through 1.1101–4	Removed.
1.1102–1 through 1.1102–3	Removed.
1.1256(h)–1T through 1.1256(h)–3T (including the OMB Control Number and the authority citation after each section).	Removed.
1.1502–7	Removed.
1.1502–25	Removed.
1.1561–1A	Removed.
1.1561–2A	Removed.
1.1561–3A	Removed.
1.6045–3T	Removed.

PART 5—TEMPORARY INCOME TAX REGULATIONS UNDER THE REVENUE ACT OF 1978

Par. 3. The authority citation for part 5 is revised to read as follows:

Authority: 26 U.S.C. 7805.

§ 5.852–1 [Removed]

Par. 4. Section 5.852–1 is removed.

§ 5.857–1 [Removed]

Par. 5. Section 5.857–1 is removed.

PART 5c—TEMPORARY INCOME TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

Par. 6. The authority citation for part 5c is revised to read as follows:

Authority: 26 U.S.C. 168(f)(8)(G) and 7805.

§ 5c.1256–1 through 5c.1256–3 [Removed]

Par. 7. Sections 5c.1256–1 through 5c.1256–3 (including the authority citation immediately following each section) are removed.

PART 12—TEMPORARY INCOME TAX REGULATIONS UNDER THE REVENUE ACT OF 1971

Par. 8. The authority citation for part 12 is revised to read as follows:

Authority: 26 U.S.C. 167, 263, and 7805.

§ 12.5 [Removed]

Par. 9. Section 12.5 is removed.

PART 54—PENSION EXCISE TAXES

Par. 10. The general authority citation for part 54 is revised to read as follows:

Authority: 26 U.S.C. 7805. * * *

§ 54.6071–1T [Removed]

Par. 11. Section 54.6071–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 13. Section 602.101(c) is amended by removing the following entries from the table:

CFR part or section where identified and described	Current OMB control number
[Removed]	
1.48–7	1545–0808
1.48–8	1545–0155
1.167(j)–3	1545–0172
1.167(k)–3	1545–0074
1.167(k)–4	1545–0074
1.185–3	1545–0152, 1545–0172
1.250–1	1545–0132
1.333–3	1545–0123
1.333–6	1545–0123
1.337–5	1545–0123
1.337–6	1545–0123
1.358–5	1545–0123
1.856–9	1545–0123
1.897–4	1545–0123
1.1101–4	1545–0074
1.1102–2	1545–0123
1.1256(h)–1T	1545–0644
1.1256(h)–2T	1545–0644
1.1256(h)–3T	1545–0644
1.1561–3A	1545–0123
1.6045–3T	1545–0715, 1545–0997, 1545–1085
5.852–1	1545–0123
54.6071–1T	1545–0575

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: November 5, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 93–9694 Filed 4–26–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 93–28]

Special Local Regulations: 3rd Annual International Submarine Race, Fort Lauderdale, South Beach Park, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the 3rd International Submarine Races. This event will be held on June 16, 1993 until June 27, 1993, from 7 a.m. EDT (Eastern Daylight Time) until 5 p.m. EDT, each day. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on June 16, 1993 and terminate on June 27, 1993, from 7 a.m. EDT until 5 p.m. EDT, each day.

FOR FURTHER INFORMATION CONTACT: LTJG M. RUDNINGEN, Coast Guard Group Miami, (305) 535–4536.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The information to hold the event was not received until March 9, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT J.M. LOSEGO, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG M.W. RUDNINGEN, Project Officer, Coast Guard Group Miami.

Discussion of Regulations

There will be approximately fifty (50) teams in race submarines, ranging in size from 10 to 15 feet, participating in the Florida Atlantic University 3rd International Submarine Races. Ten (10) to twenty (20) spectator craft are also expected. The event will take place in the Atlantic Ocean ¼ mile east of South Beach Park at a depth of approximately twenty (20) feet. Only competing and official vessels will be allowed to enter the regulated area because of the nature of the racing event. To ensure the safety of swimmers and divers, no propeller engines will be permitted in the regulated area. A large stable platform will be provided for vessel support, staging and testing.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0728 is added to read as follows:

§ 100.35–T0728 3rd Annual International Submarine Race.

(a) *Regulated area.* A regulated area is established for all navigable waters of the Atlantic Ocean east of South Beach Park, Florida, bounded by the following four points: 26–06′–48″N, 80–06′–15″W, at the northwest corner; 26–06′–48″N, 80–05′–57″W, at the northeast corner; 26–06′–36″N, 80–06′–15″W, at the southwest corner; and, 26–06′–36″N, 80–05′–57″W, at the southeast corner.

(b) *Special local regulations.* (1) Entry into the regulated area, by other than event participants and official vessels, is

prohibited, unless authorized by the Patrol Commander.

(2) All vessels near the regulated area will follow the directions of the Patrol Commander and will proceed at no more than 5 MPH when passing the regulated area.

(3) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(4) After the termination of the 3rd International Submarine Races for each respective day, all vessels may resume normal operation.

(c) *Effective dates.* These regulations become effective on June 16, 1993 and terminate on June 27, 1993, from 7 a.m. EDT until 5 p.m. EDT, each day. These times are effective, unless the regulated area is sooner terminated by the Patrol Commander.

Dated: April 7, 1993.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 93-9841 Filed 4-26-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-93-04]

Special Local Regulations: International Bay City River Roar, Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the International Bay City River Roar. This event will be held on the Saginaw River on the 25th, 26th and 27th of June 1993, with an alternate date of June 28, 1993, if the weather is inclement on June 27, 1993.

EFFECTIVE DATE: These regulations become effective from 9:00 a.m. until 4:30 p.m. on June 25, 1993, from 9:00 a.m. until 6:00 p.m. on June 26, 1993 and from 9:00 a.m. until 5:30 p.m. on June 27, 1993.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, Aids to Navigation & Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until March 22, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafters of this regulation are William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, project officer, Aids to Navigation & Waterways Management Branch and M. Eric Reeves, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Bay City River Roar will be conducted on the Saginaw River between the Liberty Bridge and the Veterans Memorial Bridge on the 25th, 26th and 27th of June 1993. This event will have an estimated 70 hydroplanes which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Saginaw River, MI.).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0963 is added to read as follows:

§ 100.35—T0963 International Bay City River Roar, Saginaw River, Bay City, MI

(a) *Regulated area.* That portion of the Saginaw River from the Liberty Bridge on the north to the Veterans Memorial Bridge on the south.

(b) *Special local regulations.* (1) The Coast Guard will be regulating vessel navigation and anchorage by all vessel traffic in the above area from 9 a.m. (EDST) until 4:30 p.m. (EDST) on June 25, 1993, from 9 a.m. (EDST) until 6 p.m. (EDST) on June 26, 1993, from 9 a.m. (EDST) until 5:30 p.m. (EDST) on June 27, 1993. When determined appropriate by the Coast Guard Patrol Commander, vessel traffic will periodically be permitted to transit the regulated area between race heats and during breaks. Commercial vessel traffic will have priority passage.

(2) If the weather on June 27, 1993 is inclement, the river closure will be postponed until 9 a.m. (EDST) to 5:30 p.m. (EDST) on June 28, 1993. If postponed, notice will be given on June 27, 1993 over the U.S. Coast Guard Radio Net.

(3) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel not authorized to participate in the event desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(4) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(6) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: April 14, 1993.

G. A. Pennington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 93-9844 Filed 4-26-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-92-26]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Sarasota/Manatee Metropolitan Planning Council Organization (MPO) and the Florida Department of Transportation (FDOT), the bridge owner, the Coast Guard is modifying the regulations of the Cortez Drawbridge, mile 87.4, at Bradenton by changing the existing 15 minute opening schedule to a year round 20 minute opening schedule and extending the periods of daily regulation. This change is being made because periods of peak vehicular traffic have changed. This action will reduce traffic congestion and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager, Bridge Section, at (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and LT. J.M. Losego, Project Counsel.

Regulatory History

On May 8, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (57 FR 19834). The Coast Guard received 90 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal except that from 9 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour. From December 1 to May 31, Monday through Friday, from 9 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. The MPO and the bridge owner requested that the bridge be allowed to open only on the hour and half-hour from 7 a.m. to 6 p.m. weekdays and from 9 a.m. to 6 p.m. on weekends. A Coast Guard evaluation of the proposal concluded that highway traffic levels and frequency of bridge openings did not justify the 30 minute opening schedule for a drawbridge on the Gulf Intracoastal Waterway.

Extending the existing 20 minute schedule to be effective from 7 a.m. to 6 p.m. daily throughout the year was proposed as an alternative by the Coast Guard in the notice of proposed rulemaking.

Discussion of Comments and Changes

In response to our public notice, we received 90 comments. Ten commenters were in favor of the 20 minute schedule. Eighty commenters wanted a 30 minute schedule, but did not provide any additional information to support this proposal. Several of these commenters recommended a staggered 30 minute schedule for this bridge and the Anna Maria Drawbridge which is located 1.8 miles to the north. A 60 day test of the proposed 20 minute schedule was conducted from December 1, 1992, to January 31, 1993. The results confirmed highway traffic delays were reduced while actually improving vessel movement between the Cortez and Anna Maria Drawbridges. Analysis of this temporary 20 minute schedule indicated many sailing vessels which had been unable to transit between the two bridges within the existing 15 minute schedule were no longer delayed by bridge closures. Analysis of the proposed 30 minute staggered schedule indicated vessels would be impacted similarly to the existing 15 minute schedule which will be avoided by implementing the 20 minute schedule. This change will also eliminate the extended openings thereby reducing vehicular delays and traffic congestion.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this rule, the economic impact is expected to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, 33 CFR part 117 is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.287, paragraph (d)(1) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(d)(1) The draw of the Cortez (SR 684) bridge, mile 87.4, shall open on signal; except that from 7 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour.

* * * * *

Dated: April 5, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 93-9843 Filed 4-26-93; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AG17

Dependency and Indemnity Compensation Reform Act of 1992

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning the formula for the payment of dependency and indemnity compensation (DIC) to surviving spouses and children of veterans who died from service-connected causes. These amendments are necessary to implement recently enacted legislation. The intended effect of these amendments is to bring the regulations into conformance with the new statutory requirements.

EFFECTIVE DATE: These amendments are effective January 1, 1993, the date provided by Public Law 102-568.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1310, VA pays DIC to surviving spouses of veterans who died from disease or injury incurred or aggravated during active military service. Prior to January 1, 1993, 38 U.S.C. 1311(a) provided that the surviving spouse's basic DIC rate be determined by the deceased veterans's military pay grade. The Dependency and Indemnity Compensation Reform Act of 1992, section 102 of the Veterans' Benefits Act of 1992, Public Law 102-568, amended 38 U.S.C. 1311(a) to provide surviving spouses eligible for DIC with a basic monthly rate of $750, without regard to the deceased veteran's military pay grade. This basic rate is increased by $165 monthly in the case of a veteran who at the time of death was receiving or entitled to receive compensation for a service-connected disability evaluated as totally disabling for a continuous period of at least eight years immediately preceding death. In determining the eight year period, only periods during which the veteran was married to the surviving spouse will be considered.

Under the statute, beneficiaries have no option to elect DIC benefits as provided prior to the enactment of Public Law 102-568. Surviving spouses of veterans who die before January 1, 1993, will receive DIC either based upon the veteran's military pay grade or under the new formula, whichever provides the greater benefit. Surviving spouses of veterans who die on or after January 1, 1993, will receive DIC only under the formula provided by Public Law 102-568. VA is amending 38 CFR 3.5(e) (1) and (2) to implement these new statutory provisions.

Public Law 102-568 also amended 38 U.S.C. 1311(b) to increase the additional amount of DIC payable to a surviving spouse with dependent children of the deceased veteran to $100 monthly for each dependent child beginning January 1, 1993; to $150 monthly during Fiscal Year 1994; and to $200 monthly thereafter.

VA is issuing a final rule to implement the statutory amendments contained in section 102 of Public Law 102-568. Because this amendment implements statutory changes, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 12, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.5, paragraph (e)(1) and (e)(2) and their authority citation are revised to read as follows:

§ 3.5 Dependency and indemnity compensation.

* * * * *

(e) *Surviving spouses' rate.* (1) When death occurred on or after January 1, 1993, the monthly rate of dependency and indemnity compensation for a surviving spouse shall be amount set forth in 38 U.S.C. 1311(a)(1). This rate shall be increased by the amount set forth in 38 U.S.C. 1311(a)(2) in the case of the death of a veteran who at the time of death was in receipt of or was entitled to receive (or but for the receipt of retired pay or retirement pay was entitled to receive) compensation for a service-connected disability that was evaluated as totally disabling for a continuous period of at least eight years immediately preceding death. In determining the eight year period, only periods during which the veteran was married to the surviving spouse shall be considered. The resulting rate is subject to increase as provided in paragraphs (e) (3) and (4) of this section.

(2) The monthly rate of dependency and indemnity compensation for a surviving spouse when the death of the veteran occurred prior to January 1, 1993, is based on the "pay grade" of the veteran, unless the formula provided in paragraph (e)(1) of this section results in a greater monetary benefit. The Secretary of the concerned service department will certify the "pay grade" of the veteran and the certification will

be binding on the Department of Veterans Affairs. The resulting rate is subject to increase as provided in paragraphs (e) (3) and (4) of this section.

(Authority: 38 U.S.C. 1311(a) and 1321)

* * * * *

[FR Doc. 93–9736 Filed 4–26–93; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 3

RIN 2900–AF72

Exchange of Evidence; Social Security Administration and Department of Veterans Affairs

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning the exchange of evidence between the Social Security Administration (SSA) and VA. This amendment is necessary because VA's General Counsel had determined that the wording of the prior regulation was overbroad. The intended effect of this amendment is to assure that the regulations accurately reflect the statutory conditions under which evidence received by SSA is also considered evidence received by VA.

EFFECTIVE DATE: This amendment is effective May 27, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.201(a) in the **Federal Register** of June 9, 1992 (57 FR 24446). Interested persons were invited to submit written comments, suggestions or objections on or before July 9, 1992. We received one comment.

The commenter suggested that this amendment would be contrary to a recent finding by the United States Court of Veterans Appeals (COVA) that assuming a claimant has submitted a well-grounded claim for VA benefits, and there is evidence that the claimant has filed a claim with SSA, VA must request information from SSA as part of the duty to assist claimants imposed by 38 U.S.C. 5107(a). It is unclear whether the commenter objects to the fact that the proposed regulation applied to claims for dependency and indemnity compensation (DIC) only or is expressing concern with the language in the proposed rule indicating that the claimant would have the option "to request" that VA obtain a specific record from SSA.

In the COVA case at issue (see *Murincsak* v. *Derwinski*, U.S. Vet. App. No. 90–222 (April 24, 1992)); the appellant had been denied a 100% service-connected disability evaluation on the basis of unemployability. He contended that SSA had evidence which would support his claim and argued that under 38 CFR 3.201(a), VA had constructive notice of SSA records and was therefore deemed to have received them as of the date SSA received them. COVA, however, dismissed that argument, which takes the first sentence of § 3.201(a) out of context, and held that this regulation applies only to claims for DIC for service-connected deaths. The enabling statute for this regulation, 38 U.S.C. 5105, refers to joint applications for social security claims under 42 U.S.C. 401 et seq., and claims under chapter 13 of 38 U.S.C., which deals exclusively with DIC benefits.

COVA held that although VA was required to request records from SSA in this case, it was not the regulatory language at § 3.201(a), but actual notice of records in the possession of SSA that had triggered VA's duty to assist.

In order to prevent any confusion over the applicability of § 3.201(a), VA has amended the regulation to clearly specify that it applies to claims for DIC benefits only. This amendment does not, and in fact cannot, obviate VA's duty to assist under the provisions of 38 U.S.C. 5107(a) once VA has actual notice of records that might have a bearing on the adjudication of a well-grounded claim for VA benefits. For the sake of clarity, we have also amended the proposed regulatory language by removing any suggestion that the claimant would have to request that VA obtain information from SSA.

VA appreciates the comment submitted in response to the proposed rule, which is now adopted with the above described amendment.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 3, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.201, paragraph (a) and the authority citation at the end of the section are revised to read as follows:

§ 3.201 Exchange of evidence; Social Security and Department of Veterans Affairs.

(a) A claimant for dependency and indemnity compensation may elect to furnish to the Department of Veterans Affairs in support of that claim copies of evidence which was previously furnished to the Social Security Administration or to have the Department of Veterans Affairs obtain such evidence from the Social Security Administration. For the purpose of determining the earliest effective date for payment of dependency and indemnity compensation, such evidence will be deemed to have been received by the Department of Veterans Affairs on the date it was received by the Social Security Administration.

* * * * *

(Authority: 38 U.S.C. 501(a) and 5105)

[FR Doc. 93–9732 Filed 4–26–93; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 3

RIN 2900–AG18

Exclusions From Income

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning exclusions from countable income under the Improved Pension program. This amendment is necessary to implement recently enacted legislation. The intended effect of this amendment is to bring the regulations into conformance with the new statutory requirements.

EFFECTIVE DATE: These amendments are effective November 4, 1992, the date that Public Law 102–585 was signed into law.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 1718 previously provided that payments as a result of participation in a VA therapeutic or rehabilitation activity be considered a donation from a public or private relief or welfare organization and not countable as income for pension purposes. Section 401 of the Veterans' Health Care Act of 1992, Public Law 102–585, amended 38 U.S.C. 1718 to consider payments to a veteran as a result of participation in a program of rehabilitative services provided as part of the care furnished by a State home and which is approved by VA as conforming to standards for activities under 38 U.S.C. 1718 to be a donation from a public or private relief or welfare organization, and, therefore, excluded from countable income under the Improved Pension program. VA is amending 38 CFR 3.272(l) to implement this new statutory provision.

VA is issuing a final rule to implement the statutory amendment contained in section 102 of Public Law 102–585. Because this amendment implements statutory changes, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entitles as they are defined in the RFA, 5 U.S.C. 601–612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.104.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 12, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependence and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.272, paragraph (l) and its authority citation are revised to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(l) Distributions of funds under 38 U.S.C. 1718. Distributions from the Department of Veterans Affairs Special Therapeutic and Rehabilitation Activities Fund as a result of participation in a therapeutic or rehabilitation activity under 38 U.S.C. 1718 and payments from participation in a program of rehabilitative services provided as part of the care furnished by a State home and which is approved by VA as conforming to standards for activities under 38 U.S.C. 1718 shall be considered donations from a public or private relief or welfare organization and shall not be countable as income for pension purposes.

(Authority: 38 U.S.C. 1718(f))

* * * * *

[FR Doc. 93–9733 Filed 4–26–93; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 3

RIN 2900–AG15

Veterans' Radiation Exposure Amendments of 1992

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning presumptive service connection for certain diseases resulting from exposure to ionizing radiation during military service. These amendments are necessary because Congress has added to the list of conditions for which presumptive service connection is authorized and repealed the requirement that the listed diseases must manifest themselves within a specified time after the veterans' last exposure to radiation. The intended effect of these amendments is to bring the regulations into conformance with the revised statutory requirements.

EFFECTIVE DATE: These amendments are effective October 1, 1992, the date provided by Public Law 102–578.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 2 of the Veterans' Radiation Exposure Amendments of 1992, Public Law 102–578, amended 38 U.S.C. 1112(c) to repeal the requirement that, to be presumed service connected, specified diseases of veterans who participated in a radiation-risk activity become at least 10 percent disabling within 40 years after the veterans' last exposure to radiation. Public Law 102–578 also added cancer of the salivary gland and cancer of the urinary tract to the list of conditions for which presumptive service connection is authorized for veterans who participated in a radiation-risk activity. VA is amending 38 CFR 3.309(d) to implement these revised statutory provisions.

VA is issuing a final rule to implement the specified statutory amendments contained in Public Law 102–578. Because this amendment implements statutory changes,

publication as a proposal for public notice and comment in unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employments, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 11, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.309 [Amended]

2. In § 3.309(d)(1), remove the words "to a degree of 10 percent or more within the presumptive period specified in paragraph (d)(3) of this section".

3. In § 309, add paragraphs (d)(2)(xiv) and (xv) to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(d) * * *

(xiv) Cancer of the salivary gland.

(xv) Cancer of the urinary tract.

* * * * *

4. In § 3.309, remove paragraph (d)(3) and redesignate paragraph (d)(4) as paragraph (d)(3).

[FR Doc. 93–9737 Filed 4–26–93; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 3

RIN 2900–AF89

Radiation Exposure Compensation Act of 1990

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations regarding entitlement to compensation and dependency and indemnity compensation (DIC) benefits. These amendments are necessary to implement the provisions of the Radiation Exposure Compensation Act of 1990 (RECA) which authorize payments by the Department of Justice (DOJ) to certain individuals for disability or death due to specific radiogenic diseases. The intended effect of these amendments is to bring VA regulations into conformance with this new law.

EFFECTIVE DATE: This amendment is effective October 15, 1990, the date Public Law 101–426 was signed into law.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to add new § 3.715 to 38 CFR part 3 and to amend 38 CFR 3.500 in the **Federal Register** of September 3, 1992 (57 FR 40424–25). Interested persons were invited to submit written comments, suggestions or objections on or before October 5, 1992. Since no comments, suggestions or objections were received, the amendments have been adopted as proposed with only a minor technical change.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 4, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.500, add new paragraph (x) to read as follows:

§ 3.500 General.

* * * * *

(x) *Radiation Exposure Compensation Act of 1990 (§ 3.715).* (Compensation or dependency and indemnity compensation only). Last day of the month preceding the month in which payment under the Radiation Exposure Compensation Act of 1990 is issued.

3. Add new § 3.715 and its authority citation to read as follows:

§ 3.715 Radiation Exposure Compensation Act of 1990.

Payment to any individual under the provisions of the Radiation Exposure Compensation Act of 1990 (Pub. L. 101–426 as amended by Public Law 101–

510) based upon disability or death resulting from a specific disease shall bar payment, or further payment, of compensation or dependency and indemnity compensation to or on behalf of that individual based upon disability or death resulting from the same disease.

(Authority: 42 U.S.C. 2210 note)

Cross Reference: See § 3.500(x) for effective date of discontinuance.

[FR Doc. 93–9734 Filed 4–26–93; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 17

RIN 2900–AG43

Home Improvement and Structural Alterations (HISA); Increase in the Limit for Home Improvement and Structural Alterations (HISA)

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern expenditures for home improvements or structural alterations for veterans. The Veterans' Medical Programs Amendments Act of 1992 authorized increases for home improvements or structural alterations from $2,500 to $4,100 for service-connected veterans and from $600 to $1,200 for nonservice-connected veterans. This amendment will make the regulation consistent with the law.

EFFECTIVE DATE: This amendment is effective October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Monica J. Wilkins, Policies and Procedures Division (161B2), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; Phone: (202) 535–7439.

SUPPLEMENTARY INFORMATION: The Veterans' Medical Programs Amendments Act of 1992, Public Law 102–405 enacted October 9, 1992, amended 38 U.S.C. 1717, by increasing the amount of the benefit payable to veterans for home improvements and structural alterations. This law applies to veterans who filed a claim for home improvements and structural alterations benefits on or after January 1, 1990. VA is, for good cause, promulgating this amendment as a final regulation without obtaining notice and comment. Because the amendment is simply making the regulation consistent with the law, there is no need to obtain public comment.

This regulatory amendment will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy. Consequently, this amendment does not meet the criteria for a major rule as that term is defined by Executive Order 12291.

This amendment is not subject to the Regulatory Flexibility Act, 5 United States Code 601–612. The Secretary certifies that this regulation will not have a significant economic impact on the substantial number of small entities as they are defined in the Regulatory Flexibility Act. Any economic impact on small entities will be the result of the law, not this regulatory amendment.

The Catalog of Federal Domestic Assistance Number is 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: March 18, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501.

§ 17.60 [Amended]

2. Section 17.60(f) is amended by removing "$2,500" and adding in its place "$4,100" and by removing "$600" and adding in its place "$1,200".

[FR Doc. 93–9738 Filed 4–26–93; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 21

RIN 2900–AF15

Veterans' Education; Verification of Pursuit and Continued Enrollment

AGENCY: Department of Veterans Affairs.

ACTION: Delay of effective date.

SUMMARY: This document contains a delay of the effective date for final regulations which were published Wednesday, August 26, 1992. The regulations provided new rules for release of payments of educational assistance under VEAP (Post-Vietnam-Era Veterans' Educational Assistance Program).

EFFECTIVE DATE: The effective date for regulations published at 57 FR 38611 is delayed to August 1, 1999.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–233–2092.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the **Federal Register**, amendments to § 21.5130, § 21.5131, § 21.5133 and § 21.5200 require that a veteran enrolled in a course leading to a standard college degree must verify monthly that he or she is still pursuing a program of education before VA (Department of Veterans Affairs) will pay that month's educational assistance.

These regulations were published with a future effective date of August 1, 1993. At the time the final regulations appeared in the **Federal Register**, VA planned on having a new verification processing system in place by August 1, 1993. However, due to limited resources, the department has found that it will be unable to begin the new verification system by that date. Accordingly, these final regulations will not become effective until August 1, 1999.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

For the reasons set forth in the preamble, the effective date for the regulations published at 57 FR 38611 affecting §§ 21.5130, 21.5131, 21.5133 and 21.5200 is delayed to August 1, 1999.

Approved: April 20, 1993.

Michael B. Berger,

Director, Records Management Service.

[FR Doc. 93–9741 Filed 4–26–93; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-35-5656; FRL-4608-6]

Approval of State Implementation Plans; Alabama: Approval of the Visible Emission Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Alabama State Implementation Plan (SIP). These revisions were submitted to EPA by the State of Alabama through the Alabama Department of Environmental Management on June 11, 1979. The revisions being approved incorporate the visible emission regulations into the Alabama SIP.

EFFECTIVE DATES: This action will be effective June 28, 1993 unless notice is received by May 27, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Public Information Reference Unit, ATTN: Jerry Kurtzweg (AN 443), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Division, Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur of the EPA Region IV Air Programs Branch at (404) 347-2864 and at the above address.

SUPPLEMENTARY INFORMATION: On June 11, 1979, the Alabama Department of Environmental Management submitted amendments to the SIP pertaining to Visible Emissions (VE) and nitric acid. The VE regulations revise the Alabama regulation to incorporate EPA reference method 9 (40 CFR part 60, appendix A). These amendments were adopted by the Alabama Air Pollution Control Commission on June 5, 1979. Originally, EPA did not officially approve or disapprove the revision due to the inclusion of a "Director's Discretion" clause in the regulation. On September 10, 1992, the Alabama Department of Environmental Management submitted a letter clarifying the role of "Director's Discretion." This clarification specified the method which would be used to approve an alternative and stated that any alternative would be subject to EPA review through the Title V permit process. Therefore, EPA is today approving the VE regulation. The Alabama Department of Environmental Management in the September 10, 1992, letter indicated the nitric acid regulation was no longer relevant. Therefore EPA is not acting on this amendment.

Final Action

The Agency has determined that the aforementioned changes are consistent with Agency policies. Therefore, EPA is today approving this amendment to the Alabama SIP. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective June 28, 1993. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

If no adverse or critical comments are received by EPA under section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 28, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule of action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the Clean Air Act, 42 U.S.C. 7607(b)(2)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments of the Clean Air Act enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 22, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(60) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(60) Provisions for visible emissions were submitted by the Alabama Department of Environmental Management on June 11, 1979.

(i) Incorporation by reference.

(A) 335–3–4.01 Visible Emissions, adopted May 17, 1989.

(ii) Other material.

(A) None.

[FR Doc. 93–9821 Filed 4–26–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 81

[IL64–2–5807; FRL–4617–5]

Approval and Promulgation of Designation of Areas for Air Quality Planning Purposes; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule; correction; reopening of the public comment period; delay of the effective date.

SUMMARY: On March 5, 1993, USEPA approved a request by Illinois to revise area designations for Total Suspended Particulate (TSP) from nonattainment to attainment. The approval document listed the areas being redesignated. Unfortunately, five areas were inadvertently omitted from the list of areas being redesignated to attainment. Further, the revisions to the Illinois TSP designation table were omitted from the final rulemaking. This rule corrects these omissions from the earlier rule.

DATES: The comment period on this rule is reopened until May 27, 1993. The effective date is delayed until June 28, 1993, unless notification is received that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the redesignation request and other materials relating to this rulemaking are available at the following address for review: (It is recommended that you telephone David Pohlman at (312) 886–3299, before visiting the Region 5 office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this redesignation is also available by contacting: Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: In FR Doc. 93–5105, in the **Federal Register** of March 5, 1993, on page 12541, in the second column, the list of Cook County areas being redesignated should have read as follows:

Cook County: Berwyn Township (Twp.), Bloom Twp., Calumet Twp., Cicero Twp., Elk Grove Twp., Hyde Park Twp., Jefferson Twp., Lake Twp., Lakeview Twp., Leyden Twp., Maine Twp., Niles Twp., No. Stickney Twp., North Town Twp., Northfield Twp., Norwood Park Twp., Palatine Twp., Proviso Twp., River Forest Twp., Riverside Twp., Rogers Park Twp., South Stickney Twp., South Town Twp., Thorton Twp., West Town Twp., Wheeling Twp., and Worth Twp., but not including the area bounded on the north by 79th Street, on the west by Interstate 57 between Sibley Boulevard and Interstate 94 and by Interstate 94 between Interstate 57 and 79th Street, on the south by Sibley Boulevard, and on the east by the Illinois/Indiana State line.

USEPA regrets any inconvenience these errors may have caused.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 14, 1993.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, 40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.314 is amended by revising the attainment status designation table for TSP to read as follows:

§ 81.314 Illinois.

ILLINOIS—TSP

Designated area	Does not meet primary	Does not meet secondary	Cannot be classified	Better than national standards
Cook County:				
a. Lyons Township	X	X	.....	.....
b. The area bounded on the north by 79th Street, on the west by Interstate 57 between Sibley Boulevard and Interstate 94 and by Interstate 94 between Interstate 57 and 79th Street, on the south by Sibley Boulevard, and on the east by the Illinois/Indiana State line	X	X	.....	.....
LaSalle County:				
Those portions of LaSalle Township located in the following Townships, ranges, and sections: T33N, R1E, S24; T33N, R1E, S25; T33N, R2E, S30; T33N, R2E, S31; and T33N, R1E, S36	X	X	.....	.....
Those portions of Deer Park Township located in the following Townships, ranges, and sections: T32N, R1E, S1; T32N, R2E, S6; T33N, R1E, S24; T33N, R1E, S25; T33N, R2E, S30; T33N, R2E, S31; and T33N, R1E, S36	.....	X	.....	.....

ILLINOIS—TSP—Continued

Designated area	Does not meet primary	Does not meet secondary	Cannot be classified	Better than national standards
Madison County: Granite City Township and Nameoki Township	X	X		
All other portions of Illinois counties				X

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[FR Doc. 93–9664 Filed 4–26–93; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7568]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is catgorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citiation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

§ 64.6 LIST OF ELIGIBLE COMMUNITIES

State	Community name	County	Community number	Effective date
Region V:				
Minnesota	Center City, city of	Chisago	270685	March 15, 1993, suspension withdrawn.
Do	Duluth, city of	St. Louis	270421	Do
Do	Hermantown, city of	St. Louis	270708	Do

§ 64.6 LIST OF ELIGIBLE COMMUNITIES—Continued

State	Community name	County	Community number	Effective date
Do	Isanti county	Isanti	270197	Do
Do	Rosemount, city of	Dakota	270113	Do
Do	Warroad, city of	Lake of the Woods	270415	Do

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: April 16, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93-9769 Filed 4-26-93; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 92-26; FCC 93-131]

Formal Complaints Against Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted this Report and Order to amend rules governing the procedures to be followed when formal complaints are filed against common carriers. The rule changes are intended to improve the record created in formal complaint cases, minimize procedural disputes and delays, and promote more timely resolution of formal complaints.

EFFECTIVE DATE: July 26, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Romano, Enforcement Division, Common Carrier Bureau, 202-632-4887.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in CC Docket No. 92-26 [FCC 93-131], adopted March 2, 1993 and released April 2, 1993. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC. The full text of the Report and Order may also be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

SUMMARY OF REPORT AND ORDER

I. Background

1. On March 12, 1992, the Commission released a Notice of Proposed Rulemaking (NPRM) 57 FR 9528, March 19, 1992 proposing changes to the rules that govern formal complaints against common carriers. 7 FCC Rcd 2042 (1992). Twenty comments and 11 reply comments regarding the proposed revisions were filed by parties who have participated in the formal complaint process as complainants, defendants, or counsel. On April 2, 1993, the commission released a Report and Order (R&O), FCC 93-131, summarized here, which amends Part 1 of the Commission's rules by adopting some of the changes to the formal complaint rules that were proposed in the NPRM.

II. Discussion

A. General Pleading Requirements (Section 1.720)

2. The Commission amended general pleading requirements (Section 1.720) to explicitly require that "all statements purporting to summarize or explain Commission orders or policies must cite, in standard legal form, the Commission ruling upon which such statements are based." However, the Commission declined to further amend pleading requirements in the manner suggested by one commenter so that parties to formal complaints would be required to include with their pleadings all documents which would be used to support assertions of fact. Considering objections voiced by other commenters, the Commission concluded that such a requirement would add a new area of potential dispute to the complaint process and place an undue burden on formal complaint parties and Commission staff.

B. Answers (Section 1.724)

3. The Commission decided against cutting ten days from the deadline for a defendant to file an answer to a formal complaint as was proposed in the NPRM. The proposed 20 day deadline would have coincided with that imposed by the Federal Rules of Civil Procedure. However, most commenters opposed the proposal, arguing that there are significant differences between the complaint process conducted in federal district court and the complaint process before the Commission that warrant different deadlines for parallel pleadings. The Commission concluded that commenters demonstrated that a reduction in the answer deadline would unreasonably impair a defendant's ability to answer fully a complainant's allegations without yielding a benefit sufficient to mitigate the added burden. Thus, the 30 day answer deadline was retained.

C. Replies (Section 1.726)

4. The Commission adopted a rule prohibiting complainants from filing replies to a defendant's answer to a complaint except when an answer presents specifically captioned affirmative defenses. (Section 1.724, pertaining to answers, was amended to specify the requirement that all affirmative defenses must be specifically captioned as such). In such instances, a complainant will have a right, but not an obligation, to file a reply. Noting other rule changes ensuring an opportunity to file briefs in formal complaint cases, the Commission concluded that discontinuation of routine replies should simplify the record in formal complaint cases without impinging upon a complainant's ability to meet its burden of proof.

D. Motions (Section 1.727)

5. In the NPRM, the Commission proposed several rule changes intended to curb the proliferation of motions that either address procedural issues of minimal significance or repeat substantive allegations contained in major pleadings. In general, however, most commenters opposed the proposed amendments regarding formal complaint motion practice. Even most of those parties who did not apparently quarrel with the goal of reducing the number of motions filed in formal complaint cases, believe that proposed rule changes could be counterproductive while at the same time unduly restricting a party's ability to prosecute or defend a formal complaint. The Commission was largely convinced by such objections and declined to adopt proposed rules which would have significantly altered the filing window during which motions may be submitted. However, the Commission did conclude that

elimination of replies to oppositions to motions would promote compilation of a more concise record for resolution. Accordingly, that pleading opportunity was discontinued.

E. Interrogatories to Parties (Section 1.729); Other Forms of Discovery (Section 1.730); Confidentiality of Information Produced Through Discovery (Section 1.731)

6. The Commission considered several proposals, presented in the NPRM, which were designed to simplify and expedite discovery.

1. Self-Executing Discovery

7. The Commission decided against adopting a rule whereby no discovery could be undertaken absent an affirmative order by the Commission. Although the Commission still expressed the view that discovery is not strictly necessary in all cases, it concluded that requiring affirmative action by the Commission before discovery can begin would not actually promote expedition but, instead, simply add another area of dispute and potential for delay. Thus, the Commission retained its rule permitting opposing parties to serve, without any Commission authorization, up to 30 interrogatories which must be answered within 30 days unless objections are made.

2. Discovery Timetable

8. The Commission declined to adopt proposals presented in the NPRM which would have (1) altered the time during which discovery can be initiated; (2) set the deadline for responding to interrogatories at 20 days after service instead of 30 days; (3) set the deadline for objections to the breadth of discovery at 10 days after service, rather than along with the answers to interrogatories; and (4) set the deadline for filing motions to compel discovery at 5 days, rather than 15 days, after the answer deadline or the date objections are filed. In declining to adopt such changes, the Commission was persuaded by the majority of commenters who contended the proposals would thwart the effective use of various discovery tools and increase burdens on the parties without yielding significant or demonstrable time-savings. Thus, the Commission left its discovery rules unchanged except to adjust time frames to account for the fact that replies to answers to complaints will no longer be routinely filed and to cut the time available for parties to seek Commission approval for any discovery beyond the 30 automatic self-executing interrogatories. The Commission concluded that requiring requests for additional discovery to be filed 15 days after answers to self-executing interrogatories are served, instead of the 30 days currently allowed, would not unduly hamper parties' abilities to review answers to discovery and determine whether and/or what further discovery might be necessary.

3. Bifurcation of Discovery

9. In the NPRM, the Commission asked parties to address whether the delays and expenses of protracted discovery could be ameliorated by postponing any discovery regarding damages until after a ruling on liability has been issued. The premise underlying this proposal was that the considerable time and effort expended by the parties and the Commission staff on damages discovery is effectively wasted if no violation or liability is found. Both parties supporting the general proposition of deferring damages discovery and those opposing any such bifurcated discovery plan raised concerns regarding the operation of such a system. Several parties suggested that deferring damages discovery could have the unintended effect of discouraging early settlement efforts since parties may not be adequately informed as to what the case is "worth." Considering the concerns raised by the parties and the delay which would almost certain to be experienced if two rounds of discovery should be necessary, the Commission concluded that bifurcation is not appropriate for all cases. Accordingly, the Commission adopted a rule explicitly affirming its discretion to conduct bifurcated proceedings but declined to mandate a bifurcated approach for all cases.

4. Objections Based on Relevance; Admissions Through Discovery

10. In the NPRM, the Commission solicited comment on the desirability of removing relevance as a permissible objection to discovery. The Commission had asked parties to consider the advantages and disadvantages of a system whereby parties could refuse to answer interrogatories seeking information they believed to be irrelevant. Such a refusal to answer would be deemed to be an admission, relevant only for purposes of resolving the complaints, of allegations contained in the interrogatory. Commenters were virtually unanimous in their vigorous opposition to such a system and the Commission concluded that they had demonstrated that abandoning the relevancy standard and employing the proposed admission process would transform the discovery process from its legitimate purpose as a means to gather the necessary factual information to "fishing expeditions" through which parties seek to obtain a wide range of information possibly having little bearing on the allegations of the complaint. Accordingly, the Commission kept its rule limiting discovery to those matters relevant to the complaint.

5. Treatment and Filing of Discovered Materials

11. Noting generally enthusiastic endorsement by commenters, the Commission adopted a rule providing for the confidential treatment of materials exchanged by the parties during formal complaint discovery. The rule is modeled on private protective agreements entered by parties in past complaint cases and specifically limits the manner in which an opposing party may use, duplicate, and disseminate proprietary materials obtained through discovery. The provision is available to parties who believe in good faith that materials subject to discovery fall within an exemption to disclosure contained in the Freedom of Information Act and is intended to replace the time-consuming practice of negotiating private protective agreements with uniform confidentiality standards. The Commission also adopted an NPRM proposal eliminating the requirement that materials exchanged through discovery must be filed with the Commission. Although some parties contended that the Commission should continue the filing requirement in the interests of compiling a complete documentary record and encouraging cooperative discovery, the Commission determined that ending the routine submission of materials would neither impede the establishment of a factual record necessary for resolution nor discourage parties from complying with legitimate discovery requests. The Commission noted that under the amended formal complaint rules, both complainants and defendants will be free to file briefs summarizing the factual evidence supporting their cases which has been gleaned through discovery. The Commission concluded that it has neither the need nor the resources to thoroughly review all discovered materials to ferret out what information may be of decisional significance when briefs summarizing that information may be filed.

F. Other Required Written Submissions (Section 1.732)

12. The Commission agreed with commenters who argued that parties should be accorded an automatic right to file briefs and reply briefs. Thus, the Commission amended its rules to grant parties an opportunity to file briefs in all formal complaint cases. Although the rules establish the submission of briefs as voluntary, the Commission specifically noted that it retains discretion to require submission of briefs in any case when they are determined to be necessary to the full and fair consideration of the issues. In cases where no discovery has been conducted, the Commission established a default schedule for the submission of briefs; initial briefs will be due within 90 days after service of a complaint. However, when discovery is conducted the Commission concluded that there are too many possible variables to adopt uniform filing deadlines. Thus, when discovery is conducted, the Commission staff will set a deadline for the submission of initial briefs, generally 30 days after the completion of discovery. Reply briefs will be due within 20 days after the filing deadline for initial briefs, regardless of whether discovery is conducted.

13. Responding to the concerns of various commenters, the Commission extended the page limits for briefs beyond those proposed in the NPRM. When discovery is conducted, initial briefs will be limited to 50 pages; reply briefs to 30 pages. When discovery has not been conducted, initial briefs shall not exceed 35 pages; reply briefs 20 pages.

14. The Commission also adopted a rule incorporating one commenter's suggestion that when a brief incorporates material discovered subject to protective provisions, an additional five days be allowed for submission of a redacted version to the Commission. Redacted versions are submitted to the Commission solely for the purpose of inclusion in the public file. The extra time afforded for filing of redacted briefs should ensure that proper deletions of confidential information are not overlooked in the rush to complete the brief.

G. Status Conference (Section 1.733)

15. The Commission amended its rule regarding status conferences to include explicit authorization for the staff to use status conferences with the parties to issue oral rulings on interlocutory matters. However, in response to concerns raised by commenters, the Commission altered the NPRM proposal to specify that compliance deadlines will not be calculated from the date of the oral ruling, but from the date of the written confirmation of such ruling. The Commission concluded that such a provision was necessary to ensure that the parties are afforded an opportunity to pursue their appeal rights prior to the compliance deadline.

H. Copies; Service; Separate Filings Against Multiple Defendants (Section 1.735)

16. The Commission amended this procedural rule to clarify fee and filing requirements that have been changed, pursuant to statute, since the formal complaint rules were last revised. The new rule specifies that formal complaints must be filed in accordance with fee regulations contained in 47 CFR 1.1105(1)(c) and that single complaints against multiple defendants constitute separate actions for which separate fees must be paid.

I. Miscellaneous

17. The Commission ruled on various suggestions for changes in the formal complaint rules that were made by commenters but had not been addressed in any specific NPRM proposal.

18. The Commission declined to adopt a proposal permitting complainants to serve their complaints directly on defendants, thus commencing the 30 day answer period earlier than when service is accomplished by the Commission. Although the Commission agreed that some time savings would result from self-service, it rejected such a system since it would deprive the Commission of making threshold judgments as to whether a complaint should even be served (*i.e.*, whether it states a cause of action and otherwise meets the Commission's minimal filing requirements).

19. The Commission also declined to adopt a rule deferring either the answer deadline or initiation of discovery until any substantive motions have been decided. The Commission concluded that pleading and discovery deadlines were postponed until the Commission ruled on all substantive motions, defendants would be able to hold proceedings hostage simply by filing certain motions, regardless of whether they are justified by the facts or law.

20. The Commission rejected a proposal to add a process whereby parties can obtain admissions of fact as a standard part of the complaint process. The Commission agreed with commenters opposing the proposal that such a process is unnecessary given existing pleading requirements and rule provisions, and would simply add another area of dispute and layer of delay.

21. The Commission concluded that it is unnecessary to amend the formal complaint rules to address involvement by Administrative Law Judges (ALJs) in the resolution of formal complaints. While the Commission reiterated its authority to order evidentiary hearings in formal complaint cases, it emphasized the long-standing practice of designating formal complaints for hearing before an ALJ only when oral testimony or cross-examination is required. The Commission concluded that no purpose would be served by creating a rule to set particular guidelines for ALJ involvement.

22. Some commenters urged the Commission to adopt procedures whereby frivolous complaints would be dismissed at the earliest possible time. The Commission rejected as outside of the scope of this proceeding a proposal that a rule be adopted requiring the immediate dismissal of complaints that allege unreasonably high rates or overearnings when the rates and sharing mechanisms at issue are in compliance with relevant price cap requirements. With respect to dismissal generally, the Commission found that existing rules already provide for swift dismissal of flawed complaints. The Commission instructed the staff to pay particular attention to such matters in reviewing incoming complaints. Nonetheless, the Commission noted that while some complaints may not be as thoroughly pleaded as it might prefer, most formal complaints meet the minimal standards of the rules.

23. Although the Commission expressed a desire to discourage improper practices by attorneys in formal complaint proceedings, it concluded that adoption of sanctions specifically tailored to the formal complaint process is unnecessary given broad sanction authority under existing rules. Furthermore, the Commission noted that accusations of frivolous or abusive practice sometimes are themselves interposed for frivolous and abusive purposes. Formal complaint sanction rules could only encourage such charges and require Commission involvement in disputes that could prolong ultimate resolution of the underlying complaint.

24. Finally, the Commission rejected a proposal to add to the formal complaint rules a provision modeled after the Federal pre-trial procedures contained in Rule 16 of the Federal Rules of Civil Procedure. The Commission concluded that the existing rule regarding status conferences

already incorporates many of the functions covered by Rule 16, but was specifically adapted to the formal complaint process where trials are not held.

III. Paperwork Reduction

25. Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project (3060–0411), Washington DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0411), Washington, DC 20503.

IV. Conclusion

26. With this R&O, the Commission has adopted rules designed to improve the records compiled in formal complaint cases and expedite resolution of such cases. Specifically, the Commission has adopted rules which should ensure the confidentiality of materials exchanged through discovery. An absolute right to file briefs and uniform standards applicable to such pleadings have been established. In addition, certain unnecessary pleadings have been discontinued and the staff has been authorized to issue oral rulings on interlocutory matters.

V. Ordering Clauses

27. Accordingly, *it is ordered,* pursuant to sections 1, 4(i), 201(b), 208 and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 201(b), 208 and 403, that § 1.720 *et seq.* of the Commission's rules, 47 CFR 1.720 *et seq.* is amended as set forth below.

28. *It is further ordered* that this Report and Order will be effective ninety (90) days after publication of a summary thereof in the **Federal Register.**

List of Subjects in 47 CFR Part 1

Administrative practice and procedure; Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Part 1 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. In § 1.720, paragraph (i) is added to read as follows:

§ 1.720 General pleading requirements.

* * * * *

(i) All statements purporting to summarize or explain Commission orders or policies must cite, in standard legal form, the Commission ruling upon which such statements are based.

3. In § 1.724, paragraph (e) is added to read as follows:

§ 1.724 Answers.

* * * * *

(e) Affirmative defenses to allegations contained in the complaint shall be specifically captioned as such and presented separately from any denials made in accordance with paragraph (c) of this section.

4. Section 1.726 is revised to read as follows:

§ 1.726 Replies.

Within 10 days after service of an answer containing affirmative defenses presented in accordance with § 1.724(e), a complainant may file and serve a reply, which shall be responsive to only those allegations contained in affirmative defenses.

5. In § 1.727, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 1.727 Motions.

* * * * *

(e) Oppositions to motions may be filed within ten days after the motion is filed. Oppositions shall be limited to the specific issues and allegations contained in the motion; when a motion is incorporated in an answer to a complaint, an opposition to the motion shall not address any issues presented in the answer that are not also specifically raised in the motion.

(f) No reply may be filed to an opposition to a motion.

6. In § 1.729, paragraphs (a) and (d) are revised, the last sentence of paragraph (c) is revised, and new paragraph (e) is added to read as follows:

§ 1.729 Interrogatories to parties.

(a) During the time period beginning with service of the complaint and ending 30 days after the date an answer is due to be filed, any party may serve any other party written interrogatories, to be answered in writing by the party served or, if the party served is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party. All interrogatories served on an opposing party shall be filed with the Commission at the time of service. Parties shall propound no more than 30 single interrogatories without prior Commission approval. Subparts of an interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. This procedure may be used for the discovery of any nonprivileged matter which is relevant to the pleadings. Interrogatories may not be employed for the purpose of delay, harassment or to obtain information which is beyond the scope of permissible inquiry relating to the subject matter of the pleadings.

* * * * *

(c) * * * Alternately, the party may request that answers to interrogatories be discussed during a status conference, pursuant to § 1.733.

(d) Answers to interrogatories shall not be filed with the Commission unless so ordered by the Commission or its staff.

(e) The Commission may in its discretion limit the scope of permissible inquiry so that matters pertaining solely to the amount or computation of damages are not addressed until after a finding of liability has been made against the complainant. Inquiries that relate dually to liability and damages will be permitted during initial discovery conducted during the liability phase. If a bifurcated framework is implemented and a finding of liability is made, the parties shall, within 5 working days, inform the Commission whether they wish to defer damages discovery in order to enter negotiations for the purpose of settling their dispute. If the parties commence settlement negotiations, damages discovery shall not be undertaken prior to 20 days after release of the liability order.

7. In § 1.730, paragraph (c) is revised and paragraph (d) is added to read as follows:

§ 1.730 Other forms of discovery.

* * * * *

(c) Motions seeking discovery may be filed only during the period beginning with the service of a complaint and ending 30 days after the date an answer is filed or 15 days after responses to interrogatories under § 1.729 are filed, whichever period is longer, except where the movant demonstrates that the need for such discovery could not, even with due diligence, have been ascertained within this period.

(d) Documents produced through discovery shall not be filed with the Commission unless so ordered by the Commission or its staff.

§§ 1.731–1.734 [Redesignated as §§ 1.732–1.735]

8. Sections 1.731 through 1.734 are redesignated as §§ 1.732 through 1.735 and new § 1.731 is added to read as follows;

§ 1.731 Confidentiality of information produced through discovery.

(a) Any materials generated or provided by a party in response to discovery may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1)–(9). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

(b) Materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

(5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) These individuals shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(d) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraph (b) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(e) Upon termination of a formal complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the complaint proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

9. In newly redesignated § 1.732, a new sentence is added to the end of paragraph (a); paragraph (b) is redesignated and republished as paragraph (g); and new paragraphs (b), (c), (d), (e), and (f) are added to read as follows:

§ 1.732 Other required written submissions.

(a) * * * Absent an order by the Commission that briefs be filed, the parties may voluntarily submit briefs in accordance with the provisions of paragraphs (b) through (e) of this section.

(b) In cases when discovery is not conducted, briefs shall be filed concurrently by both complainant and defendant within 90 days from the date a complaint is served. Such briefs shall be no longer than 35 pages.

(c) In cases when discovery is conducted, briefs shall be filed concurrently by both complainant and defendant at such time designated by the staff, typically within 30 days after discovery is completed. Such briefs shall be no longer than 50 pages.

(d) Reply briefs may be submitted by either party within 20 days from the date initial briefs are due. Reply briefs shall be no longer than 20 pages in cases when discovery is not conducted, and 30 pages in cases when discovery is conducted.

(e) Briefs containing information which is claimed by an opposing or third party to be proprietary under § 1.731 shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked "Not for Public Inspection." An edited version removing all proprietary data shall also be filed with the Commission for inclusion in the public file. Edited versions shall be filed within five days from the date the unedited brief is submitted, and served on opposing parties.

(f) Either on its own motion or upon proper motion by a party, the Commission may establish other deadlines or page limits for briefs.

(g) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including affidavits and exhibits.

10. In newly redesignated § 1.733, paragraph (a) introductory text is republished; paragraphs (a)(5) and (b) are revised; paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively; and new paragraph (c) is added to read as follows:

§ 1.733 Status conference.

(a) In any complaint proceeding, the Commission may in its discretion direct the attorney and/or the parties to appear before it for a conference to consider:

* * * * *

(5) The necessity and extent of discovery, including objections to interrogatories or requests for production of documents;

* * * * *

(b) While a conference normally will be scheduled after the answer has been filed, any party may request that a conference be held at any time after the complaint has been filed.

(c) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a formal complaint proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to undertake affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within 10 days from the date of the written memorialization

unless the staff designates a later deadline.

* * * * *

11. In newly redesignated § 1.735, paragraph (b) is revised to read as follows:

§ 1.735 Copies; service; separate filings against multiple defendants.

* * * * *

(b) The complainant must file an original plus three copies of the complaint, accompanied by the correct fee, in accordance with subpart G of this part. See 47 CFR 1.1105(1)(c). However, if a complaint is addressed against multiple defendants, complainant shall pay separate fee and supply three additional copies of the complaint for each additional defendant.

* * * * *

[FR Doc. 93–9452 Filed 4–26–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Parts 2 and 15

[ET Docket No. 93–1; FCC 93–201]

Radio Scanners That Receive Cellular Telephone Transmissions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order implements new regulations that deny equipment authorization to radio scanners capable of receiving transmissions in the Domestic Public Cellular Radio Telecommunications Service. This action is taken in response to the Telephone Disclosure and Dispute Resolution Act. The intended effect of this action is to help ensure the privacy of cellular telephone conversations.

EFFECTIVE DATE: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653–8138.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in ET Docket No. 93–1, FCC 93–201, adopted April 19, 1993, and released April 22, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Services at (202) 857–3800 or 2100 M Street, NW., suite 140, Washington, DC 20037.

Paperwork Reduction

The paperwork burden estimated in the Notice of Proposed Rule Making has been adjusted to reflect changes that are being adopted in this Report and Order. The adjusted paperwork burden is pending OMB approval.

Summary of the Report and Order

1. By this action, the Commission amends 47 CFR parts 2 and 15 to prohibit the manufacture and importation of radio scanners capable of receiving frequencies allocated to the Domestic Public Cellular Radio Telecommunications Service. This action implements statutory requirements set forth in the Telephone Disclosure and Dispute Resolution Act (TDDRA), Public Law 102–556. The rules being adopted are intended to increase the privacy protection of cellular telephone users without unduly restricting legitimate uses of scanners.

2. The Domestic Public Cellular Radio Telecommunications Service ("Cellular Radio Service") provides telephone service to mobile customers. Cellular telephones use frequencies in the bands 824–849 MHz and 869–894 MHz to connect their users to other cellular system users and to the Public Switched Telephone Network.

3. As defined within our rules, scanning receivers, or "scanners," are radio receivers that can automatically switch between four or more frequencies anywhere within the 30–960 MHz band. In order to control their potential to cause harmful interference to authorized radio communications, the rules require that scanners receive an equipment authorization (certification) from the Commission prior to marketing.

4. On October 28, 1992, the President signed the TDDRA into law. Section 403 of the TDDRA amends section 302 of the Communications Act of 1934 (47 U.S.C. 302(d)(1) and (2)) by requiring that by April 26, 1993 (180 days after enactment of the TDDRA), the Commission prescribe and make effective regulations denying equipment authorization for any scanning receiver that is capable of: (1) Receiving transmissions in the frequencies allocated to the domestic cellular radio service; (2) readily being altered by the user to receive transmissions in such frequencies; or, (3) being equipped with decoders that convert digital cellular transmissions to analog voice audio.

Further, section 302(d)(2), as amended by the TDDRA, provides that, beginning one year after the effective date of the regulations adopted pursuant to paragraph (d)(1), no receiver having such capabilities shall be manufactured in the United States or imported for use in the United States.

5. In accordance with the TDDRA, we adopted a Notice of Proposed Rule Making (Notice) proposing to deny equipment authorization to scanning receivers that: (1) Tune frequencies used by cellular telephones; (2) can be readily altered by the user to tune such frequencies; or (3) can be equipped with decoders that convert digital cellular transmissions to analog voice audio. See Notice of Proposed Rule Making in ET Docket No. 93–1, 59 FR 06769, February 2, 1993. The Notice requested comment on a proposed definition of "readily altered by the user." The Notice also proposed to deny equipment authorization (notification) to frequency converters that tune, or can be readily altered by the user to tune, cellular telephone frequencies. To assist us in determining compliance with these requirements, we proposed to require applicants for certification of scanners, and for notification of frequency converters used with scanners, to include in their applications a statement stating that the device cannot be easily altered to enable a scanner to receive cellular transmissions.

6. Some 46 parties filed comments on the *Notice* and 6 parties filed reply comments. A large number of commenters, presumably most of them scanner enthusiasts, oppose adoption of any rules that would restrict the tuning capabilities of scanners. Manufacturers of scanners and cellular service providers in general support the Commission's proposed changes. However, several commenters ask for clarification or expansion of the rules.

7. In accordance with TDDRA, we are adopting new rules restricting scanners and associated frequency converters generally as proposed in the *Notice*. Based on the comments, we are adopting several minor changes to the rules as proposed.

8. The Final Regulatory Flexibility Analysis is contained in the text of the Notice.

9. The TDDRA requires that the rules adopted in this proceeding become effective on or before April 26, 1993. Accordingly, due to the limited time available to meet this requirement, we find good cause for the rules adopted herein to become effective upon publication in the **Federal Register**. See 5 U.S.C. 553(d).

10. Accordingly, *It is ordered* that under the authority contained in sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, and the Telephone Disclosure and Dispute Resolution Act, 47 CFR

parts 15 and 2 are amended as set forth below. These rules and regulations are effective upon publication in the Federal Register. It is further ordered that this proceeding is terminated.

11. For further information on this proceeding, contact David Wilson, Technical Standards Branch, Office of Engineering and Technology, at 202–653–8138.

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment, wiretapping and electronic surveillance Parts 2 and 15 of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for 47 CFR part 2 continues to read as follows:

Authority: Sec. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 302, 303, 303(r) and 307.

2. 47 CFR 2.975 is amended by adding a new paragraph (a)(8) to read as follows:

§ 2.975 Application for notification

(a) * * *

(8) Applications for the notification of receivers contained in frequency converters designed or marketed for use with scanning receivers shall include a statement describing the methods used to comply with the design requirements of § 15.121(a) of this chapter or the marketing requirements of § 15.121(b) of this chapter.

* * * * *

3. 47 CFR 2.1033 is amended by adding a new paragraph (b)(12) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) * * *

(12) Applications for the certification of scanning receivers shall include a statement describing the methods used to comply with the design requirements of § 15.121(a) of this chapter or the marketing requirements of § 15.121(b) of this chapter.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for 47 CFR part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303 and 307.

2. 47 CFR 15.37 is amended by adding a last sentence to paragraph (b), and adding a new paragraph (f), to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(b) * * * In addition, receivers are subject to the provisions in paragraph (f) of this section.

* * * * *

(f) The manufacture or importation of scanning receivers, and frequency converters designed or marketed for use with scanning receivers, that do not comply with the provisions of § 15.121 shall cease on or before April 26, 1994. Effective April 26, 1993, the Commission will not grant equipment authorization for receivers that do not comply with the provisions of § 15.121 of this part. This paragraph does not prohibit the sale or use of authorized receivers manufactured in the United States, or imported into the United States, prior to April 26, 1994.

3. 47 CFR § 15.121 is added to subpart B to read as follows:

§ 15.121 Scanning receivers and frequency converters designed or marketed for use with scanning receivers.

(a) Except as provided in paragraph (b) of this section, scanning receivers, and frequency converters designed or marketed for use with scanning receivers, must be incapable of operating (tuning), or readily being altered by the user to operate, within the frequency bands allocated to the Domestic Public Cellular Radio Telecommunications Service in part 22 of this Chapter (cellular telephone bands). Receivers capable of "readily being altered by the user" but are not limited to, those for which the ability to receive transmissions in the cellular telephone bands can be added by clipping the leads of, or installing, a simple component such as a diode, resistor and/or jumper wire; replacing a plug-in semiconductor chip; or programming a semiconductor chip using special access codes or an external device, such as a personal computer. Scanning receivers, and frequency converters designed or marketed for use with scanning receivers, must also be incapable of converting digital cellular transmissions to analog voice audio.

(b) Scanning receivers, and frequency converters designed or marketed for use with scanning receivers, that are manufactured exclusively for, and marketed exclusively to, entities described in 18 U.S.C. 2512(2) are not subject to the requirements of paragraph (a) of this section.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–9847 Filed 4–23–93; 10:58 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 58, No. 79
Tuesday, April 27, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1097

[Docket Nos. AO–219–A46; DA–93–05]

Milk in the Memphis, TN Marketing Area; Proposed Termination of Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rule.

SUMMARY: This document invites written comments on the proposed termination of the order regulating the handling of milk in the Memphis, Tennessee, marketing area. A proposed amended Memphis, Tennessee, order failed to receive the required three-fourths approval in a recent producer referendum. Since the Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the applicable statutory authority, it is necessary to consider terminating the present order.

DATES: Comments are due May 12, 1993.

ADDRESSES: Comments should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities Pursuant to 5 U.S.C. 605(B), the administrator of the agricultural marketing service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would eliminate the regulatory impact of the order on dairy farmers and regulated handlers.

This proposed action has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the termination of the order regulating the handling of milk in the Memphis, Tennessee, marketing area is being considered.

All persons who want to send written data, views or arguments about the proposed termination should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures and coordinate the termination with amendatory action being taken on milk orders for neighboring markets. The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would terminate the order regulating the handling of milk in the Memphis, Tennessee, marketing area.

On February 5, 1993, the Department issued a final decision on proposed amendments to all Federal milk orders, which was published March 5, 1993 (58 FR 12634). The final decision document contained proposed amended orders for all marketing areas, including the Memphis order. The document also included a referendum order for the Memphis order, and several other orders, to ascertain whether producers approve the issuance of the amended order. The final decision concluded that amended orders were needed to effectuate the declared policy of the applicable statutory authority.

The enabling statute requires that at least three-fourths of the producers participating in a referendum must approve the individual handler pool Memphis order before it can be put into effect.

In the referendum conducted on the Memphis order, less than 20 percent of the producers participating in the referendum approved the issuance of the proposed amended order. In these circumstances, where it has been concluded that the order should be amended to effectuate the enabling statute and that the enabling statute requires approval by three-fourths of the producers, it appears that continuation of the existing Memphis order would not be in conformity with the applicable statutory authority. Therefore, it is necessary to consider terminating the present order.

List of Subjects in 7 CFR Part 1097

Milk marketing orders.

The authority citation for 7 CFR part 1097 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: April 20, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–9728 Filed 4–26–93; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1098

[Docket Nos. AO–184–A55; DA–93–10]

Milk in the Nashville, TN, Marketing Area; Proposed Termination of Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rule.

SUMMARY: This document invites written comments on the proposed termination of the order regulating the handling of milk in the Nashville, Tennessee, marketing area. A proposed amended Nashville, Tennessee, order failed to receive the required two-thirds approval in a recent producer referendum. Since the Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the applicable statutory authority, it is necessary to consider terminating the present order.

DATES: Comments are due May 12, 1993.

ADDRESSES: Comments should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, 202–720–4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would eliminate the regulatory impact of the order on dairy farmers and regulated handlers.

This proposed action has been reviewed by the Department in accordance with Departmental Regulations 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act, as amended [7 U.S.C. 601–674) ["the Act"], provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Act, the termination of the order regulating the handling of milk in the Nashville, Tennessee, marketing area is being considered.

All persons who wish to send written data, views or arguments concerning the proposed termination should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after publication of this notice in the Federal Register. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures and coordinate the termination with amendatory action being taken on milk orders for neighboring markets. The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would terminate the order regulating the handling of milk in the Nashville, Tennessee, marketing area.

On February 5, 1993, the Department issued a final decision on proposed amendments to all Federal milk orders, which was published on March 5, 1993 (58 FR 12634). The final decision document contained proposed amended orders for all marketing areas, including the Nashville order. The document also included a referendum order for several orders, including the Nashville order, to ascertain whether producers approved the issuance of the amended orders. The final decision concluded that amended orders were needed to effectuate the declared policy of the applicable statutory authority.

The Act requires that, with respect to an order with a marketwide pool—such as the Nashville order—at least two-thirds of the producers participating in a referendum must approve the order before it can be put into effect.

In the referendum conducted on the Nashville order, less than two-thirds of the producers who participated in the referendum approved the issuance of the proposed amended order. In these circumstances, where it has been concluded that the order should be amended to effectuate the declared policy of the Act, and the Act requires approval by two-thirds of the producers, it appears that continuation of the existing Nashville order would not be in conformity with the applicable statutory authority. Therefore, it is necessary to consider terminating the present order

List of Subjects in 7 CFR Part 1098

Milk marketing orders.

The authority citation for 7 CFR part 1098 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: April 20, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–9729 Filed 4–26–93; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1099

[Docket No. AO–183–A45; DA–93–08]

Milk in the Paducah, KY Marketing Area; Proposed Termination of Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rule.

SUMMARY: This document invites written comments on the proposed termination of the order regulating the handling of milk in the Paducah, Kentucky, marketing area. A proposed amended Paducah, Kentucky, order failed to receive the required two-thirds approval in a recent producer referendum. Since the Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the applicable statutory authority, it is necessary to consider terminating the present order.

DATES: Comments are due May 12, 1993.

ADDRESSES: Comments should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(B), the administrator of the agricultural marketing service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would eliminate the regulatory impact of the order on dairy farmers and regulated handlers.

This proposed action has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the termination of the order regulating the handling of milk in the Paducah, Kentucky, marketing area is being considered.

All persons who want to send written data, views or arguments about the proposed termination should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures and coordinate the termination with amendatory action being taken on milk orders for neighboring markets. The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would terminate the order regulating the handling of milk in the Paducah, Kentucky, marketing area.

On February 5, 1993, the Department issued a final decision on proposed amendments to all Federal milk orders, which was published March 5, 1993 (58 FR 12634). The final decision document contained proposed amended orders for all marketing areas, including the Paducah order. The document also included a referendum order for the Paducah order, and several other orders, to ascertain whether producers approve the issuance of the amended order. The final decision concluded that amended orders were needed to effectuate the declared policy of the applicable statutory authority.

The enabling statute requires that at least two-thirds of the producers participating in a referendum must approve the marketwide pool Paducah order before it can be put into effect.

In the referendum conducted on the Paducah order, less than 20 percent of the producers participating in the referendum approved the issuance of the proposed amended order. In these circumstances, where it has been concluded that the order should be amended to effectuate the enabling statute and that the enabling statute requires approval by two-thirds of the producers, it appears that continuation of the existing Paducah order would not be in conformity with the applicable statutory authority. Therefore, it is necessary to consider terminating the present order.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

The authority citation for 7 CFR part 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: April 20, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–9730 Filed 4–26–93; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 61

Low-Level Waste Shipment Manifest Information and Reporting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) has proposed to amend its regulations to improve low-level waste (LLW) information and reporting [57 FR 14500, dated April 21, 1992]. In a letter dated August 18, 1992, following the closure of the comment period on the proposed rule, the Low-Level Radioactive Waste Forum suggested that, to produce a more effective rule, NRC sponsor a public meeting to further discuss concerns raised in the comment letters and thereby clarify the purpose of the rule. In response to this request, NRC will hold a public meeting with interested parties on June 15, 1993.

DATES: The public meeting is scheduled to be held on June 15, 1993, from 9 a.m. to 3:45 p.m.

As discussed later in this notice, the meeting will focus on the issues, comments, and needs for clarification identified in the 40 comment letters received on the proposed rule.

ADDRESSES: The meeting will be held in room P–110 at the NRC Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: William Lahs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2569; or Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3877.

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule that was published in the **Federal Register** on April 21, 1992 (57 FR 14500), the NRC sought to improve the low-level waste manifest information and reporting currently required in 10 CFR parts 20 and 61. In attempting to accomplish this goal, the NRC staff and others recognized the public health and safety interests and other multi-faceted needs that are served by manifest information: Specifically, the transportation safety interests of the U.S. Department of Transportation; the LLW disposal site performance assessment interests of NRC and Agreement States; the interests

of the States or Compacts charged with the responsibility of developing LLW disposal sites; and the interests of LLW disposal facility operators. Although many of the comments on the proposed rule addressed issues entirely within the purview of NRC, others were directed at features of the rule, manifest forms, or manifest instructions that evolved as a result of other information needs.

The Low-level Radioactive Waste Forum (an association of representatives of States and Compacts established to facilitate implementation of the Low-Level Radioactive Waste Policy Amendments Act of 1985 and to promote the objectives of low-level radioactive waste regional compacts) had advocated the development of the "uniform manifest" rulemaking from its inception and had constituted a Manifest Tracking Working Group to monitor NRC's development activities. Discussions between members of the Working Group and some affected parties in the private sector led to the suggestion for a meeting that was made in the August 18, 1992 letter from the Forum to the Chairman of the NRC.

With the intent of providing an opportunity to openly discuss issues and comments on the proposed rule, the NRC staff has decided to hold a public meeting on this rulemaking action. The staff will use the meeting as a forum to summarize significant issues raised by comment letters, provide background information, and seek individual comment from interested persons. The meeting is not for the purpose of reaching consensus advice for NRC action.

The Meeting and Proposed Agenda

The meeting will be held on June 15, 1993, in room P–110 at the NRC's Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland. The meeting will start at 9 a.m. and end about 3:45 p.m. By copy of this notice, the NRC has specifically invited all parties who provided comments on the proposed rule. The staff encourages all interested parties to attend, including those who did not comment on the proposed rule but have interests in the format and content of the LLW manifests and accompanying requirements. Please register in advance of the meeting by calling or writing to either the listed contacts.

The staff is seeking to identify those parties who will be attending the meeting who would like to speak about this rulemaking. If feasible, the staff will attempt to physically arrange the meeting room to facilitate comment from such parties. The staff is also seeking input from meeting attendees on any specific issues suitable for discussion that are not identified in the proposed agenda, described below. Notwithstanding the staff's desire to focus the meeting on those issues raised by the comments on the proposed rule, all meeting attendees will have an opportunity to comment on any applicable issue. A transcript of the meeting will be taken and will be considered together with the previously received comment letters as the NRC staff develops the final rule.

Based on review of comments on the proposed rule, the NRC has identified a variety of issues about the proposed requirements. These issues, with the exception of the general issues involving the establishment and operation of a national LLW data base, have been included in the agenda for the public meeting. The excluded issues are not immediately germane to this rulemaking and will be addressed at a later date. The tentative agenda for the meeting follows:

Agenda

9 a.m.–9:20 a.m. Introduction and Discussion of Meeting Agenda

9:20 a.m.–10 a.m.
- —Brief Summary of Rulemaking and Manifest Objectives
- —Manifest Reporting Burdens; Recent Developments
- —Distribution of Completed Manifest Forms
- —Description of Issues Raised by Commenters
- —Additional Issues From Meeting Attendees

10 a.m.–10:30 a.m. Public Comments on Policy Issues
- —What are health and safety benefits of rulemaking?
- —When will requirement for manifest be imposed?
- —Who must complete manifest?
- —Material vs. waste
- —Shipments to processors
- —Shipments to processors returned to original shipper for interim storage
- —Shipments to decontamination facilities
- —Will collection of additional information be allowed?
- —Does rule expand authorities of States or Compacts?
- —To what extent must LLW be described on manifest?
- —Duplications in reporting
- —Radionuclides and activities, lower limits of detection
- —Waste descriptors
- —Units
- —Other identified issues

10:40 a.m.–10:55 a.m. Break

10:55 a.m.–11:55 a.m. Continuation of Public Comment and Discussion of Policy Issues

11:55 a.m.–1 p.m. Lunch

1 p.m.–1:20 p.m. Continuation of Public Comment and Discussion of Policy Issues

1:20 p.m.–2:45 p.m. Public Comment on Manifest and Instructions—Format, Information, and Implementation Issues
- —Definition of terms
- —Control of transfers, tracking and paperwork needed in transport vehicle
- —Assignment of generator numbers
- —Additions or deletions of manifest information
- —Corrections and modifications
- —Other identified issues

2:45 p.m.–3 p.m. Break

3:00 p.m.–3:30 p.m. Continuation of Public Comment on Manifest and Instructions

3:30 p.m.–3:45 p.m. Closing Remarks and Discussion of Rulemaking Schedule

Copies of the public comment letters received on this rulemaking and the most current proposed versions of the manifests and supporting instructions can be obtained through the aforementioned information contacts.

Dated at Rockville, MD, this 20th day of April 1993.

For the Nuclear Regulatory Commission.

Melvin Silberberg,

Chief, Waste Management Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 93–9760 Filed 4–26–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–211–AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, that would have required an inspection to detect cracking of the aft end of the wing rib boom angles on the left and right engine, and repair or replacement of the wing rib boom angle assemblies, if necessary. That proposal was prompted by the detection of cracks in the engine outboard rib boom angles at the main

landing gear (MLG) actuator attachment point. This action revises the proposed rule by adding a repetitive inspection, and including a more detailed compliance schedule for necessary replacement of cracked rib boom angle assemblies. The actions specified by this proposed AD are intended to prevent structural failure of the actuator attachment point, which could lead to collapse of the MLG.

DATES: Comments must be received by June 7, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–211–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 28, 1992 (57 FR 61587). That NPRM would have required an inspection to detect cracking of the aft end of the wing rib boom angles on the left and right engine, and repair or replacement of the wing rib boom angle assemblies, if necessary. That NPRM was prompted by the detection of cracks in the engine outboard rib boom angles at the main landing gear (MLG) actuator attachment point. That condition, if not corrected, could result in structural failure of the actuator attachment point, which could lead to collapse of the MLG.

Since the issuance of that notice, additional fatigue cracking has been detected in the engine outboard rib boom angles at the MLG actuator attachment point. These cracks were detected on British Aerospace Model ATP series airplanes that had been inspected in accordance with British Aerospace Service Bulletin ATP–57–13, dated September 18, 1992. (This service bulletin was referenced in the notice.) Fatigue cracking will reduce the strength of the attachment of the MLG actuator support structure to the airframe. This condition, if not detected and corrected, could result in structural failure of the actuator attachment point, which could lead to collapse of the MLG.

Based on information received as a result of the one-time visual inspection (as recommended in the original version of the service bulletin), the manufacturer has determined that cracking may occur on these airplanes as they accumulate additional hours time-in-service. Therefore, in order to detect such cracking, the manufacturer recommends a repetitive detailed visual inspection. British Aerospace (now Jetstream Aircraft Limited) has issued British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993. This revised service bulletin adds a repetitive detailed visual inspection to detect cracking of the aft end of the engine outboard rib boom angles under the wing rib immediately outboard of the left and right engine. Revision 1 also describes procedures for replacement of cracked rib boom angle assemblies, and recommends a detailed compliance schedule for necessary replacement. The recommended compliance schedule for replacement varies, depending on crack location and size and whether cracks are detected on one or both rib boom angles. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has classified this service bulletin as mandatory.

Since cracks have been detected on airplanes that already have been inspected in accordance with the inspection requirement proposed in the notice, the FAA has determined that the proposed rule must be revised in order to ensure that such cracks are detected in a timely manner, and so that necessary repair or replacement can be accomplished in order to ensure continued operational safety.

This supplemental notice revises the proposed rule to add a requirement for repetitive inspections and to cite British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993, as the appropriate source of service information.

In addition, this supplemental notice includes selective compliance schedules for replacement of cracked rib boom angle assemblies, depending on whether cracking is detected on one or both rib boom angles; in certain cases, the compliance time for such replacement would be reduced from what was proposed previously. This proposed compliance schedule is identical to the one recommended in Revision 1 to the service bulletin.

The FAA also has determined that, in order to ensure that operators have a reasonable amount of time to accomplish the initial detailed visual inspection in a timely manner on all Model ATP series airplanes, including those that will be more than 12 months old as of the effective date of this AD, the proposed compliance time for this inspection must be revised somewhat. The compliance time has been revised to specify that the initial inspection would be required within 400 hours time-in-service after the effective date of

the final rule, or within 12 months since airplane manufacture, whichever occurs later.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Since the issuance of the notice, the corporate name for the company that manufactures Model ATP series airplanes has been changed from British Aerospace to Jetstream Aircraft Limited. The FAA notes, however, that the identification data plate installed on these airplanes continues to identify the manufacturer of the Model ATP as British Aerospace. Therefore, this supplemental notice continues to refer to these airplanes as British Aerospace Model ATP series airplanes.

In addition, this supplemental notice clarifies the description of the specific inspection area. The more accurate description of the inspection area is "engine outboard rib boom angles." The wording in the proposal has been revised accordingly.

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $990, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–211–AD.

Applicability: All Model ATP series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main landing gear actuator attachment point, which could lead to collapse of the main landing gear, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, or within 12 months since airplane manufacture, whichever occurs later, conduct a detailed visual inspection to detect cracking of the aft end of the engine outboard rib boom angles under the wing rib outboard of the left and right engine, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(b) If no crack is detected, repeat the detailed visual inspection at intervals not to exceed 3,000 landings or 12 months, whichever occurs first.

(c) If any crack is detected on only one rib boom angle during any inspection required by paragraphs (a) or (b) of this AD, and that crack does not extend beyond bolt hole X, accomplish either paragraph (c)(1), (c)(2), or (c)(3) of this AD.

Note: Procedures for addressing cracks found in both rib boom angles are contained in paragraphs (f), (g), and (h) of this AD.

(1) Prior to further flight, repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 300 hours time-in-service, reinspect the rib boom angle for crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 6 months after discovery of the crack, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (e) of this AD, prior to further flight, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(d) If any crack is detected on only one rib boom angle during any inspection required by paragraphs (a) or (b) of this AD, and that crack extends beyond bolt hole X, but not beyond bolt hole Y or down towards bolt hole A, accomplish either paragraph (d)(1), (d)(2), or (d)(3) of this AD.

(1) Prior to further flight, repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle in accordance with the service bulletin.

(3) At intervals not to exceed 100 hours time-in-service, reinspect the rib boom angle for additional crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 6 months after discovery of the crack, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (e) of this AD, prior to further flight, either repair that rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(e) If any crack is detected on only one rib boom angle during any inspection required by paragraphs (a) or (b) of this AD, and that crack extends beyond bolt hole Y or into bolt hole A, accomplish either paragraph (e)(1), (e)(2), or (e)(3) of this AD.

(1) Prior to further flight, repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 50 hours time-in-service, reinspect the rib boom angle for additional crack propagation, in

accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 1 month after discovery of the crack, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (e) of this AD, prior to further flight, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(f) If any crack is detected on both rib boom angles during any inspection required by paragraphs (a) or (b) of this AD, and cracks do not extend beyond bolt hole X, accomplish either paragraph (f)(1), (f)(2), or (f)(3) of this AD.

(1) Prior to further flight, repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 100 hours time-in-service, reinspect the rib boom angles for crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 3 months after discovery of the cracks, either repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (h) of this AD, prior to further flight, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(g) If any crack is detected on both rib boom angles during any inspection required by paragraphs (a) or (b) of this AD, cracks extend beyond bolt hole X, but not beyond bolt hole Y or down towards bolt hole A, accomplish either paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) Prior to further flight, repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 50 hours time-in-service, reinspect the rib boom angles for additional crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 1 month after discovery of the cracks, either repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (h) of this AD, prior to further flight, either repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(h) If any crack is detected on both rib boom angles during any inspection required by paragraphs (a) or (b) of this AD, and cracks extend beyond bolt hole Y or into hole A, accomplish either paragraph (h)(1) or (h)(2) of this AD.

(1) Prior to further flight, repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 21, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–9743 Filed 4–26–93; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 306

Octane Posting and Certification

AGENCY: Federal Trade Commission.

ACTION: Extension of time in which to submit comments on proposed amendments to the Octane Rule.

SUMMARY: The Federal Trade Commission is seeking public comment on proposed amendments to the Octane Rule that were published on March 26, 1993. The time for filing such comments has been extended by the Presiding Officer from April 26, 1993, to May 10, 1993.

DATES: Written comments will be accepted until May 10, 1993.

ADDRESSES: Comments should be sent to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW.,[1] Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, 202–326–3038, Enforcement Division, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: By notice of March 26, 1993,[1] the Commission announced it was seeking public comment on a proposal to add alternative liquid automotive fuels (including diesel fuel oil) to the coverage of the Commission's Octane Rule. Under the Energy Policy Act of 1992, the Commission must issue the final rule in this proceeding by July 21, 1993. On April 20, 1993, the American Petroleum Institute filed a request that the comment period be extended until May 26, 1993. The Presiding Officer has extended the period for the receipt of such comments to May 10, 1993. Because of the statutorily-mandated deadline to issue a final rule by July 21, 1993, however, there will be no further extensions of the comment period.

Lewis F. Parker,

Chief Presiding Officer.

[FR Doc. 93–9775 Filed 4–26–93; 8:45 am]

BILLING CODE 6750–01–M

[1] 58 FR 16464.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued April 21, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of informal conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) will be holding an informal conference pursuant to the Notice of Informal Conferences issued on March 10, 1993. The purpose of the conference is to receive a briefing on ANSI X12 standards and Electronic Data Interchange.

DATES: Friday, April 30, 1993, beginning at 8:30 a.m.

ADDRESSES: Natural Gas Supply Association, Main Conference Room, suite 300, 1129 20th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Informal Conference

Take notice that pursuant to the Notice of Informal Conferences issued on March 10, 1993,[1] Commission staff will convene an informal conference in this matter on Friday, April 30, 1993. The purpose of the conference is to receive a briefing on, and to discuss, ANSI X12 standards and Electronic Data Interchange.

The conference will begin at 8:30 a.m. on April 30, 1993 and will be held at: Natural Gas Supply Association, Main Conference Room, suite 300, 1129 20th Street, NW., Washington, DC 20036.

All interested persons are invited to attend. For additional information, or to indicate intent to participate in the conference, such persons should contact Marvin Rosenberg at (202) 208–1283 or Brooks Carter at (202) 208–0666.

Lois D. Cashell,

Secretary.

[FR Doc. 93–9780 Filed 4–26–93; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 284

[Docket No. RM93–8–000]

Revisions to Regulations Implementing Section 5 of the Outer Continental Shelf Lands Act

April 21, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend certain regulations and remove certain other regulations which were promulgated to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA). Section 5 of the OCSLA requires open access, nondiscriminatory transportation of natural gas on the Outer Continental Shelf (OCS).

Among other things, the Commission is proposing to remove the regulations governing the OCSLA capacity allocation program, and the regulation which provides for abandonment authority. In Order No. 636, the Commission established a capacity release program which is applicable for all transportation services provided by interstate pipelines that hold a Part 284 blanket transportation certificate, including OCS transactions. Hence, the Commission proposes to remove the Order No. 509 capacity allocation regulations.

DATES: Comments are due no later than June 21, 1993. Reply comments are due no later than July 21, 1993.

ADDRESSES: An original and 14 copies of the comments on this proposed rule must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 and should refer to Docket No. RM93–8–000.

FOR FURTHER INFORMATION CONTACT:

Connie Caldwell, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend certain regulations and remove certain other regulations which were promulgated to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA).[1] Section 5 of the OCSLA requires open access, nondiscriminatory transportation of natural gas on the Outer Continental Shelf (OCS). The pertinent regulations are contained in subpart K of part 284 of the

[1] 58 FR 14530, March 18, 1993.

[1] 43 U.S.C. 1334.

Commission's regulations.[2] They are promulgated in Order No. 509, issued on December 9, 1988.[3]

Among other things, the Commission is proposing to remove the regulations governing the OCSLA capacity allocation program,[4] and the regulation which provides for abandonment authority.[5] In Order No. 636,[6] the Commission established a capacity release program which is applicable for all transportation services provided by interstate pipelines that hold a part 284 blanket transportation certificate, including OCS transactions. Hence, the Commission proposes to remove the Order No. 509 capacity allocation regulations.

A companion order to this Notice of Proposed Rulemaking (NOPR) will be issued, in Docket Nos. RP89–84–007 and RP89–228–037, which will respond to a related court order remanding certain orders to the Commission for further consideration.[7] In the three Commission orders which were remanded, the Commission applied the subpart K regulations to an interstate pipeline, Tennessee Gas Pipeline Company (Tennessee). The companion order determines that the matters remanded to the Commission are resolved by this rulemaking. However, Tennessee is directed in the companion order to inform the Commission, in its comments to this NOPR, if remaining matters need to be resolved.

II. Reporting Requirements

The proposed rule, if adopted, would eliminate regulations that the Commission preliminary believes are no longer appropriate and would reduce filing burdens in several areas of Commission regulation. The Commission's proposed rule will reduce the public reporting burden by an estimated 10,320 hours for FERC–545 (1902–0154). This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The reduction in burden is based on an estimated 43 copy filings related to the transportation of natural gas on the OCS. Each filing is expected to average 240 hours to prepare. Total reporting burden under FERC–545 is related to the Commission's Order No. 636. With the burden reduction proposed herein, the total burden under FERC–545 will be reduced to estimated 160,265 hours annually. Send comments regarding this burden estimate by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415] and to the FERC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

III. Background

A. Promulgation of the OCSLA Regulations

In 1988, the Commission promulgated regulations to implement section 5 of the OCSLA.[8] The Commission's OCSLA regulations provided every interstate natural gas pipeline transporting natural gas on or across the OCS with a blanket transportation certificate under subpart G of part 284 of the commission's regulations. This certificate authorized and required nondiscriminatory transportation of natural gas on behalf of others, established a capacity allocation program, and required each of these pipelines to file tariffs to reflect the part 284 blanket certificate authorization, among other things.

The Order No. 509 certificates differed from a standard part 284 blanket transportation certificate[9] in that the certificate holder was given abandonment authority for certain transportation services provided under individual certificates issued under part 157 of the regulations. Also, the OCSLA regulations provided for a capacity allocation program in order to encourage the pipelines and their customers to rely on the pipeline's new blanket certificate for transportation authorization in lieu of their individually-issued part 157 certificates.

B. Application of the Regulations

Tennessee Gas Pipeline Company (Tennessee) filed tariff sheets to comply with the then newly-adopted OCSLA regulations in Docket Nos. RP89–84 and RP89–228. The Commission issued three orders addressing these tariff filings.[10] Tennessee subsequently filed an appeal of the Commission's orders which applied these regulations to the tariff filings made by Tennessee. On August 14, 1992, the United States Court of Appeals for the District of Columbia Circuit remanded this case to the Commission for further consideration.[11]

C. Order No. 636

On April 8, 1992, the Commission issued Order No. 636. In Order No. 636, the Commission established a capacity release program applicable to all open access pipelines, among other things. By establishing a uniform capacity release program applicable to all open access pipelines, the Commission intended to create a nationwide program which would supersede all existing capacity brokering, capacity release, and upstream pipeline capacity assignment programs.

Consequently, the Commission issued a companion order to Order No. 636 which required the modification of all pre-Order No. 636 capacity brokering, capacity release, and upstream pipeline capacity assignment programs to bring those programs into conformance with the Order No. 636 capacity release program.[12]

[T]he Commission believes that the goal of Order No. 636, to place all natural gas sellers on an equal competitive footing, can only be achieved if all capacity reallocations are undertaken on the same general basis on all pipelines. Because most markets are served

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[2] 18 CFR 284.301–284.305.

[3] Order No. 509, Interpretation of, and Regulations Under Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas Pipelines on the Outer Continental Shelf, FERC Stats. & Regs. Preambles ¶ 30,842 (1988), 53 FR 50925 (Dec. 9, 1988), order on rehearing, Order No. 509–A, FERC Stats. & Regs. Preambles ¶ 30,847 (1988), 54 FR 8301 (Feb. 17, 1989).

[4] 18 CFR 284.304.

[5] 18 CFR 284.303(c)(3).

[6] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992); order on reh'g, Order No. 636–A, 57 FR 36128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992), order on reh'g, Order No. 636–B, 57 FR 57911 (December 8, 1992), 61 FERC ¶ 61,272 (1992).

[7] *Tennessee Gas Pipeline Company* v. *FERC*, 972 F.2d 376 (D.C. Cir. 1992).

[8] Order No. 509, *supra*.

[9] Part 284 blanket transportation certificates were established pursuant to section 7 of the Natural Gas Act in Order No. 436. Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665 (1985), *vacated and remanded, Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988), *readopted on an interim basis*, Order No. 500, 52 FR 30334 (Aug. 14, 1987), FERC Stats. & Regs. [Regulations Preambles, 1986–1990] ¶ 30,761 (1987), *remanded, American Gas Association* v. *FERC*, 888 F.2d 136 (D.C. Cir. 1989), *readopted*, Order No. 500–H, 54 FR 52344 (Dec. 21, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR 6605 (Feb. 26, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,880 (1990), *aff'd in part and remanded in part*, *American Gas Association* v. *FERC*, 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 111 S. Ct. 957 (1991).

[10] For a detailed description of these Tennessee orders and the Tennessee proceedings in general, see the companion order being issued in Docket Nos. RP89–84–007 and RP89–228–037.

[11] *Tennessee Gas Pipeline Company* v. *FERC*, 972 F.2d (D.C. Cir. 1992).

[12] Algonquin Gas Transmission Company, *et al.*, 59 FERC ¶ 61,032 (1992), *reh'g denied*, 60 FERC ¶ 61,113 (1992).

by more than one pipeline, and any given pipeline serves multiple markets, only by mandating generally uniform national capacity reallocation mechanisms can the Commission prevent any pipeline or firm shipper from achieving an undue advantage or incurring an undue disadvantage compared to firm shippers on other pipelines from the operation of a particular pipeline's capacity brokering program.[13]

The Algonquin order quoted above resolved any disparity between the Order No. 636 capacity release program and existing programs which had been authorized in Commission orders. However, the OCS capacity allocation program, which was established by rulemaking as opposed to Commission order, remained intact.

IV. Overview of the Proposed Revisions

It is important to note initially that the Commission is not proposing to rescind or alter the requirement that interstate pipelines that transport natural gas on the OCS offer open access transportation under a part 284 blanket transportation certificate. That requirement will continue to be imposed on all OCS pipelines, as required by Commission policy and in order to ensure that the open access, nondiscriminatory standard for OCS transportation required by section 5 of the OCSLA is maintained.

However, the Commission is proposing to remove the regulations governing the OCSLA capacity allocation program,[14] and the regulation which provides for abandonment authority.[15] As stated earlier, in Order No. 636 the Commission established a capacity release program which is applicable for all transportation services provided by interstate pipelines that hold a part 284 blanket transportation certificate, including OCS transactions. As a result of the implementation of the Order No. 636 capacity release program, the OCSLA capacity allocation program becomes redundant. Further, since the Order No. 636 capacity release program is applicable to all interstate transactions, including those offshore, a conflict arises as to which program applies to OCS transactions. The Commission believes that one uniform capacity release program applicable to all interstate transactions, offshore and onshore, will best serve the public interest. Hence, the Commission proposes to remove the Order No. 509 capacity allocation regulations.

The Commission also proposes to remove the Order No. 509 regulations governing rate filings for OCS pipelines with blanket transportation certificates issued in Order No. 509.[16] Since all OCS interstate pipelines now have rates on file for transportation service under a blanket certificate, the Order No. 509 regulations are no longer needed. Additionally, the Commission is proposing to revise the remaining Subpart K regulations in order to conform with the removal of the regulations discussed above.

VI. Discussion

Review of the Commission's changes to its open access regulations in Order No. 636, the Tennessee orders, and the Court's remand order, has culminated in this proposal to revise the OCSLA regulations.

A. Capacity Reallocation Program

The OCSLA required that interstate pipelines provide open access transportation on the OCS. In order to implement that mandate the Commission issued Part 284 blanket transportation certificates to all OCS pipelines, as defined in § 284.302. Since certain interstate gas transportation was being provided under individually-issued Part 157 certificates, a means for the pipelines to convert the part 157 services to part 284 services was needed.

Therefore, the Commission formulated the capacity reallocation program discussed above and adopted the regulations found in § 284.304 to effectuate that program.[17] This program was not provided solely as a means for initial implementation of open access, nondiscriminatory transportation on the OCS, although it was required for that initial implementation to take place smoothly. The program also was established as an ongoing program applicable to OCS transactions occurring after initial implementation. Essentially, this program allowed shippers to relinquish unneeded capacity on an OCS pipeline to other shippers. In this way, the pipeline's capacity would be reallocated to shippers who most needed the capacity. Further, the reallocation could occur without the need for further transaction-specific regulatory approval.

At the time these regulations were adopted, the Order No. 509 capacity allocation program was needed to ensure that the requirements of section 5 of the OCSLA were met. However, under Order No. 636, the Commission established a capacity release program which is applicable for all transportation services provided by interstate pipelines that hold a part 284 blanket transportation certificate. The Order No. 636 capacity releasing program will operate as follows:

The firm capacity holder will inform the pipeline that it wants to release capacity on a permanent or temporary basis, the specific quantity to be released, the period of time, and any other conditions of the release. For example, the releasing customer might state that it will release a specified amount of capacity only so long as the temperature remains above a specified degree. That is, the firm shipper may release firm capacity on an interruptible basis. In addition, the releasing customer can bring to the pipeline for posting a pre-arranged deal for releasing capacity. If no better offer is received, the pipeline must contract with the replacement shipper found by the releasing customer. If a better offer is forthcoming, the pipeline must give the replacement shipper found by the releasing customer an opportunity to match the better offer. If the replacement shipper matches the better offer, the pipeline must contract with the replacement shipper found by the releasing customer. If the releasing customer's designated replacement shipper does not match the better offer, the pipeline must contract with the person who made the better offer.

The pipeline must immediately post the capacity releasing information on its electronic bulletin board for a reasonable period of time during which applicants for capacity can agree to the releasing customer's terms and conditions. * * * [T]he pipeline may take other action to market any released capacity.

The pipeline will be required to resell that capacity under part 284 to the applicant meeting the releasing customer's specifications. The replacement shipper must, of course, satisfy all of the pipeline's tariff provisions governing shipper eligibility before it can contract with the pipeline for the capacity. Unless the pipeline otherwise agrees (such as where there is a permanent reallocation of annual capacity), the releasing customer will remain liable on its contract but will receive a credit against its bill for the capacity resold. The pipeline itself should be indifferent to the substitution because its total contract demand will remain unchanged.[18]

The Order No. 636 capacity release program reflects the current needs of the natural gas market.[19]

[13] Algonquin Gas Transmission Company, *et al.*, 59 FERC ¶ 61,032, at p. 61,095 (1992).

[14] 18 CFR 284.304.

[15] 18 CFR 284.303(c)(3).

[16] 18 CFR 284.305.

[17] 18 CFR 284.304.

[18] Order No. 636, III FERC Stats. & Regs. Preambles at 30,418–419.

[19] As we stated in Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,526: the Commission found [in Order No. 636] that the pre-Order No. 636 regulatory structure of the pipeline industry has, and will continue to have, a harmful impact on all segments of the natural gas industry and on the Nation. The Commission concluded that it was appropriate to take remedial action to improve the competitive structure of the natural gas industry to further the creation of an efficient national wellhead market for gas without adversely affecting the quality and reliability of the service provided by pipelines to their custom ers. The Commission

Continued

On the other hand, the Order No. 509 capacity allocation program was designed to meet the requirements of the OCSLA and is applicable only to interstate pipelines which operate on the OCS. Since an industry-wide capacity reallocation program has been established through Order No. 636, continued existence of the Order No. 509 capacity allocation program raises the question of which capacity reallocation program applies to OCS transactions. Because of this conflict in authorizations and in furtherance of our goal to implement a uniform capacity release program applicable to all interstate pipelines, the Commission is proposing to remove the regulations, found in § 284.304, which established the Order No. 509 capacity allocation program.

The Commission believes that uniform application of the Order No. 636 capacity reallocation program to all part 284 transportation service is essential to the successful restructuring of the industry under Order No. 636. In light of the development of the Order No. 636 capacity release program, which is applicable to all part 284 transportation (including transportation under the Order No. 509 transportation blankets), the Commission believes that the Order No. 509 capacity allocation program is no longer needed.

This proposed change in the regulations is consistent with the Commission's intent in promulgating the Order No. 509 regulations. While it seemed reasonable to anticipate that the onshore blanket transportation certificates and the Order No. 509 blanket transportation certificates would operate harmoniously, this did not prove to be the case. Certainly, this was the goal sought by the Commission, since "the fundamental purpose of both the OCSLA and [Order No. 509] is to ensure open access transportation of OCS gas to someplace other than another part of the OCS."[20] Even though the offshore blanket transportation certificates vary somewhat from the onshore blanket transportation certificates, due to the requirements of the OCSLA, the Commission's stated intent was to "mirror the onshore open access as closely as possible."[21] In this way, transportation from the OCS to all points onshore could occur without unnecessary regulatory interference. Therefore, the proposed revisions to the regulations would serve to further the Commission's efforts to ensure open access transportation on the OCS.

B. Rate Filings

The Commission also proposes to remove the Order No. 509 regulations governing rate filings for OCS pipelines with blanket transportation certificates issued in Order No. 509.[22] These regulations required the filing of Part 284 rates for service under the Order No. 509 blankets and were necessary to effectuate the Order No. 509 blanket certificates.[23] However, now that all OCS interstate pipelines have filed rates for transportation service under the certificates issued in Order No. 509, these regulations are no longer required. Additionally, the Commission is proposing to revise § 284.303 of the regulations to conform with the removal of this section.

C. New OCS Pipelines

The only remaining matter which arises out of the revisions to the regulations proposed here is the treatment of any new OCS pipelines, particularly with regard to the OCSLA requirement that interstate pipelines which transport natural gas on the OCS offer open access transportation. The Commission is not proposing to rescind or alter that requirement. Instead, revised § 284.303 would require every OCS pipeline to provide open access, nondiscriminatory transportation service pursuant to a Part 284, Subpart G blanket transportation certificate.

This provision will continue to be imposed on all OCS pipelines, new and existing, in order to ensure that the open access, nondiscriminatory standard for OCS transportation required by section 5 of the OCSLA is maintained. As a result, in order to build new facilities on the OCS and participate in OCS transactions, a part 157 certificate normally would be required for the construction of the facilities, and a part 284 blanket transportation certificate would be required in order to provide service on the new facilities.

This provision would also be imposed in a situation where the ownership of existing OCS pipeline facilities is transferred to a new party. In that event, the new owner of the facilities would be required to obtain a part 157 certificate to operate the facilities as well as part 284 blanket certificate to provide transportation service.

This provision is consistent with Commission policy, as well. The Commission recently enunciated a new policy with regard to authorizations to provide service under part 157:

> We recognize that our denial of case-specific service [part 157] authority constitutes a change in our previous policy in this regard. Pursuant to that policy, we have granted case-specific transportation certificates, even though the services could be performed by the applicants under their blanket certificates, where we were also approving construction of facilities. Because of the investments in facilities, we concluded that case-specific authority was appropriate to ensure long-term authority for the transportation services. [Citation omitted.]
>
> In the past, this policy was appropriate to facilitate pipelines' efforts to obtain construction financing by ensuring that their transportation authority would be of sufficient duration to recover their facilities' costs. The policy also ensured the customers in those proceedings that their pipelines would continue to have transportation authority, regardless of whether the pipelines continued open-access transportation. However, in view of the role played by open-access transportation in today's market, these assurances are no longer needed in every instance where construction authority is sought. More importantly, it would be counter to our open-access transportation policy to add major new facilities to the interstate system that are not subject to open access.[24]

Therefore, even without the requirement proposed in § 284.303, new OCS pipelines would be required to provide open access transportation service under Commission policy. Nevertheless, because the OCSLA requires open access transportation on the OCS and

believes that its action will result in a modern, viable natural gas industry specifically fashioned to the needs of all gas consumers and the Nation for an adequate and reliable supply of clean and abundant natural gas at reasonable prices.

[20] *Id.* at 31,281.

[21] Order No. 509–A, FERC Stats. & Regs. Preambles at 31,338.

[22] 18 CFR 284.305.

[23] Section 4(c) of the NGA, rates for any certificated transportation service must be on file with the Commission before that particular service may commence.

[24] Blue Lake Gas Storage Co., *et al.* 59 FERC ¶ 61,118, 61,456 (1992), *reh'q denied*, 61 FERC ¶ 61,284 (1992), *order on reh'q pending. See also*, Texas Eastern Transmission Corporation, 62, FERC ¶ 61,019 (1993) (where the Commission denied an application for case-specific transportation authorization and required that service be provided under blanket transportation authorization, based on the policy announced in *Blue Lake*, above); Algonquin LNG, Inc., *et al.*, 61 FERC ¶ 61,292 (1992) (where the Commission denied a request to extend the term of a limited-term, case-specific certificate and required that service be provided under blanket transportation authorization, based on the policy announced in *Blue Lake*, above). *But see* Algonquin Gas Transmission Company, 60 FERC ¶ 61,125 (1992) (where the Commission issued a case-specific certificate for construction of approximately 1.9 miles of looping facilities to provide firm transportation service for one customer); Eastern Shore Natural Gas Company, 60 FERC ¶ 61,270 (1992) (where the Commission amended the service requirements of a previously issued case-specific certificate); Transcontinental Gas Pipe Line Corporation, 60 FERC ¶ 61,271 (1992) (where the Commission allowed the amendment of a case-specific certificate rather than requiring performance under a Part 284 certificate, since an incremental rate specifically based on the incremental facilities would be charged).

the ensure continued compliance with the OCSLA mandate, the Commission will impose the open access transportation requirement on OCS pipelines through our regulations, instead of on a case-by-case basis.

VII. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any Commission action that may have a significant adverse effect on the human environment.[25] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[26] The action taken here will not have a significant adverse impact on the human environment and falls within the categorical exemptions provided in the Commission's regulations. Therefore, an environmental assessment is unnecessary and was not prepared in this rulemaking.

VIII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[27] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm or burdens on small entities. Given the nature of this proposed rule, the Commission concludes that there will not be a significant impact on a significant number of small entities. Therefore, pursuant to section 605(b) of the RFA,[28] the Commission hereby certifies that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities, and that, even if the rule were to have a significant impact on a substantial number of small entities, it would be to their benefit. Accordingly, no regulatory flexibility analysis is required.

IX. Information Collection Requirement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information and recordkeeping requirements imposed by agency rules.[29] The information collection requirements in this proposed rule are contained in FERC–545 "Gas Pipeline Rates: Rate Change (Non-Formal) (1902–0154).

The Commission uses the data collected in these information requirements to carry out its regulatory responsibilities pursuant to the OCSLA and the NGA. The Commission's Office of Pipeline and Producer Regulation uses the data to ensure that all rates and charges in proposed tariff sheets are just and reasonable in light of transportation activities authorized for OCS pipelines.

The Commission is submitting to the Office of Management and Budget a notification that these collections of information will no longer be required or have been modified. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415]. Comments on the requirements of this rule can be sent to the FERC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

X. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of the initial comments to this notice must be filed with the Commission no later than June 21, 1993. An original and 14 copies of any reply comments must be filed no later than July 21, 1993. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM93–8–000.

Written comments will be placed in the public files of the Commission and will be available for inspection during regular business hours at the Commission's Public Reference Room, room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.303 is revised to read as follows:

§ 284.303 OCS blanket certificates.

Every OCS pipeline (as that term is defined in § 284.302(b)) is required to provide open access, nondiscriminatory transportation service pursuant to a blanket transportation certificate issued under subpart G of this part.

§§ 284.304 and 284.305 [Removed]

3. Sections 284.304 and 284.305 are removed.

[FR Doc. 93–9781 Filed 4–26–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–53–92]

RIN 1545–AR37

Withdrawal of Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of proposed regulations.

SUMMARY: This document withdraws proposed regulations under 26 CFR part 1. This action is taken in response to the Regulatory Burden Reduction Initiative.

DATES: These proposed rules are withdrawn April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Paul C. Feinberg of the Office of the Associate Chief Counsel (Domestic), within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, attention: CC:DOM, (202) 622–3325, not a toll-free number.

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[25] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles ¶30,783 (1987).

[26] 18 CFR 380.4(a)(27).

[27] 5 U.S.C. §§ 601–612.

[28] 5 U.S.C. 605(b).

[29] 5 CFR part 1320.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 1992, the Internal Revenue Service published in the **Federal Register** the Request for Comments on Regulatory Burden Reduction Initiative (57 FR 11277), in which the Treasury Department and the Internal Revenue Service solicited public comment on a program to:

(1) Close certain regulations projects that are no longer needed or will not be pursued in the foreseeable future;

(2) Withdraw certain proposed regulations which there are no current plans to finalize; and

(3) Redesignate certain regulations as relating to prior law in light of subsequent changes to the law.

Section II of that document listed proposed regulations to be withdrawn. Those proposed regulations which did not receive any comments or which received only comments favorable to the program are withdrawn. Accordingly, pursuant to the announcement in the **Federal Register** (57 FR 11277), this document withdraws the proposed regulations set forth below from the **Federal Register** system.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Paul C. Feinberg of the Office of Associate Chief Counsel (Domestic), within the Office of the Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.46–1 Through 1.50–1

Income taxes, Investments, Reporting and recordkeeping requirements.

26 CFR 1.101–1 Through 1.133–1T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.401–0 Through 1.419A–2T

Bonds, Employee benefit plans, Income taxes, Pensions, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

26 CFR 1.451–1 Through 1.458–10

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.501(a)–1 Through 1.505(c)–1T

Income taxes, Nonprofit organizations, Reporting and recordkeeping requirements.

26 CFR 1.851–1 Through 1.860–5

Reporting and recordkeeping requirements.

26 CFR 1.1231–1 Through 1.1297–3T

Income taxes.

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, proposed amendments to 26 CFR part 1 are withdrawn as listed in the following table:

PART 1—[AMENDED]

Proposed regs. sec.	FR cite and project No.	Subject
1.48–7	52 FR 35438 (9/21/87) (LR–183–82).	Basis adjustment to reflect investment tax credit.
1.116–3, 1.854–1, 1.857–6, 1.1232–3A	47 FR 5902 (2/9/82) (LR–83–80) ..	Partial exclusion of dividends and interest received by individuals.
1.414(m)–5, 1.414(m)–6, 1.414(n)–1 through 1.414(n)–4, 1.414(o)–1(c) through 1.414(o)–1(k)(1), 1.414(o)–1(k)(3), 1.414(o)–1(k)(4).	52 FR 32502 (8/27/87) (LR–111–82).	Affiliated service groups, employee leasing, and other arrangements.
1.451–3	51 FR 401 (1/6/86) (LR–121–85) ..	Accounting for long term contracts.
1.501(c)(12)–2	49 FR 1244 (1/10/84) (LR–17–81)	Rules clarifying the regulations with respect to computation of gross income of an electric cooperative.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 93–9695 Filed 4–26–93; 8:45 am]

BILLING CODE 4830–01–4

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 93–008]

Special Local Regulation: New Jersey Offshore Powerboat Race, Manasquan, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard proposes to amend the existing special local regulation for the New Jersey Offshore Powerboat Race. The race will be held on Saturday, July 17, 1993, in the waters of the Atlantic Ocean between Spring Lake and Seaside Park, New Jersey. This regulation is needed to protect the boating public from the hazards associated with high speed power boat racing in confined waters.

DATES: Comments must be received June 11, 1993.

ADDRESSES: Comments should be mailed to the Commander, First Coast Guard District, Boating Safety Division, 408 Atlantic Ave., Boston, MA 02110–3350, or may be delivered to room 428 at the address listed above, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant E.G. Westerberg, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking process by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses,

identify this notice (CGD1 93–008) and the specific section of the proposal to which their comment applies, and give reason for each comment. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Boating Safety Division at the address under ADDRESSES. If it determine that the opportunity for oral presentations will aid this rule making, the Coast Guard will hold a public hearing at a time and place announced by a later in the Federal Register.

Drafting Information

The drafters of this notice are LT E.G. Westerberg, Project Manager, First Coast Guard District, and LCDR J.D. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

On December 18, 1992 the sponsor, New Jersey Offshore Powerboat Racing Association submitted a request to hold an offshore power boat race in the Atlantic Ocean on the New Jersey coast. Two Special Local Regulations currently exist which regulate the event. The Coast Guard proposes to revise the permanent regulation, 33 CFR 100.505 and remove 33 CFR 100.109. The regulation would establish a temporary regulated area in the Atlantic Ocean and Manasquan Inlet for this event known as the "New Jersey Offshore Power Boat Race." The proposed regulation would provide specific guidance to control vessel movement during the limited duration of the race.

This event will include up to 90 powerboats competing on a triangular course at speeds approaching 100 m.p.h. Due to the inherent dangers of a race of this type, vessel traffic will be temporarily restricted to promote safe navigation.

The sponsor, New Jersey Offshore Powerboat Racing Association, conducted this event along the New Jersey coast in 1992. This year's race will follow a similarly marked course as in the previous year. However, the regulated area will be extended to include Manasquan Inlet.

Discussion of Proposed Amendments

The Coast Guard proposes to rewrite the existing Special Local Regulations to better regulate the event. The regulated area will include specified waters of the Atlantic Ocean adjacent to Manasquan Inlet and Seaside Park, New Jersey. Specified portions of Manasquan Inlet are included to better regulate vessel traffic in the vicinity of the race course. The Special Local Regulation will close the regulated area to all traffic from 9 a.m. to 6 p.m. on July 17, 1993 with a rain date July 18, 1993. This closure is needed to protect spectators and participants from the hazards that accompany a high speed powerboat race.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard believes the economic impact of this proposal to be minimal and that a Regulatory Evaluation is unnecessary due to the limited duration of the race, the extensive advisories that have been and will be made, and the fact that the event is taking place on a Saturday, which is normally a light volume day for commercial marine traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects the impact of this proposal to be minimal. For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.505 is revised to read as follows:

§ 100.505 New Jersey Offshore Power Boat Race, Spring Lake and Seaside Heights, NJ

(a) *Regulated Area.* The regulated area includes:

(1) The coastal Atlantic waters between the Towns of Spring Lake and Seaside Heights, with a Northern boundary of an east to west line at latitude 40–10–00 North, a Southerly boundary of an east to west line at latitude 39–55–00 North, an Easterly boundary of a line drawn parallel to, and one and one-half (1½) miles seaward from the New Jersey coast between the north and south boundaries of the regulated area, and a Western boundry of the New Jersey shoreline between the north and south boundaries of the regulated area.

(2) The Manasquan River: From the New Jersey Transit Railroad Bridge to the mouth of the Manasquan Inlet.

(b) *Special Local Regulations.* (1) Commander, U.S. Coast Guard Group Sandy Hook reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) The regulated area will be closed to all traffic except participants, patrol craft, and those vessels authorized by the New Jersey Offshore Powerboat Racing Association. The Commanding Officer, Coast Guard Group Sandy Hook or designee may, at his discretion, allow vessels to enter the regulated area between races. Transiting and spectating

vessels are exempted from this requirement as follows:

(i) Vessels exiting the Manasquan Inlet must proceed in a northerly direction only: Navigation in any other direction is prohibited. Coast Guard patrol vessels will be present to direct exiting vessels to proceed north within one-quarter (¼) mile of the shore until clear of the regulated area in the vicinity of Spring Lake, NJ.

(ii) Spectator Vessels. The spectator fleet will remain northeast of the northern edge of the race adjacent to Manasquan Inlet. The sponsor shall provide a readily identifiable means to mark the spectator area. Vessels will not be allowed to observe the race from any other location within the regulated area.

(3) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period of regulation.

(4) Race participants must remain on the course when racing. Any participating vessel straying from the race course must reduce speed and return to the course at headway speed. Only disabled race boats will be allowed to enter the spectator area. If a contestant enters the spectator area for any other reason, they will be automatically disqualified and the race may be terminated.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(6) In the event of an emergency or as directed by the Coast Guard patrol commander, the sponsor shall immediately cease racing activities. At the discretion of the patrol commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate the event.

(c) *Effective period.* This regulation will be effective from 9 a.m. through 6 p.m. on July 17, 1993 and annually thereafter as published in the **Federal Register**. In case of inclement weather, this regulation will be effective from 9 a.m. through 6 p.m. on July 18, 1993.

§ 100.109 [Removed]

3. Section 100.109 is removed.

Dated: April 21, 1993.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, First Coast Guard District.

[FR Doc. 93–9842 Filed 4–26–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Chapter VI

The Higher Education Amendments of 1992; Negotiated Rulemaking

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of additional meetings to conduct negotiated rulemaking.

SUMMARY: The Acting Assistant Secretary for Postsecondary Education of the United States Department of Education (Department) will convene a group to participate in a negotiated rulemaking session. This is the second of two negotiated rulemaking sessions convened to implement certain provisions of the Higher Education Amendments of 1992 that relate to student financial assistance programs.

DATES: The two meetings are scheduled from April 26 through 30, 1993 and from June 14 through 18, 1993. Each full day of negotiations will begin at 9 a.m.

ADDRESSES: Both meetings will be held at the Woodfin Suites Hotel, 1380 Piccard Drive, Rockville, Maryland. Telephone number: 301/590–9880. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time.

FOR FURTHER INFORMATION CONTACT: If you have any questions, please contact Mr. Robert W. Evans at 202/708–8242. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

The group of negotiators will include individuals representing students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan services, guaranty agency services, and collection agencies. This group will convene twice, once in April and again in June. The Acting Assistant Secretary, by dividing the negotiations in two meetings, hopes to provide negotiators with sufficient time to confer and get feedback from a variety of interested parties. This group will review draft proposed regulations for certain sections of parts B, G, and H of title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, that were not reviewed in the earlier negotiated rulemaking session. These sections deal with student assistance general provisions in 34 CFR part 668, subparts A and B; third-party servicers and consultants; ability-to-benefit; and the State postsecondary review program. The draft proposed regulations for these sections were developed following regional meetings throughout the country at which issues related to these regulations were discussed.

The Department has arranged for mediators from the private sector to mediate the upcoming negotiated-rulemaking session. The mediators will not be involved with the substantive development of the proposed regulations. Their role is to:

- Chair the negotiations;
- Help the negotiating process run smoothly;
- Help participants define issues and reach consensus.

The meetings are open to members of the public who wish to observe the process.

Issues for Negotiation

The student financial assistance issues that will be negotiated are those in certain sections of parts B, G, and H of title IV of the Higher Education Act where the Secretary has the authority to set policy. The Secretary published a selective list of these issues in the **Federal Register** notice announcing the regional meetings (57 FR 38639, August 26, 1992).

Background

Section 492 of part G of title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, contains procedural requirements the Department is to follow in developing and issuing regulations to govern parts B, G, and H. The statute further requires that participants in this negotiated rulemaking process be chosen by the Secretary from individuals nominated by groups participating in the regional meetings that preceded the negotiating sessions. The statute requires the Secretary to select individuals as negotiators who reflect the "diversity in the industry, representing both large and small participants, as well as individuals serving local areas and national markets." The Department announced that it would hold regional meetings (57 FR 38639, August 26, 1992) and convened these meetings in

San Francisco, CA; New York City, NY; Kansas City, MO; and Atlanta, GA, between September 14 and September 30, 1992.

Groups participating in these regional meetings nominated more than 275 individuals to serve as negotiators.

Participants

The following is a list of the participants whom the Department has invited to participate in the negotiated rulemaking. The list also includes the names of mediators and Federal negotiators. The Department may add additional negotiators to this list. Each participant represents one of the groups specified in the statute (section 492(a)1)). The Department has attempted to invite from among those individuals nominated by the groups represented at the regional meetings a range of individuals representing the various viewpoints of the interest groups specified in the statute and the various geographic areas of the nation.

Negotiators For Group 1: Student Assistance General Provisions, 34 CFR Part 668, Subparts A & B; Third-Party Servicers; and Consultants

Robert W. Evans, Director, Division of Policy Development, Policy, Training & Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 4310, DC
Kenneth W. Babcock, Directing Attorney, Public Counsel, CA
Joan Berkes, Associate Director for Professional Development, National Association of Student Financial Aid Administrators, DC
Ellen V. Blackmun, Vice President, Student Finance Education Management Corporation/Art Institute International, PA
Mary F. Bushman, Vice President Government Relations, AFSA Data/Fleet Financial Group, IL
Mary J. Calais, Director Public Policy, National Association of College and University Business Officers, DC
Carol Cataldo, Executive Director of CATDS, DC
Nancy Coolidge, Office of the President, University of California, Oakland, CA
Mary L. Dover, Director of Financial Aid, Johnson County Community College, KS
Gary Frazier, Vice President of Sales, Unger & Associates, Inc., TX
Jean S. Frohlicher, President, National Council of Higher Education Loan Programs, Inc., DC
Joshua Grabel, Associated Students of the University of Arizona, AZ
Robert S. Inglis, Vice President, Servicing, Policy & Compliance, Student Loan Marketing Association, VA
David S. Levy, Director of Financial Aid, California Institute of Technology, CA
Douglas Morrow, California Student Association of Community Colleges, CA
Barmak Nassirian, Assistant Director, Federal Relations, American Association of State Colleges and Universities, DC
Edward E. Pollack, Executive Vice President/Chief Operating Officer, USA Funds, Inc., IN
Sheila M. Ryan, Director of Planning & Development, Nellie Mae, MA
Robert Zier, Senior Vice President, Manager of Government Relations and Compliance, Wachovia Student Financial Services, Inc., NC

Negotiators For Group 2: Ability-to-Benefit and State Postsecondary Review

Brian Kerrigan, Acting Director, Policy, Training, & Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 4310, DC
Carol Sperry, Acting Director, Institution Participation and Oversight Service, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 3919, DC
Judith Flink, Director of Student Financial Services, University of Illinois-Chicago, IL
Elizabeth M. Imholz, Attorney, Legal Services for New York City, CA
Susan Lipsmeyer, Director of Financial Aid, Grossmont College, CA
Dr. Dallas Martin, President, National Association of Student Financial Aid Administrators, DC
Kenneth A. Miller, Executive Director, Council for Private Postsecondary & Vocational Education, CA
Carolyn Moffet, President, Superior Career Institute, Inc., NY
A. Jack Moore, President, City College, Inc., OK
Carol A. Mowbray, Coordinator, Student Benefits & Support Services, Northern Virginia Community College, VA
Mark L. Pelesh, Legal Counsel, Accrediting Commission for Trade & Technical Schools, Cohn & Marks, DC
Dr. John Petersen, Executive Director, Accrediting Commission for Community & Junior Colleges, Western Association of Schools and Colleges, CA
Arliss L. Roaden, Executive Director, Tennessee Higher Education Commission, TN
Phillip H. Roush, Commissioner, Indiana Commission on Proprietary Education, IN
Jeanne Russell, Administrator, Accrediting Bureau of Health Education Schools, IN
Patty Sullivan, Senior Policy and Legislative Officer, National Governors' Association, DC
Dr. Jane A. Stockdale, Chief, Division of Veteran/Military Education, Pennsylvania Department of Education, PA
Mike Van Ryn, Assistant Commissioner for Quality Assurance, Board of Regents, New York State Education Department, NY
Jane Wellman, Vice President for Government Relations, National Association of Independent Colleges & Universities, DC
Brian J. Williams, United Council of the University of Wisconsin Student Government, Inc., WI

Dated: April 21, 1993.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 93–9865 Filed 4–23–93; 9:30 am]

BILLING CODE 4000–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL 4618–2]

Public Meeting of the Hazardous Waste Manifest Rulemaking Committee

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of the next public meeting of the Hazardous Waste Manifest Rulemaking Committee. The meeting is open to the public without advance registration.

The purpose of the meetings is to continue work on revising the uniform national hazardous waste manifest form and rule.

DATES: The Committee meeting will be held on May 10, from 10 am to 6 pm, and on May 11, 1993 from 8:30 am to 4 pm.

ADDRESSES: The meeting will be held at Resolve-World Wildlife, 1250 Twenty-fourth Street NW., Fifth Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Rick Westlund, Regulatory Management Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–2745. Persons needing further information on procedural or logistical matters should call Deborah Dalton, Consensus and Dispute Resolution

Program, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–5495, or the Committee's facilitator, Suzanne Orenstein, Resolve, 1250 24th Street, NW., suite 500, Washington, DC 20037, (202) 778–9533.

Dated: April 22, 1993.

Deborah S. Dalton,

Deputy Director, EPA Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation.

[FR Doc. 93–9949 Filed 4–26–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–97, RM–8203]

Radio Broadcasting Services; Norway, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Zephyr Broadcasting Inc., proposing the substitution of Channel 232C3 for Channel 232A at Norway, Michigan, and modification of the license for Station WZNL (FM) to specify operation on the higher class channel. Canadian concurrence will be requested for this allotment at coordinates 45–46–29 and 87–55–22. We shall propose to modify the license for Station WZNL (FM) in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 11, 1993, and reply comments on or before June 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Brian M. Madden, Leventhal, Senter & Lerman, 2000 K Street, NW., suite 600, Washington, DC 20006–1809.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–97, adopted March 26, 1993, and released April 20, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–9690 Filed 4–26–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–98, RM–8207]

Radio Broadcasting Services; Rushford, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Wheeler Broadcasting of Minnesota, Inc., requesting the substitution of Channel 257C3 for Channel 257A at Rushford, Minnesota, and modification of the license for Station KWNO–FM to specify operation on Channel 257C3. The coordinates for Channel 247C3 are 43–50–51 and 91–42–11. We shall propose to modify the license for Station KWNO–FM in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 11, 1993, and reply comments on or before June 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Ray L. Wheeler, Chairman, Wheeler Broadcasting of Minnesota, Inc., 216 Center Street, Winona, Minnesota 55987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–98, adopted March 26, 1993, and released April 20, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–9691 Filed 4–26–93; 8:45 am]

BILLING CODE 6712–01–M

47 FR Part 73

[MM Docket No. 93–100, RM–8175]

Radio Broadcasting Services; Cleveland and Ebenezer, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Radio Cleveland, Inc. and JimBar Enterprises, proposing the substitution of Channel

280C3 for Channel 280A at Cleveland, Mississippi, and modification of the license for Station WCLD–FM and deletion of vacant Channel 280A at Ebenezer to accommodate the upgrade of Cleveland. The coordinates for Channel 280C3 at Cleveland are 33–43–59 and 90–41–38. We shall propose to modify the license for Station WCLD–FM for Channel 280A in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. Should interest be expressed for retention of Channel 280A in Ebenezer, a new filing window would be opened for that channel and Station WCLD–FM could not be upgraded to Channel 280C3.

DATES: Comments must be filed on or before June 11, 1993, and reply comments on or before June 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, Fletcher, Heald & Hildreth, 1300 N. 17th Street, 11th Floor, Rosslyn, Virginia 22079.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–100, adopted March 29, 1993, and released April 20, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For more information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Review Division, Mass Media Bureau.

[FR Doc. 93–9688 Filed 4–26–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–99, RM–8202]

Radio Broadcasting Services; Moberly, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by FM 105, Inc. proposing the substitution of Channel 288C2 for Channel 288C3 at Moberly, Missouri, and modification of the construction permit for Station KZZT(FM) to specify operation on Channel 288C2. The coordinates for Channel 288C2 at Moberly are 39–25–45 and 92–22–49.

DATES: Comments are due on or before June 11, 1993, and reply comments on or before June 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: John R. Wilner, Bryan Cave, 700 Thirteenth Street, NW., suite 700, Washington, DC 20005–3960.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–99, adopted March 26, 1993, and released April 20, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–9689 Filed 4–26–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–92, RM–8205]

Radio Broadcasting Services; Howe, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Maple Communications Limited Partnership, permittee of Station KHYI–FM, Channel 237A, Howe, Texas, proposing the substitution of Channel 237C3 for Channel 237A at Howe and modification of its authorization to specify operation on the higher powered channel. Channel 237C3 can be allotted to Howe in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 kilometers (7.5 miles) south to accommodate Maple's desired site. The coordinates for Channel 237C3 are 33–23–58 and 96–35–51. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 237C3 at Howe or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 11, 1993, and repiy comments on or before June 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Margaret M. Graves, Esq., Latham & Watkins, 1001 Pennsylvania Avenue, NW., suite 1300, Washington, DC 20004 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Medical Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–92, adopted March 25, 1993, and released April 20, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–9692 Filed 4–26–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–91, RM–8197]

Radio Broadcasting Services; Berlin, De Forest and Wautoma, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by De Forest Broadcasting Company requesting the allotment of Channel 226A to De Forest, Wisconsin, as that community's first local transmission service. The coordinates for Channel 226A are 43–16–08 and 89–20–09. There is a site restriction 1.9 kilometers (1.2 miles) north of the community. To accommodate the allotment at De Forest, we shall also propose the substitution of Channel 272A for Channel 226A at Wautoma, Wisconsin, and Channel 284A for Channel 272A at Berlin, Wisconsin. Channel 272A is licensed to Station WISS–FM, Berlin. Channel 284A can be allotted to Berlin at the licensed site for Station WISS–FM (43–56–55 and 88–59–09). Wautoma Radio Company is the sole applicant for Channel 226A at Wautoma. Channel 272A can be allotted to Wautoma at the applicant's specified site for Channel 226A (44–04–18 and 89–17–30).

DATES: Comments must be filed on or before June 11, 1993, and reply comments on or before June 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Richard J. Hayes, Jr., 13809 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 93–91, adopted March 25, 1993, and released April 20, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–9693 Filed 4–26–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 1-year Finding for a Petition To List Four Plant Species Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 1-year petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), announces a 1-year finding on a petition to add four plant species, *Amsinckia carinata* (Malheur Valley fiddleneck), *Eriogonum crosbyae* (Crosby's buckwheat), *Ivesia rhypawra* var. *rhypara* (grimy ivesia), and *Senecio ertterae* (Ertter's senecio), to the List of Endangered and Threatened Plants. After review of all available scientific and commercial information, the Service determines that listing is not warranted for any of the four species under consideration at this time.

The limited distribution of these plants could make them vulnerable to mining or grazing; however, these activities are not imminent threats to the plants at this time. *Ivesia rhypara* var. *rhypara* and *Senecio errterae* are the subject of conservation agreements with the Bureau of Land Management in Oregon. In the event that the protective measures envisioned by the conservation agreements and by the land managing agencies are not successful, the Service could list these species at a later date.

DATES: The finding announced in this notice was made on April 21, 1993. Comments and information may be submitted until further notice.

ADDRESSES: Comments and materials regarding the petition finding may be submitted to the Field Supervisor, Boise Field Office, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho 83705. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert L. Parenti, at the above address (208/334–1931).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act), for any petition to revise

the Lists of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, the U.S. Fish and Wildlife Service (Service) is required to make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be "warranted but precluded" should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months.

On October 8, 1991, the Service received a petition dated October 7, 1991, from Stu Garrett, to list *Amsinckia carinata, Eriogonum crosbyae, Ivesia rhypara* var. *rhypara*, and *Senecio ertterae* as endangered. A 90-day finding that the petition presented substantial information that the requested action may be warranted was announced on the Federal Register on November 19, 1992 (57 FR 54547).

On the basis of the best available scientific and commercial information, the Service finds that listing *Amsinckia carinata, Eriogonum crosbyae, Ivesia rhypara* var. *rhypara*, and *Senecio ertterae* as endangered is not warranted at the present time.

Amsinckia carinata is a synonym of *A. vernicosa* ssp. *vernicosa*, a species that the Service considers too widespread and abundant for consideration for Federal listing (55 FR 6187). *Eriogonum crosbyae, Ivesia rhypara* var. *rhypara*, and *Senecio ertterae* may face threats from mining, grazing, and other factors; however, the risks to these three species from these threats are currently low. Although mining claims exist, they are not as extensive as originally thought. The declining trend in mining activity is expected to continue as claim holding fees have been raised, and mineral exploration has become less profitable. In addition, the petitioned species occur on substrates that possess low mineral potential.

Grazing occurs at *Ivesia rhypara* var. *rhypara* and *Senecio ertterae* sites in Oregon; however, no information indicates that impacts from grazing are extensive enough to affect the survival of the species at the present time. The Service does not expect mining, grazing, or other factors to occur so quickly or extensively, as to pose substantial, immediate threats to the three species in question.

The Service currently considers threats to *Eriogonum crosbyae, Ivesia rhypara* var. *rhypara*, and *Senecio ertterae* to be low. Listing these species as either endangered or threatened is not appropriate at this time because they are not presently in danger of extinction or expected to become so in the foreseeable future. In the event that conditions change and the species become imperiled due to factors mentioned in the petition or other unforeseen factors, the Service could list these species as endangered or threatened under the Act. The Service will continue to provide technical assistance to State and Federal agencies to address the conservation needs of the above species.

Authors

The primary authors of this notice are Robert Parenti and Diana Hwang (See ADDRESSES section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: April 21, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–9803 Filed 4–26–93; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Proposed Determination of Endangered Status for Argali in Kyrgyzstan, Mongolia, and Tajikistan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for the argali (*Ovis ammon*), a wild sheep, in Kyrgyzstan, Mongolia, and Tajikistan. The species currently is classified as threatened in those three countries and as endangered in all other parts of its range. The threatened classification, and a current special rule governing trophy importation from Kyrgyzstan, Mongolia, and Tajikistan, now appear inadequate to provide for the protection of the species. The Service seeks relevant data and comments from the public. The comments and other available information will be evaluated, and such review may lead to withdrawal or to a final rule that differs substantially from this proposal. In particular, should sufficient data be received, the final rule could maintain threatened status for the argali in one or more of the involved countries, and incorporate a revised special rule providing for limited importation.

DATES: Comments must be received by October 25, 1993. Public hearing requests must be received by June 11, 1993.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203). Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION:

Background

The argali (*Ovis ammon*) is the largest species of wild sheep. Its historic range includes Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, southern Siberia, Mongolia, north-central and western China including Tibet, Nepal, and the Himalayan portions of Afghanistan, Pakistan, and India. In a final rule published pursuant to the endangered Species Act of 1973 (Act) in the Federal Register of June 23, 1992 (57 FR 28014–28024), and becoming effective on January 1, 1993, the Service classified the argali as endangered throughout its range, except in Kyrgyzstan, Mongolia, and Tajikistan, where it was designated as threatened. A special rule provided for the limited importation into the United States of argali trophies taken legally in Kyrgyzstan, Mongolia, and Tajikistan, once the Service had received from the governments of those countries properly documented and verifiable certification that: (1) Argali populations are sufficiently large to sustain sport hunting; (2) regulating authorities have the capability to obtain sound data on these populations; (3) regulating authorities recognize these populations as a valuable resource and

have the legal and practical means to manage them as such; (4) the habitat of these populations is secure; (5) regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations; and (6) funds derived from the involved sport hunting are applied substantially to argali conservation. Extension of this special rule to argali populations in certain other countries, together with reclassification of such populations to threatened status, was stated to be a future possibility.

In connection with its new regulation of June 23, 1992, the Service noted that the argali (exclusive of the subspecies *O. a. hodgsoni*) is on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and thus until the effective date of the regulation could be imported into the U.S. upon presentation of a proper CITES export permit from the country of origin. Section9(c)(2) of the Act provides that the otherwise lawful importation of wildlife that is not an endangered species listed pursuant to section 4 of the Act, but that is on Appendix II of CITES, shall be presumed, under certain circumstances, to be in compliance with provisions of the Act and implementing regulations. There had been some question as to whether this provision of the Act might automatically require allowing the importation of a species that is both listed as threatened and on Appendix II, and preclude the issuance of more restrictive special rules covering importation. However, in a detailed discussion in the background to the final rule of June 23, 1992, the Service concluded that such special rules may be issued to provide for the conservation of the involved species.

It was emphasized that the Service's interpretation of Section 9(c)(2) was a key factor in the assignment of threatened, rather than endangered, status to the argali in Kyrgyzstan, Mongolia, and Tajikistan. Had the Service been unable to issue a special rule restricting importation of trophies from those countries, and if therefore importation could have proceeded without assurances of adequate population status and management, such a situation would have become a contributory element to factor "D" of section 4(a)(1) of the Act, "the inadequacy of existing regulatory mechanisms," and likely would have been sufficient to warrant endangered classification of the involved populations. The decision to assign threatened, rather than endangered, status to those populations was made by a very narrow margin. In the final rule of June 23, 1992, the Service reported that the various problems confronting those populations were such that reclassification to endangered status remained under active consideration. It was noted that reclassification might become especially advisable if the Service found itself unable to adequately regulate the situation pursuant to a threatened classification.

In promulgating the final rule the Service acted in accordance with the requirement of section 4(d) of the Act that special rules issued for threatened species be "necessary and advisable to provide for the conservation of such species." The Service recognized that there was a reasonable argument for the proposition that controlled sport hunting may provide economic incentives contributing to the conservation of certain wildlife populations. During the periods of review and comment prior to the final rule, various interests had argued that sport hunting programs, with consequent exportation of trophies, might encourage and provide necessary funds for the conservation of the argali. Consideration of such interests, and allowance for their development and submission of information supporting their position, was a factor in the unusual length of the argali rulemaking process. There was a notice of a review on November 24, 1989 (54 FR 48723), a notice of intent to propose a rule on May 23, 1990 (55 FR 21207), a proposed rule on October 5, 1990 (55 FR 40890–40896), an extension of the comment period on February 8, 1991 (56 FR 5192), an extension of the deadline for a final rule on October 25, 1991 (56 FR 55266–55267), another reopening of the comment period on January 8, 1992 (57 FR 659), and the final rule of June 23, 1992. Throughout this publication process, and in extensive supplemental correspondence and announcements, the Service emphasized that the importation of argali trophies was feasible, provided that substantive data were made available showing that such activity was beneficial to the conservation of the overall species. The Service solicited these data from appropriate foreign governments and many other concerned parties, and gave ample opportunity for them to respond. Even upon the final rule, the effective date was set back more than six months so as not to interfere with the coming hunting season and to allow still further opportunity for response to the rule's requirement for the properly documented and verifiable certifications listed above. Moreover, as suggested in the final rule, the Service is now funding its own surveys that may help meet this requirement for certain of the involved argali populations.

Regardless of the above considerations, on January 4, 1993, just after the final rule became effective, the Service was challenged in two separate lawsuits. The plaintiffs include a number of hunting organizations and businesses. They contend, among other things, that the Service failed to give adequate notification of the argali special rule and that section 9(c)(2) of the Act does require that argali trophies be allowed to enter the United States simply upon presentation of a CITES export permit from the country or origin. These contentions, coming after the extensive opportunity offered for comment and presentation of data on the argali situation, suggest to the Service that the plaintiffs do not consider that the conditions of the final rule can be met and/or that they do not wish to assist in any effort to do so. There actions illustrate a lack of support for the conservation purposes that were a basis for the protective regulations in the final rule.

These regulations were not intended to disrupt ongoing sport hunting programs in Kyrgyzstan, Mongolia, and Tajikistan, but rather to work in conjunction with such programs, provided that adequate documentation could be produced, showing that these programs were in keeping with the six factors listed above. It is regrettable that the intention of the protective regulations was misinterpreted by the plaintiffs. The regulations created a special opportunity for the three named countries to continue export of sport-taken trophies to the United States. As noted repeatedly in the final rule of June 23, 1992, the fundamental prerequisite for allowing this opportunity was provision of the required documentation. This prerequisite has yet to be satisfied with respect to any of the named countries, though the Service is developing its own surveys in Kyrgyzstan and Mongolia.

The Service is convinced of the validity of its final rule and protective regulations, but recognizes that there is legal uncertainty regarding compliance with the special rule for the three threatened populations. The Service might find itself in the position, as described above, of not being able to adequately regulate argali importation. Therefore, the current legal situation gives increased weight to factor "D" of section 4(a)(1) of the Act, "the inadequacy of existing regulatory mechanisms." This inadequacy would increase substantially should the Services's interpretation of section

9(c)(2) be set aside. The potential for such a situation, together with the many other problems of the argali, as described in the final rule of June 23, 1992, is sufficient to warrant a reclassification of the argali in Kyrgyzstan, Mongolia, and Tajikistan from threatened to endangered. By proposing such reclassification, the Service both emphasizes the present need for adequate regulation of the species and is in a better position to avoid a break in such regulation.

The final rule of June 23, 1992, presented a discussion of the "Summary of Factors Affecting the Species" (57 FR 28018–28022). That discussion, as modified by the above discussion regarding Factor D, applies to this proposed rule to reclassify the argali as endangered in Kyrgyzstan, Mongolia, and Tajikistan. The Service will, at the time of announcing its decision on this proposal, summarize any new substantive information on the status of the affected argali populations.

Notwithstanding the above, the Service continues to await and to seek the properly documented and verifiable certification that could enable the importation of argali trophies as provided in the original final rule of June 23, 1992. Should such data be received, and should the legal conditions warrant, the Service could withdraw this proposal or, if there already is a new final rule, could propose to reinstate the original final rule. Alternatively, a new final rule could maintain threatened status for the argali in one or more of the three involved countries, and could establish a modified special rule, based on any new data that are received, providing for limited importation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such actions are currently known with respect to the species covered by this proposal.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel. Pursuant to these provisions of the Act, the Service now is funding surveys of the status of the argali in Kyrgyzstan and Mongolia. This effort may eventually form part of a larger project involving other forms of assistance and cooperative funding from additional organizations.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21 and 17.31, set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (within the United States or on the high seas), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered or threatened wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. The importation of a personal trophy, taken through a carefully managed sport hunting program that provides an economic incentive for the general conservation for the involved species, may in some cases be considered to enhance the survival of that species. For threatened species, there also are permits available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Comments particularly are sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species, including data regarding the six points, as listed in the above "Background," for which the Service now is seeking documented certification;

(2) Information concerning the distribution of this species;

(3) Current or planned activities in the involved areas, and their possible effect on the subject species; and

(4) Details on the laws, regulations, and management programs covering each of the affected populations of this species, particularly with regard to their adequacy in providing for sport-hunting that may enhance the survival of these populations.

Final promulgation of the regulation on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ substantially from this proposal. The Service emphasizes that it is actively seeking and evaluating information on the argali, and that this review could lead to withdrawal of this proposal, to retention of threatened status for the argali in one or more of the three involved countries, and/or to a modified special rule providing for limited importation. Interested parties are urged to consider such alternatives when examining the proposal and preparing their comments.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed by 45 days from the date of publication in the **Federal Register** of the proposal, should be in writing, and should be directed to the party named in the above **ADDRESSES** section.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

Author

The primary author of this proposed rule is Ronald M. Nowak, U.S. Fish and Wildlife Service (OSA), Washington, DC 20240 (703–358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by removing the two entries under MAMMALS for the "Argali" and by adding in their place a new entry to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
•	•	•	•	•	•	•	
Argali	*Ovis ammon*	Afghanistan, China, India, Kazakhstan, Kyrgyzstan, Mongolia, Nepal, Pakistan, Russia, Tajikistan, Uzbekistan.	Entire	E	15,475,____	NA	NA
•	•	•	•	•	•	•	

§ 17.40 [Amended]

3. It is proposed to amend § 17.40, "Special rules—mammals," by removing paragraph (j).

Dated: April 12, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–9804 Filed 4–26–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 79
Tuesday, April 27, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93-041-1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of February 1993. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of February 1993. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under. **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 22nd day of April 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-9801 Filed 4-26-93; 8:45 am]

BILLING CODE 3410-34-P

Forest Service

Environmental Impact Statement for the Six Rivers National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of revised availability dates for the draft and final Environmental Impact Statement.

SUMMARY: The Six Rivers National Forest is revising the projected availability dates of the draft and final Environmental Impact Statement (EIS) for the Land and Resource Management Plan.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Laura Chapman, Assistant Forest Planner, Six Rivers National Forest, 1330 Bayshore Way, Eureka, California, 95501, (707) 441-3637.

SUPPLEMENTARY INFORMATION: On December 12, 1990, a Notice of Intent (NOI) to prepare a draft and final EIS was published in the **Federal Register** (55 FR 51127-51138). The NOI indicated the draft EIS was scheduled to be filed with the Environmental Protection Agency (EPA) and available for public review by December 1991. Due to the need for additional time to complete the analysis, it is now expected to be available for review by May 1993. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The final EIS was scheduled to be completed by September 1992. It is now expected to be completed by April 1994.

Dated: March 1, 1993.

Martha Ketelle,

Acting Forest Supervisor.

[FR Doc. 93-9697 Filed 4-26-93; 8:45 am]

BILLING CODE 3410-11-M

Suitability Studies for 22 Wild and Scenic Rivers, Tahoe National Forest, Placer, Yuba, Eldorado, Sierra, and Nevada Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to study the suitability of 22 rivers in the Tahoe National Forest in California for inclusion in the National Wild and Scenic Rivers System. All 22 of the rivers are located within or form the boundary of the Tahoe National Forest. Two of the 22 rivers, Canyon Creek and the Rubicon River, are located on a shared

administrative boundary with the Eldorado National Forest (Rubicon River) and the Plumas National Forest (Canyon Creek). This study also includes 22 miles of the South Yuba River beyond the National Forest boundary which is administered by the Bureau of Land Management. The Tahoe National Forest will evaluate all 22 rivers in one EIS and will develop a range of suitability alternatives from "no rivers suitable" to "all rivers suitable and recommended for designation". The agency gives notice of this study to solicit comments from interested and affected people on the scope and findings of the analysis. The proposed study will be implemented during fiscal years 1993 and 1994.

DATES: Comments on the scope of the study should be received by August 1, 1993.

ADDRESSES: Send written comments and suggestions concerning the suitability of the rivers to John Skinner, Forest Supervisor, Tahoe National Forest, P.O. Box 6003, Nevada City, CA 95959, (916) 265–4531.

FOR FURTHER INFORMATION CONTACT: John Bradford, Wild and Scenic River Analysis Interdisciplinary Team Leader, P.O. Box 6003 Nevada City, CA 95959, (916) 265–4531.

SUPPLEMENTARY INFORMATION: This study proposes to evaluate the suitability of 22 rivers for designation as Wild and Scenic Rivers. A suitability study is the last administrative step in the Wild and Scenic Rivers process before a recommendation is made to Congress for designation. Only rivers found eligible for Wild and Scenic River status are evaluated in the suitability study.

In 1991, the Tahoe National Forest engaged in a process for determining Wild and Scenic River eligibility. At the close of the process 31 rivers were determined eligible for Wild and Scenic River status. At that point in the process, the Forest Supervisor directed that Wild and Scenic River values and classification standards be protected for the 31 eligible rivers until such time as the suitability studies are completed and new management emphasis is developed.

The EIS will address the suitability of 22 of the original 31 rivers together to maintain consistency across the western half of the Forest and complete the work efficiently. The area of consideration for each river is a minimum ¼ mile from each bank for the entire length of the eligible portion of the river. Eight of the remaining nine rivers will be addressed in a separate, "eastside rivers" suitability study in cooperation with the Bureau of Reclamation. The remaining river, the Middle Fork American River will be addressed in a separate study in cooperation with the Bureau of Reclamation's Phase III of the American River Water Resources Investigation. The 22 considered in this process are as follows:

North Yuba Ranger District: Pauley Creek, Lavezzola Creek, Empire Creek, Canyon Creek (Common boundary with the Plumas NF), Downie River, North Yuba River, Oregon Creek, and New York Ravine.

Nevada City Ranger District: Humbug Creek, Middle Yuba River, Macklin Creek, East Fork Creek, Fordyce Creek, South Yuba River, Big Granite Creek, North Fork of the the North Fork American River, and Little Granite Creek.

Truckee Ranger District: Rubicon River (Common boundary with the Eldorado NF).

Forest Hill Ranger District: Grouse Creek, Screwauger Canyon, New York Canyon, and North Fork of the Middle Fork American River.

Public participation will be especially important at several points during the analysis. The first point is the scoping process (40 CFR 1501.7). The Forest Service has and is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement.

There will be an opportunity to learn more about the rivers and the process through periodic newsletters and public workshops to be held in May, June, and July of 1993. The tentative workshop locations are Auburn, Foresthill, Nevada City, and Downieville. Additional meetings may be held at other locations as needed. A notice of these meetings will be sent to people on the rivers planning mailing list and to the news media located in the Auburn, Grass Valley, Nevada City, Marysville, and Sacramento areas. Written comments or suggestions are encouraged throughout the planning process and during the public meetings.

The Tahoe National Forest is the lead Forest for the Study. The Eldorado and Plumas National Forests will provide administrative cooperation throughout the process. The Bureau of Land Management is a joint preparer of the EIS.

The draft EIS is scheduled to be completed in February of 1994. The comment period on the draft EIS will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2D 1016, 1022 (9TH Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980), Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS of the merits of the alternatives formulated and discussed in the statement. Reviewer's may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The Secretary of Agriculture will consider the comments, responses, environmental consequences discussed in the final EIS and applicable laws, regulations, and policies in making his recommendation to the President regarding the suitability of these rivers for inclusion in the National Wild and Scenic Rivers System. The decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress through legislative designation.

John Skinner, Forest Supervisor, Tahoe National Forest, Highway 49 & Coyote St, Nevada City, CA 95959, is the responsible official for the suitability study. Michael Espy, Secretary of

Agriculture, U.S. Department of Agriculture, room 200–A, Adm. Bldg, Washington, DC 20250, is the responsible official for recommendations for Wild and Scenic river designation within National Forest boundaries.

Dated: April 20, 1993.

Thomas J. Mills,

Associate Deputy Chief.

[FR Doc. 93–9699 Filed 4–26–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Human Nutrition Information Service

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

National Nutrition Monitoring Council: Notice of Meeting

SUMMARY: The National Nutrition Monitoring Advisory Council will hold its fourth meeting on May 18, 1993, 9 a.m. to 5 p.m. and May 19, 1993, 9 a.m. to 1 p.m. at the Ramada Inn, located at 8400 Wisconsin Avenue, Bethesda, MD 20814. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Alanna J. Moshfegh, Co-Executive Secretary to the Council from USDA, Human Nutrition Information Service, U.S. Department of Agriculture, 6505 Belcrest Road, room 366, Hyattsville, MD 20782, (301) 436–8457; or Linda Meyers, Ph.D., Co-Executive Secretary to the Council from HHS, Public Health Service, Office of Disease Prevention and Health Promotion, room 2132, Switzer Building, 330 C Street SW., Washington, DC 20201, (202) 205–9007.

SUPPLEMENTARY INFORMATION: The responsibilities of the National Nutrition Monitoring Advisory Council are to evaluate the scientific and technical quality of the ten-year comprehensive plan and the effectiveness of the coordinated National Nutrition Monitoring and Related Research Program and to provide guidance to the Secretaries of USDA and HHS. This Council is also required by Public Law 101–445 to prepare annual reports to the Secretaries of both USDA and HHS that include recommendations for improvement of the Program.

The Council meeting agenda will include nutrition monitoring presentations and in-depth discussion on state level data uses and needs. The Council will also discuss its strategy for evaluating the Ten-Year Plan. The public may file statements with the Council before or after the meeting by addressing them to either of the contact persons listed above.

Done at Washington, DC this 19 day of April, 1993.

David A. Rust,

Acting Administrator, Human Nutrition Information Service, U.S. Department of Agriculture.

J. Michael McGinnis,

Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

[FR Doc. 93–9793 Filed 4–26–93; 8:45 am]

BILLING CODE 3410–KE–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Bethesda, Maryland on Tuesday and Wednesday, May 11–12, 1993 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, May 11, 1993

9–10:30 a.m. Special Orientation Session for New Board Members on Proposed Accessibility Guidelines for State and Local Government Facilities (closed session)

10:45–11:45 a.m. Planning and Budget Committee

1:15–5 p.m. Rulemaking Group (closed meeting)

Wednesday, May 12, 1993

9–12 p.m. Rulemaking Work Group (closed meeting)

1:30–3 p.m. Board Meeting

ADDRESSES: The meetings will be held at: Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14.

SUPPLEMENTARY INFORMATION: At its business meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the March 10 and January 13, 1993 Board Meetings.
- Executive Director's Report.
- Status Report on Technical Program Projects.
- Fiscal Year 1993 Budget Reprogramming.
- Status Report on Fiscal Year 1994 Budget.
- Preliminary Discussion on Fiscal Year 1995 Budget.
- Status Report on Pending Rulemaking (closed).
- Major Issues for State and Local Government Facilities (closed).
- Report of Extraordinary Work.
- Complaint Status Report.
- Recreation Advisory Committee.

Some meetings or items may be closed to the public as indicated above. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 93–9824 Filed 4–26–93; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). A prompt review has been requested.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Antarctic Marine Living Resources Conservation and Management Measures.

Agency Form Numbers: NOAA 88–211, 88–211A, 88–211B, and 88–211C.

OMB Approval Number: 0648–0194.

Type of Request: Revision of a currently approved collection.

Burden: 63 hours.

Number of Respondents: 5 (several responses per respondent).

Avg Hours Per Response: 46 minutes.

Needs and Uses: As a member of the Convention which governs the Antarctic marine living resources, the United States has agreed to adhere to conservation measures for this region. At the Commission's last meeting, a number of reporting requirements were adopted, which impose new of expanded data requirements on vessels. The changes include: Reporting requirements for trawl fisheries, institution of monthly and five-day catch and effort reporting for certain species, and new measures for reporting research data.

Affected Public: Individuals.

Frequency: On occasion, weekly, monthly and every five days.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ron Minsk, OMB Desk Officer, room 3019, New Executive Office Building, Washington, DC 20503.

Dated: April 21, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–9721 Filed 4–26–93; 8:45 am]

BILLING CODE 3510-CW-F

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance; Sholdt Jewelers, Inc., et al.

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
Sholdt Jewelers, Inc	1424 Fourth Avenue, Suite 331, Seattle, WA 98101.	03/18/93	Jewelry.
Jan-R Corporation	2191 Rhodes Road, Sero Wooley, WA 98284.	03/22/93	Machine and equipment—Burglar alarms.
Craneveyor Corp	1524 N. Potrero Avenue, S. Elmonte, CA 91733.	03/22/93	Machine and equipment—Crane/hoist systems for material handling.
Adcom	11 Elkins Road, East Brunswick, NJ 08816.	03/23/93	Electronics—Electric power amplifiers.
Sewtec Manufacturing Co., Inc	263 Brook Street, New Bedford, MA 02745.	03/25/93	Shorts: made mostly from cotton, polyester and linen.
Sea Cure Technology, Inc	1600 Kentucky Street, Suite A1, Bellingham, WA 98226.	03/25/93	Machine and equipment—Marine parts.
Federal Bronze Casting Industries, Inc.	9 Backus Street, Newark, NJ 07105	03/29/93	Bronze sand castings manufactured to various specifications for use in various industries.
Eagle-Picher Industries, Inc	580 Walnut Street, Cincinnati, OH 45201.	03/29/93	Germanium.
Dolan-Bullock Co	75 Oxford Street, Providence, RI 02901.	03/30/93	Men's jewelry.
George Pocock Racing Shells, Inc	2212 Pacific Avenue, Everett, WA 98201–4524.	03/30/93	Fiberglass canoes.
Powerex, Inc	Hillis Street, Youngwood, PA 15607	03/30/93	High-power semi-conductor devices and AC and DC motor controls.
American Brass & Iron Foundry (The).	7825 San Leandro Street, Oakland, CA 94621.	04/02/93	Pipe fittings, gym weights and municipal castings: covers, meter boxes, etc.
Blom Industries, Inc	25551 Joy Boulevard, Mt. Clemens, MI 48046–0486.	04/06/93	Metal brake pedals, engine lift hooks, transmission mounts and parts used in motor vehicles.
Nordon Tool & Mold Inc	691 Exchange Street, Rochester, NY 14608.	04/06/93	Plastic roller assemblies for copiers and plastic shock absorbers for the automotive industry.
All Fab, Inc	Building C–19, Pane Field, Everett, WA 98204.	04/06/93	Airplane parts.
Electrol Manufacturing Company	1100 East Elm Avenue, Fullerton, CA 92631.	04/06/93	Precision gears.
Tromley Industrial Holdings, Inc	12505 Southwest Herman Road, Tualatin, OR 97062.	04/06/93	Foundry molding equipment.
Maxximum Company, Inc. (The)	205 South 20th Street, Nampa, ID 83686.	04/06/93	Yokes and rudder pedals for computer flight simulation or games.
Target-Rock Corporation	1966 East Broadhollow Road, E. Farmingdale, NY 11735.	04/07/93	Commercial valves.
Duchess Footwear Corporation	3 Norton Street, South Berwick, ME 03908.	04/07/93	Women's casual shoes.
Texas Steel Company	3901 Hemphill, Fort Worth, TX 76110.	04/07/93	Steel castings—Mining equipment parts.
Par Technology Corporation	220 Seneca Turnpike, New Hartford, NY 13413.	04/07/93	Point-of-sale terminal type case register and vision inspection systems—x-ray.
J.M.L. Optical Industries, Inc	690 Portland Avenue, Rochester, NY 14621–5196.	04/07/93	Optical lenses.
Labelow Corporation	10 Chapin Street, Canadaigua, NY 14424.	04/07/93	Facsimile paper, films and stationary fasteners and rubber stamp kits.
Rennsport USA, Inc	20 Russell Blvd., P.O. Box 652, Bradford, PA 16701.	04/07/93	Adult trides and hand-eez grips.
Pure Castings Company	2110 E. 4th Street, Austin, TX 78702.	04/08/93	Metal products—Steel castings.
Bob Allen Companies, Inc. (The)	214 S.W. Jackson Street, Des Moines, IA 50302.	04/08/93	Apparel—Sporting good bags, men's and women's outerwear, and carrying cases for firearms, etc.

Firm name	Address	Date petition accepted	Product
Ortho-Kinetics, Inc	W220 N 507 Springdale Road, Waukesha, WI 53187.	04/09/93	3-wheeled electric mobility scooters, reclining chairs with electric lift base, etc.
Gerber Systems Corporation	83 Gerber Road West, South Windsor, CT 06074.	04/09/93	Misc.—Photoplotters, cim product, spare parts, graphic art products, drafting products.
Cyclonaire Corporation	2922 N. Division Avenue, York, NE 68467.	04/09/93	Machine and equipment—Pneumatic conveying systems.
Accurate, Inc	746 E. Milwaukee Street, Whitewater, WI 53190.	04/09/93	Machine and equipment—Dry material handling equipment.
Caratron Industries, Inc	27955 College Park Drive, Warren, MI 48093.	04/09/93	Gears, part of turboject or turbopropeller aircraft engines, parts of aircraft gas turbines, etc.
Clifton Shirt Company, Inc	529 Main Street, Loveland, OH 45140.	04/09/93	Apparel—Men's and women's shirts of man-made fibers and of wool.
Union Tank Works, Inc	12065 44th Place South, Seattle, WA 98178–0069.	04/12/93	Metal products—Steel pressure containers.
Milwaukee Bearing and Machining, Inc.	9532 West Carmen Avenue, Milwaukee, WI 53225.	04/13/93	Babbitt-lined bearings: metal bearings lined with a softer material that reduces friction.
Gulf Coast Wire Products, Inc	P.O. Box 68, Kaplan, LA 70548	04/13/93	PVC fluidized wire and plastic.
Triplett Corporation	One Triplett Drive, Bluffton, OH 45817.	04/15/93	Machine and equipment—Test and measurement equipment for use in electrical industry.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 20, 1993.

David L. McIlwain,

Acting Deputy Assistant Secretary for Program Operations.

[FR Doc. 93–9777 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–24–M

Foreign-Trade Zones Board

[Order No. 634]

Resolution and Order Approving With Restriction the Application of the St. Joseph County Airport Authority for Special-Purpose Subzone Status Fairmont Homes, Inc./Gulf Stream, Inc.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the St. Joseph County Airport Authority, grantee of FTZ 125, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on November 6, 1991, requesting special-purpose subzone status at the manufactured housing and recreational vehicle (RV) manufacturing facilities of Fairmont Homes, Inc., and its subsidiary Gulf Stream, Inc. (Fairmont/Gulf Stream), in Elkhart County, Indiana, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations would be satisfied, and that the proposal would be in the public interest provided approval is subject to certain conditions, approves the application, subject to the following conditions:

1. Fairmont/Gulf Stream shall elect privileged foreign status on all foreign components admitted to the subzone for use in the production of manufactured housing (mobile homes and prefabricated housing), trailers and vehicles other than Class A and Class C RVs.

2. With respect to Class A and Class C RVs, Fairmont/Gulf Stream shall elect privileged foreign status on foreign components except for pickup cab/chassis, chassis/suspension components, mufflers, pumps, filters, windshields, mirrors, electronic components, audio components, switches, refrigerators, panelling, hardware and fixtures.

3. With respect to micro-mini Class C RV production, Fairmont/Gulf Stream shall elect privileged foreign status on shipments of foreign pickup cab/chassis which exceed 5,000 units in a calendar year.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including Section 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the St. Joseph County Airport Authority, Inc., grantee of Foreign-Trade Zone 125, for authority to establish a special-purpose subzone for the manufactured housing and recreational vehicle manufacturing plants of Fairmont Homes, Inc., and its subsidiary, Gulf Stream, Inc. (Fairmont/Gulf Stream), located in Elkhart County, Indiana, was filed by the Board on November 6, 1991 (FTZ Docket 82–91, 57 FR 40, 1–2–92); and,

Whereas, the Board has found that the requirements of the Act and the Board's

regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to restriction;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 125C) for the production of manufactured housing and recreational vehicles at the Fairmont/Gulf Stream facilities in Elkhart County, Indiana, at the locations described in the application, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including section 400.28, and subject to the following conditions:

1. Fairmont/Gulf Stream shall elect privileged foreign status on all foreign components admitted to the subzone for use in the production of manufactured housing (mobile homes and prefabricated housing), trailers and vehicles other than Class A and Class C RVs.

2. With respect to Class A and Class C RVs, Fairmont/Gulf Stream shall elect privileged foreign status on foreign components except for pickup cab/chassis, chassis/suspension components, mufflers, pumps, filters, windshields, mirrors, electronic components, audio components, switches, refrigerators, panelling, hardware and fixtures.

3. With respect to micro-mini Class C RV production, Fairmont/Gulf Stream shall elect privileged foreign status on shipments of foreign pickup cab/chassis which exceed 5,000 units in a calendar year. Restriction requiring that privileged foreign status (19 CFR 146.41) shall be elected on shipments of foreign pickup cab/chassis should shipments on such items exceed 5,000 units in a calendar year.

Signed at Washington, DC, this 19th day of April, 1993, pursuant to Order of the Board.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

[FR Doc. 93–9836 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 635]

Approval for Expansion of Manufacturing Activity (Vessels) Within Foreign-Trade Subzone 2G, Trinity Marine Group/Equitable Shipyard, New Orleans, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u) (the Act), and the Foreign-Trade Zones (FTZ) Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, § 400.28(a)(2) of the Board's regulations, requires approval of the Board prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, on April 10, 1992, the Board authorized subzone status on behalf of the Trinity Marine Group, Inc. (TMG), at the Equitable Shipyard shipbuilding facility, New Orleans, Louisiana, on a temporary basis (to 4/1/94) for the completion of construction of a vessel subject to the standard shipyard subzone restrictions (Subzone 2G, Board Order 573, 57 FR 13695, 4/17/92);

Whereas, the Board of Commissioners of the Port of New Orleans (the Port), grantee of FTZ 2 and Subzone 2G, New Orleans, Louisiana, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of TMG to expand the scope of temporary subzone authority to include the construction of additional vessels under zone procedures (filed 4/6/93, A(32b1)-1–93; Doc. 12–93, assigned 4/12/93);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has authority to act for the Board in making decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is the same in terms of products involved, to activity recently approved by the Board under similar circumstances (§ 400.32(b)(1)(i)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28, and subject to the special restrictions (standard shipyard restrictions) and time limit described in Board Order 573.

Signed at Washington, DC, this 19th day of April, 1993, pursuant to Order of the Board.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 93–9837 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–427–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews and partial termination of administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France. The classes or kinds of merchandise covered by these orders are ball bearings (BBs), cylindrical roller bearings (CRBs), and spherical plain bearings (SPBs). The reviews cover seven manufacturers/exporters and the period May 1, 1991 through April 30, 1992. Although we initiated reviews for three other manufacturers/exporters, we are terminating these reviews because the requests for review were timely withdrawn. As a result of these reviews, the Department has preliminarily determined the weighted-average dumping margins for the reviewed firms to range from 0.00 to 66.42 percent for BBs, from 0.00 to 18.37 percent for CRBs, and 0.00 for SPBs.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Joanna Schlesinger (Dassault Industries), Michael Diminich (SKF France), Joseph Fargo (SNECMA), Maureen McPhillips (SNR Roulements S.A., Valeo S.A.), Anna Snider (SNFA), Carlo Cavagna (Turbomeca), or Richard Rimlinger; Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20902) the antidumping duty orders on BBs, CRBs, SBPs and parts thereof from France.

On July 6, 1992, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period May 1, 1991 through April 30, 1992 (57 FR 29701). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
Dassault Industries (Dassault).	BBs, CRBs, SPBs
SKF France (including all relevant affiliates).	BBs, CRBs, SPBs
SNFA	BBs, CRBs
SNR Roulements, S.A. (SNR).	BBs, CRBs
Societe Nationale d'Etude et de Construction de Moteurs d'Aviation (SNECMA).	BBs, CRBs
Turbomeca	BBs, CRBs, SPBs
Valeo	BBs

Subsequent to the publication of our initiation notice, we received timely withdrawal requests for Eurocopter Deutschland GmbH (formerly Messerschmitt-Boelkow-Blohm (MBB)), Eurocopter France (formerly Aerospatiale Division Helicopteres (ADH)), and ITT Jabsco. Because there were no other requests for review of these companies from any other interested parties, we are terminating the reviews with respect to these companies, in accordance with 19 CFR 353.22(a)(5).

The Department allowed certain companies to submit abbreviated questionnaire responses if they sold exclusively from published price lists and were able to demonstrate that all price list prices, with rare exceptions, were adhered to. In lieu of a detailed sales listing, firms that qualified for the price list option were permitted to provide all applicable price lists and aggregate cost and adjustment data. In these reviews, Dassault and SNECMA qualified for, and opted to use, this price list option.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for certain firms. The Department's regulations provide that we may take into account whether a party refuses to provide information (19 CFR 353.37(b)). For purposes of these reviews, we have used the most adverse BIA—generally the highest rate for any company for the same class or kind of merchandise from the less-than-fair-value (LTFV) investigation or prior administrative reviews—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding.

Because SNFA and Valeo failed to respond to the Department's questionnaire, we have used the highest rate ever found for each class or kind of merchandise.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), and constitute the following classes or kinds of merchandise:

1. Ball Bearings and Parts Thereof

These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. Cylindrical Roller Bearings and Parts Thereof

These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

3. Spherical Plain Bearings and Parts Thereof

These products include all spherical plain bearings that employ a spherically shaped sliding element. Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the period of review (POR) and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed sales during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included May 1–5, 1991; July 1–7, 1991; October 21–27, 1991; December 16–22, 1991; February 17–23, 1992, and March 2–8, 1992. We reviewed all PP sales transactions during the POR because there were few PP sales.

USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for movement expenses, discounts, and rebates.

We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Tariff Act. However, as noted in the FMV section of this notice, we followed the instructions of the Court of Appeals for the Federal Circuit in *Zenith Electronics Corp.* v. *United States*, 92–1043 (Zenith) and did not make a circumstance of sale adjustment for VAT taxes. Furthermore, the Department is now examining the Zenith decision in detail and is considering the proper methodology for making this tax adjustment. Interested parties are invited to comment upon this issue.

With respect to subject merchandise to which value was added in the United

States, *e.g.*, parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters prior to sale to unrelated U.S. customers, we deducted any increased value in accordance with section 772(e)(3) of the Tariff Act.

We consider those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on AFBs and not subject to assessment of antidumping duties. In Roller Chain, Other Than Bicycle, From Japan (48 FR 51801; November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order in such circumstances. We have applied this principle to these reviews with respect to certain sales made by Dassault and Turbomeca.

Foreign Market Value

The home market was viable for all companies and all classes or kinds of merchandise except for Dassault. To calculate foreign market value (FMV) for SPBs from Dassault, we used sales to a third country, the United Kingdom. The Department used home market price, third country price, or constructed value (CV) as defined in section 773 of the Tariff Act, as appropriate, to calculate FMV.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2000 home market or third country sales transactions for a particular class or kind of merchandise, we selected sales from sample months that corresponded to the sample weeks selected for U.S. sales sampling. The sample months included April, May, July, October, and December of 1991, and February, March, and June of 1992.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV in administrative reviews. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of respondents' home market sales data that we collected. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared the monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (*i.e.*, within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.*, that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that share the following physical characteristics: Load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. Due to the Court of Appeals' decision in *Zenith Electronics Corp.* v. *United States*, 92–1043, we made no adjustments for differences in the VAT taxes. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses.

Third country prices were based on the delivered prices to unrelated purchasers. Where applicable, we made adjustments for movement expenses, direct selling expenses, differences in cost attributable to differences in physical characteristics of the merchandise, and differences in packing. We also made adjustments, where applicable, for third country indirect selling expenses to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses.

We used sales to related customers only where we determined such sales were made at arm's length, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Where we found home market sales below the cost of production in the previous administrative review period, as in the case of BBs from SKF, we initiated a cost investigation. In addition, based on allegations submitted by Federal-Mogul in this administrative review, we initiated a cost investigation with respect to BBs sold by SNR.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales were made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we did not

disregard any sales of that model. When 10 percent or more, but not more than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV.

To determine if sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not disregard below-cost sales unless there were sales below cost of that model in each month sold If the model was sold in more than three months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold.

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," within the meaning of section 773(b)(2) of the Tariff Act, we were unable to conclude that the costs of production of such sales were recovered within a reasonable period. As a result, we disregarded below-cost sales of BBs made by SKF and SNR over an extended period of time.

Home market sales of obsolete merchandise and distress sales were not disregarded in our cost analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

In accordance with section 773(a)(2) of the Tariff Act, we used constructed value as the basis for FMV when there were no sales of such or similar merchandise for comparison in the home market or third country.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit and packing. We also included: (1) actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations. For comparisons involving ESP transactions, we made further deductions to constructed value for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins for the period May 1, 1991 through April 30, 1992 to be:

Company	BBs	CRBs	SPBs
Dassault	0.00	0.00	0.00
SKF	5.29	(1)	0.00
SNFA	66.42	18.37	(2)
SNR	2.98	0.00	(2)
SNECMA	23.82	10.98	(2)
Turbomeca	0.00	0.51	(1)
Valeo	66.42	18.37	(2)

[1] No U.S. sales during the review period.
[2] No review requested.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, will be held on May 24, 1993, in HCHB Auditorium, at 9 a.m. Any hearing regarding issues related solely to France, if requested, will be held on May 27, 1993, in room 1617–M–4, at 2 p.m.

General issues briefs and/or written comments from interested parties may be submitted not later than May 12, 1993. General issues rebuttal briefs and rebuttals to written comments, limited to the issues raised in the initial briefs and comments, may be filed not later than May 19, 1993. Case briefs and comments and all rebuttal briefs regarding issues related solely to France are due no later than May 17 and May 24, 1993, respectively. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or hearings.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of these administrative reviews. This rate represents the highest rate for any firm with shipments in these administrative

reviews, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: April 14, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–9827 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews and partial termination of administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Germany. The classes or kinds of merchandise covered by these orders are ball bearings (BBs), cylindrical roller bearings (CRBs), and spherical plain bearings (SPBs). The reviews cover six manufacturers/exporters and the period May 1, 1991 through April 30, 1992 (the POR). Although we initiated reviews for nine other manufacturers/exporters, we are terminating the reviews because the requests for review were timely withdrawn. As a result of these reviews, the Department has preliminarily determined the weighted-average dumping margins for the reviewed firms to ranging from 0.08 percent to 19.42 percent on BB, from 8.51 percent to 24.42 percent on CRBs from 7.57 percent to 8.71 percent on SPBs.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 21, 1993.

FOR FURTHER INFORMATION CONTACT: Carlo Cavagna (Fichtel & Sachs AG), Michael Diminich (FAG Kugelfischer George Schaefer KgaA), J. David Dirstine (SKF GmbH, George Mueller Nurnberg, AG), David Levy (NTN Kugellagerfabrik (Deutschland) GmbH), Maureen McPhillips (INA Walzlager Schaeffler KG), or Richard Rimlinger; Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20900) the antidumping duty orders on ball bearings (BBs), cylindrical roller bearings (CRBs) and spherical plain bearings (SPBs) and parts thereof from Germany. On July 6, 1992, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period May 1, 1991 through April 30, 1992 (57 FR 29700). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
FAG Kugelfischer George Schaefer KGaA (FAG).	BBs, CRBs, SPBs
Fichtel & Sachs AG	BBs
Georg Mueller Numberg, AG (GMN).	BBs
INA Walzlager Schaeffler KG (INA).	BBs, CRBs, SPBs
NTN Kugellagerfabrik (Deutschland) GmbH (NTN).	BBs, CRBs, SPBs
SKF GmbH (including all relevant affiliates).	BBs, CRBs, SPBs

Subsequent to the publication of our initiation notice, we received timely withdrawal requests for Durbal GmbH & Co., Eurocopter Deutschland GmbH (formerly Messerschmitt-Boelkow-Blohm (MBB)), Eurocopter France (formerly Aerospatiale Division Helicopteres (ADH)), ITT Jabsco, Kugelfabrik Schute GmbH & Co., Neuweg Fertigung GmbH (NWG), Societe Nouvelle de Roulements (SNR), Universal-Kugellager-Fabrik GmbH, and Volkswagen AG. Because there were no other requests for review of these companies from any other interested parties, we are terminating the reviews with respect to these companies, in accordance with 19 CFR 353.22(a)(5).

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), and parts thereof (AFBs), and constitute the following "class or kinds" of merchandise:

1. Ball Bearings and Parts Thereof

These products include all antifriction bearings that employ balls as the rolling element.

Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. Cylindrical Roller Bearings and Parts Thereof

These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

3. Spherical Plain Bearings and Parts Thereof

These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80,

8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed sales in sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included May 1–5, 1991; July 1–7, 1991; October 21–27, 1991; December 16–22, 1991; February 17–23, 1992, and March 2–8, 1992. We reviewed all PP sales transactions during the POR because there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for movement expenses, discounts and rebates.

We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Tariff Act. However, as noted in the FMV section of this notice, we followed the instructions of the Court of Appeals for the Federal Circuit in *Zenith Electronics Corp.* v. *United States*, 92–1043 (Zenith) and did not make a circumstance of sale adjustment for VAT taxes. Furthermore, the Department is now examining the Zenith decision in detail and is considering the proper methodology for making this tax adjustment. Interested parties are invited to comment upon this issue.

With respect to subject merchandise to which value was added in the United States, *e.g.*, parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters, prior to sale to unrelated U.S. customers, we deducted any increased value in accordance with section 772(e)(3) of the Tariff Act.

We consider those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on AFBs and not subject to the assessment of antidumping duties. In Roller Chain, Other Than Bicycle, from Japan (48 FR 51801; November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order in such circumstances. We have applied this same principle to these reviews.

Foreign Market Value

The home market was viable for all companies and all classes or kinds of merchandise. The Department used home market prices or constructed value (CV) as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2000 home market or third-country sales transactions for a particular class or kind of merchandise, we reviewed sales from sample months that corresponded to the sample weeks selected for U.S. sales sampling. The sample months included April, May, July, October, and December of 1991, and February, March, and June of 1992.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV in administrative reviews. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of respondents' home market sales data that we collected. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared the monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (*i.e.*, within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.*, that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that share the following physical characteristics: Load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable

to differences in physical characteristics of the merchandise and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. Due to the Court of Appeals' decision in *Zenith Electronics Corp.* v. *United States*, 92–1043, we made no adjustments for differences in the VAT taxes. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses.

We used sales to related customers only where we determined such sales were made at arm's length, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Where we found home market sales below the cost of production in the previous administrative review period, we initiated cost investigations. We conducted cost investigations with respect to BBs, CRBs, and SPBs for SKF, BBs for GMN, BBs and CRBs for FAG, and BBs and CRBs for INA.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales were made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below-cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV.

To determine if sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not disregard below-cost sales unless there were sales below cost of that model in each month sold. If a model was sold in more than three months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold.

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," within the meaning of section 773(b)(2) of the Tariff Act, we were unable to conclude that the costs of production of such sales were recovered within a reasonable period. As a result, we disregarded below-cost sales over an extended period of time for FAG (BBs and CRBs), GMN (BBs), INA (BBs and CRBs), and SKF (BBs, CRBs, and SPBs).

Home market sales of obsolete merchandise and distress sales were not disregarded from our cost analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

In accordance with section 773(a)(2) of the Tariff Act, we used constructed value as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit and packing. We also included: (1) Actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations. For comparisons involving ESP transactions, we made further deductions to constructed value for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 CFR 353.56(b)(2).

Effective November 20, 1990, FAG acquired a group of bearings manufacturers located in the former German Democratic Republic (GDR). For purposes of these reviews, the Department followed the decision made in the last administrative reviews and did not require FAG to include in its response the home market sales or cost data of these former GDR manufacturers. The former GDR manufacturers made no U.S. sales during the POR. Given the extraordinary circumstances of the merger of the two countries, one market-oriented and the other a nonmarket economy, a reasonable administration of the Tariff Act calls for a reasonable period of time to convert the records and business practices of the former GDR manufacturers to reflect the new economic environment. The Department's position is outlined in a proprietary decision memorandum dated September 23, 1992, from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, to Alan M. Dunn, Assistant Secretary for Import Administration.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins for the period May 1, 1991 through April 30, 1992 to be:

Company	BBs	CRBs	SPBs
FAG	19.42	24.42	8.71
Fichtel & Sachs	6.21	[2]	[2]
GMN	0.08	[2]	[2]
INA	17.67	13.20	[2]
NTN	0.29	[1]	[1]
SKF	16.82	8.51	7.57

[1] No U.S. sales during the review period.
[2] No review requested.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, will be held on May 24, 1993, in the Main Auditorium, at 9 a.m. Any hearing regarding issues related solely to Germany, if requested, will be held on May 27, 1993, in room 1617–M–4 at 9 a.m.

General issues briefs and/or written comments from interested parties may be submitted not later than May 12, 1993. General issues rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than May 19, 1993. Case briefs and comments and all rebuttal briefs regarding issues related solely to Germany are due no later than May 17 and May 24, 1993, respectively. The Department will subsequently publish

the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents calculation of duties on an entry-by-entry basis, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of these administrative reviews. This rate represents the highest rate for any firm with shipments in these administrative reviews, other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: April 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–9828 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews and partial termination of administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy. The classes or kinds of merchandise covered by these orders are ball bearings (BBs) and cylindrical roller bearings (CRBs). The reviews cover four manufacturers/exporters and the period May 1, 1991 through April 30, 1992. Although we initiated reviews for three other manufacturers/exporters, we are terminating the reviews because their requests for review were timely withdrawn. As a result of these reviews, the Department has preliminarily determined the weighted-average dumping margins for the reviewed firms to range from 1.26 to 28.25 percent for BBs, and from 0.00 to 29.92 percent for CRBs.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Carlo Cavagna (Meter S.p.A.), Michael Diminich (SKF Industrie S.p.A.), Joe Fargo (SNECMA), Anna Snider (FAG Italia S.p.A.), or Richard Rimlinger; Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20903) the antidumping duty orders on ball bearings (BBs) and cylindrical roller bearings (CRBs) and parts thereof from Italy. On July 6, 1992 in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period May 1, 1991 through April 30, 1992 (57 FR 29700).

The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
FAG Italia S.p.A. (FAG-Italy) ...	BBs, CRBs
Meter S.p.A. (Meter)	BBs
SKF—Industrie S.p.A. (including all relevant affiliates) (SKF-Italy).	BBs, CRBs
Societé Nationale d'Etude et de Construction de Moteurs d'Aviation (SNECMA).	BBs, CRBs

Subsequent to the publication of our initiation notice, we received timely withdrawal requests for Eurocopter France (formerly Aerospatiale Division Helicopteres (ADH)), ITT Jabsco, and OMCG, s.r.l. Because there were no other requests for review of these companies from any other interested parties, we are terminating the reviews with respect to these companies, in accordance with 19 CFR 353.22(a)(5).

The Department allowed certain companies to submit abbreviated questionnaire responses if they sold

exclusively from published price lists and were able to demonstrate that all price list prices, with rare exceptions, were adhered to. In lieu of a detailed sales listing, firms that qualified for the price list option were permitted to provide all applicable price lists and aggregate cost and adjustment data. In these reviews, SNECMA qualified for, and opted to use, this price list option.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), and constitute the following classes or kinds of merchandise:

1. Ball Bearings and Parts Thereof

These products include all AFBs which employ balls as the roller element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. Cylindrical Roller Bearings and Parts Thereof

These products include all AFBs which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. The HTS item numbers are provided for convenience and Customs purposes. They are not determinative of the products subject to the orders. The written description remains dispositive.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the period of review (POR) and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled ESP sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed sales in sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included May 1–5, 1991; July 1–7, 1991; October 21–27, 1991; December 16–22, 1991; February 17–23, 1992, and March 2–8, 1992. We reviewed all PP sales transactions during the POR because there were relatively few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for movement expenses, discounts and rebates.

We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Tariff Act. However, as noted in the FMV section of this notice, we followed the instructions of the Court of Appeals for the Federal Circuit in *Zenith Electronics Corp.* v. *United States*, 92–1043 (Zenith) and did not make a circumstance of sale adjustment for consumption taxes. Furthermore, the Department is now examining the Zenith decision in detail and is considering the proper methodology for making this tax adjustment. Interested parties are invited to comment upon this issue.

With respect to subject merchandise to which value was added in the United States, e.g., parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters prior to sale to unrelated U.S. customers, we deducted any increased value in accordance with section 772(e)(3) of the Tariff Act.

We consider those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on AFBs and not subject to the assessment of antidumping duties. In Roller Chain, Other Than Bicycle, from Japan (48 FR 51801; November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order in such circumstances. We have applied this same principle to these reviews.

Foreign Market Value

The home market was viable for all companies and all classes or kinds of merchandise. The Department used home market price or constructed value (CV) as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV). In the case of SNECMA, which sells Italian-origin bearings to the United States from France, we applied the four criteria set forth in 19 CFR 353.47 regarding exportation from an intermediate country. This section provides that if (1) a reseller in an intermediate country purchases the merchandise from a producer in a covered country, (2) the producer (at the time of the sale to that reseller) does not know where the reseller will export the merchandise, (3) the merchandise enters the commerce of the intermediate country but is not substantially transformed in that country, and (4) the merchandise is subsequently exported to the United States, the intermediate country will be considered the home market for purposes of establishing FMV. Using these criteria, we determined that France is the appropriate home market for sales of Italian-origin AFBs by SNECMA.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2000 home market or third country sales transactions for a particular class or kind of merchandise, we reviewed sales from eight sample

months that corresponded to the sample weeks selected for U.S. sales sampling. The sample months included April, May, July, October, and December of 1991, and February, March, and June of 1992.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV in administrative reviews. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of respondents' home market sales data that we collected. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average was representative of the transactions under consideration, we performed a three-step test.

We first compared the monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (*i.e.*, within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.*, that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that share the following physical characteristics: Load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. Due to the Court of Appeals' decision in *Zenith Electronics Corp.* v. *United States*, 92–1043, we made no adjustments for differences in the VAT taxes. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses.

We used sales to related customers only where we determined such sales were made at arm's length (*i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers).

Where we disregarded sales below the cost of production in the previous administrative review period, or where we received adequate allegations of sales below cost in this review, we initiated cost investigations. We conducted cost investigations with respect to BBs and CRBs from SKF-Italy and from FAG-Italy.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales were made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV.

To determine if sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for particular models to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not disregard below cost sales unless there were sales below cost of that model in each month sold. If a model was sold in more than three months, we did not disregard below cost sales unless there were sales below cost in at least three of the months in which the model was sold.

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," we were unable to conclude that the costs of production of such sales were recovered within a reasonable period. As a result, we disregarded below-cost sales made by SKF-Italy and FAG-Italy over an extended period of time.

Home market sales of obsolete merchandise and distress sales were not disregarded in our cost analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

In accordance with section 773(a)(2) of the Tariff Act, we used constructed value as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit and packing. We also included: (1) Actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we

deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations. For comparisons involving ESP transactions, we made further deductions to constructed value for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins for the period May 1, 1991 through April 30, 1992 to be:

Company	BBs	CRBs
FAG-Italy	9.64	29.92
Meter	1.26	(1)
SKF-Italy	5.90	0.00
SNECMA	28.25	10.32

[1] No U.S. sales during the review period.

Parties to this proceeding may request disclosure and interested parties may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, will be held on May 24, 1993, in the Main Auditorium, at 9 a.m. Any hearing regarding issues related solely to Italy, if requested, will be held on May 26, 1993, in room 3708, at 2 p.m.

General issues briefs and/or written comments from interested parties may be submitted not later than May 12, 1993. General issues rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than May 19, 1993. Case briefs and comments and all rebuttal briefs regarding issues related solely to Italy are due no later than May 14, 1993, and May 21, 1993, respectively. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of these administrative reviews. This rate represents the highest rate for any firm with shipments in these administrative reviews, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: April 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-9829 Filed 4-26-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Preliminary Results of Antidumping Duty, Administrative Reviews and Partial Termination of Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews and partial termination of administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan. The classes or kinds of merchandise covered by these orders are ball bearings (BBs), cylindrical roller bearings (CRBs), and spherical plain bearings (SPBs). The reviews cover sixteen manufacturers/exporters and the period May 1, 1991 through April 30, 1992. Although we initiated reviews for one other manufacturer/ exporter, we are terminating these reviews because the request for reviews for this firm was withdrawn. As a result of the remaining reviews, the Department has preliminarily determined the weighted-average dumping margins for the reviewed firms to range from 0.54 to 14.73 percent for BBs, from 0.00 to 11.57 percent for CRBs, and from 0.00 to 1.47 percent for SPBs.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith (Honda Motor Co. Ltd., Nachi-Fujikoshi Corp., Showa Pillow Block Mfg., Ltd., Takeshita Seiko Co.), Kris Campbell (Izumoto Seiko Co. Ltd., Tottori Yamakei Bearing

Seisakusho Ltd.), David Levy (Nippon Seiko K.K., NTN Corp.), Philip Marchal (Fujino Iron Works Co., Ltd., Nakai Bearing Co., Ltd., Nankai Seiko Bearing Co., Ltd., Nippon Pillow Block Sales Co., Ltd., Osaka Pump Co., Ltd.), Joseph Hanley (Asahi Seiko Co., Ltd., Inoue Jikuuke Kogyo Co., Koyo Seiko Co., Ltd.), or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20904) the antidumping duty orders on BBs, CRBs, and SPBs and parts thereof from Japan. On July 6, 1992, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period May 1, 1991, through April 30, 1992 (57 FR 29700). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
Asahi Seiko Co., Ltd. (Asahi) ...	BBs.
Fujino Iron Works Co., Ltd. (Fujino).	BBs.
Honda Motor Co., Ltd. (Honda)	BBs, CRBs, SPBs.
Inoue Jikuuke Kogyo Co., Ltd., (IJK).	BBs, CRBs.
Izumoto Seiko Co. Ltd., (Izumoto).	BBs.
Koyo Seiko Co., Ltd., (Koyo) ...	BBs, CRBs, SPBs.
Nachi-Fujikoshi Corp. (Nachi) ..	BBs, CRBs.
Nakai Bearing Co., Ltd. (Nakai)	BBs.
Nankai Seiko Co., Ltd. (Nankai).	BBs.
Nippon Pillow Block Sales Co. Ltd.(NPB).	BBs.
Nippon Seiko K.K. (NSK)	BBs, CRBs, SPBs.
NTN Corp. (NTN)	BBs, CRBs, SPBs.
Osaka Pump Co., Ltd. (Osaka Pump).	BBs.
Showa Pillow Block Mfg., Ltd. (Showa).	BBs.
Takeshita Seiko Co. (Takeshita).	BBs.
Tottori Yamakai Bearing Seisakusho (Tottori).	BBs.

Subsequent to the publication of our initiation notice, we received a timely withdrawal request for Eurocopter Deutschland GmbH. Because there were no other requests for review for this company from any other interested parties, we are terminating the reviews with respect to Eurocopter Deutschland in accordance with 19 CFR 353.22(a)(5).

The Department allowed certain companies to submit abbreviated questionnaire responses if they sold exclusively from published price lists and were able to demonstrate that all price list prices, with rare exceptions, were adhered to. In lieu of a detailed sales listing, firms that qualified for the price list option were permitted to provide all applicable price lists and aggregate cost and adjustment data. In these reviews, Honda qualified for and opted to use this price list option.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), and constitute the following "classes or kinds" of merchandise:

1. Ball Bearings and Parts Thereof

These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. Cylindrical Roller Bearings and Parts Thereof

These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

3. Spherical Plain Bearings and Parts Thereof

These products include all spherical plain bearings that employ a spherically shaped sliding element, and parts thereof, and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the period of review (POR) and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed sales during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included May 1–5, 1991; July 1–7, 1991; October 21–27, 1991; December 16–22, 1991; February 17–23, 1992; and March 2–8, 1992. We reviewed all PP sales transactions during the POR because there were few PP sales.

USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for movement expenses, discounts and rebates.

We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

We made an addition to USP for consumption taxes in accordance with section 772(d)(1)(C) of the Tariff Act. However, as noted in the FMV section of this notice, we followed the instructions of the Court of Appeals for the Federal Circuit in *Zenith Electronics Corp. v. United States*, 92–1043 (Zenith)

and did not make a circumstance of sale adjustment for consumption taxes. Furthermore, the Department is now examining the Zenith decision in detail and is considering the proper methodology for making this tax adjustment. Interested parties are invited to comment upon this issue.

With respect to subject merchandise to which value was added in the United States, e.g., parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters prior to sale to unrelated U.S. customers, we deducted any increased value in accordance with section 772(e)(3) of the Tariff Act.

We consider those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on AFBs and not subject to the assessment of antidumping duties. In Roller Chain, Other Than Bicycle, from Japan (48 FR 51801; November 14, 1983), roller chain, which was subject to an antidumping finding, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the finding in such circumstances. We have applied this same principle to these reviews.

Foreign Market Value

The home market was viable for all companies and all classes or kinds of merchandise except for Showa Pillow Block Mfg., Co. The Department used home market price or constructed value (CV) as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV). With respect to Showa Pillow Block, the Department used sales to a third country or CV as defined in section 773 of the Tariff Act, as appropriate, to calculate FMV.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2000 home market or third country sales transactions for a particular class or kind of merchandise, we reviewed sales from eight sample months that corresponded to the sample weeks selected for U.S. sales. The sample months included April, May, July, October, and December of 1991, and February, March, and June of 1992.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of respondents' home market sales data that we collected. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared the monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (i.e., within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.*, that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kind that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that share the following physical characteristics: Load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. Due to the Court of Appeals' decision in *Zenith Electronics Corp.* v. *United States*, 92–1043, we made no adjustments for differences in the consumption taxes. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses.

Where we disregarded sales below cost in the previous administrative review period, or where we received adequate allegations of sales below cost in this review period, we initiated cost investigations. We conducted cost investigations with respect to BBs, CRBs, and SPBs from NTN; BBs and CRBs from Koyo, Nachi, and NSK; and BBs from Asahi Seiko, Fujino Iron Works, and Nankai Seiko.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales have been made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made

below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV.

To determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in three or fewer months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in more than three months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold.

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. As a result of our investigation, we disregarded below-cost sales over an extended period of time for BBs, CRBs, and SPBs from NTN; BBs and CRBs from Koyo, Nachi, and NSK; and BBs from Asahi Seiko, Fujino Iron Works, and Nankai Seiko.

Home market sales of obsolete merchandise and distress sales were not disregarded from our cost analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

In accordance with section 773(a)(2) of the Tariff Act, we used constructed value as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit and packing. We also included: (1) Actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations. For comparisons involving ESP transactions, we made further deductions to constructed value for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 CFR 353.56(b)(1).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins for the period May 1, 1991 through April 30, 1992 to be:

Company	BBs	CRBs	SPBs
Asahi	0.54	[2]	[2]
Fujino	1.58	[2]	[2]
Honda	0.81	1.30	1.47
IJK	2.33	0.00	[2]
Izumoto	8.21	[2]	[2]
Koyo	9.81	11.57	0.00
Nachi	11.89	2.55	[2]
Nakai	6.19	[2]	[2]
Nankai	13.17	[2]	[2]
NPB	7.47	[2]	[2]
NSK	1.98	8.28	[1]
NTN	2.01	0.75	0.25
Osaka Pump	1.06	[2]	[2]
Showa	14.73	[2]	[2]
Takeshita	5.00	[2]	[2]
Tottori	1.05	[2]	[2]

[1] No U.S. sales during the review period.
[2] No review requested.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. A general issues hearing, if requested, will be held on Monday, May 24, 1993, in the Department's auditorium, at 9:00 am. Any hearing regarding issues related solely to Japan, if requested, will be held on Friday, May 28, 1993, in room 3708, at 9:00 am.

General issues briefs and/or written comments from interested parties may be submitted not later than May 12, 1993. General issues rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than May 19, 1993. Case briefs and comments and all rebuttal briefs regarding issues related solely to Japan are due no later than May 18, 1993, and May 25, 1993, respectively. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or hearings.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of AFBs based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of these administrative reviews. This rate represents the highest rate for any firm with shipments in these administrative

reviews, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22(c)(5)).

Dated: April 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–9830 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–559–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted an administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore. The class or kind of merchandise covered by this order is ball bearings (BBs). The review covers one manufacturer/exporter and the period May 1, 1991, through April 30, 1992. As a result of this review, the Department has preliminarily determined the weighted-average dumping margin for the reviewed firm to be 4.50 percent.

We invite interested parties to comment on this preliminary result.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: David S. Levy or Michael R. Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20907) the antidumping duty order on ball bearings (BBs) and parts thereof from Singapore. On July 6, 1992, in accordance with 19 CFR 353.22(c), we initiated an administrative review of this order for the period May 1, 1991, through April 30, 1992 (57 FR 29700). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). This review covers sales of BBs manufactured by NMB Singapore Ltd. (NMB) and Pelmec Industries (Pte.) Ltd. (Pelmec). Since NMB and Pelmec are related companies we are treating them as one entity (hereinafter referred to as NMB) for purposes of this review.

Scope of Review

The products covered by this review are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), and constitute the following "class or kind" of merchandise:

1. Ball Bearings and Parts Thereof

These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

United States Price

In calculating United States price (USP), the Department used exporter's sales price (ESP), as defined in section 772 of the Tariff Act.

Due to the extremely large number of transactions that occurred during the period of review (POR) and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed sales during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included May 1–5, 1991; July 1–7, 1991; October 21–27, 1991; December 16–22, 1991; February 17–23, 1992; and March 2–8, 1992.

USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made deductions, as appropriate, from ESP for billing adjustments, discounts, movement expenses, direct selling expenses, indirect selling expenses, and repacking in the United States.

Foreign Market Value

The home market was viable for NMB with respect to its sales of BBs. As a result, the Department used home market price or constructed value (CV) as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of respondents' home market sales data that we collected. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared the monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (*i.e.*, within plus or minus 10 percent) from the monthly weighted-average prices. We did this for

each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.*, that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that share the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Home market prices were based on the packed, ex-factory or delivered prices to unrelated purchasers in the home market. Where applicable, we made adjustments for billing adjustments, movement expenses, direct selling expenses, differences in cost attributable to differences in physical characteristics of the merchandise, and differences in packing. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions and to offset U.S. indirect selling expenses deducted in ESP calculations but not exceeding the amount of those U.S. expenses.

Because we disregarded sales below cost in the previous administrative review period, we initiated a cost investigation with respect to BBs for NMB.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales have been made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV.

To determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in three or fewer months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in more than three months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold.

Since NMB did not submit information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. As a result of our investigation, we disregarded below-cost sales made by NMB over an extended period of time.

In accordance with section 773(a)(2) of the Tariff Act, we used constructed value as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit and packing. We included: (1) Actual general expenses or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to constructed value in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons to U.S. sales, we deducted home market direct selling expenses and made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions. We made further deductions to constructed value for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our review, we preliminarily determine the weighted-average dumping margins for the period May 1, 1991, through April 30, 1992 to be:

Company and BBs

NMB—4.50

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. A general issues hearing, if requested, will be held on May 24, 1993, in the Commerce auditorium at 9 a.m. Any hearing regarding issues related solely to Singapore, if requested, will be held on May 24, 1992, in room 3708, at 2 p.m.

General issues briefs and/or written comments from interested parties may be submitted not later than May 12, 1993. General issues rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than May 19, 1993. Case briefs and comments and all rebuttal briefs regarding issues related solely to Singapore are also due no later than May 12, and May 19, 1993, respectively. The Department subsequently will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or hearings.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of AFBs based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the

POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22(c)(5)).

Dated: April 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–9832 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–401–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Sweden; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Sweden. The classes or kinds of merchandise covered by these orders are ball bearings (BBs), and cylindrical roller bearings (CRBs). The reviews cover one manufacturer/exporter and the period May 1, 1991 through April 30, 1992 (the POR). As a result of these reviews, the Department has preliminarily determined the weighted-average dumping margins for the reviewed firm to be 4.97 percent for BBs, and 5.65 percent for CRBs.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo, Michael Diminich, or Richard Rimlinger; Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20900) the antidumping duty orders on ball bearings (BBs) and cylindrical roller bearings (CRBs) and parts thereof from Sweden. On July 6, 1992, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period May 1, 1991 through April 30, 1992 (57 FR 29791). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). These reviews cover SKF Sverige and its sales of BBs and CRBs.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), and parts thereof (AFBs), and constitute the following "classes or kinds" of merchandise:

1. Ball Bearings and Parts Thereof

These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. Cylindrical Roller Bearings and Parts Thereof

These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

United States Price

In calculating United States price (USP), the Department used exporter's sales price (ESP), as defined in section 772 of the Tariff Act.

Due to the extremely large number of transactions that occurred during the period of review (POR) and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed sales in sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included May 1–5, 1991; July 1–7, 1991; October 21–27, 1991; December 16–22, 1991; February 17–23, 1992, and March 2–8, 1992.

USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made deductions, as appropriate, from ESP for movement expenses, discounts and rebates. We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Tariff Act. However, as noted in the FMV section of this notice, we followed the instructions of the Court of Appeals for the Federal Circuit in *Zenith Electronics Corp.* v. *United States*, 92–1043 (Zenith) and did not make a circumstance of sale adjustment for VAT taxes. Furthermore, the Department is now examining the Zenith decision in detail and is considering the proper methodology for making this tax adjustment. Interested parties are invited to comment upon this issue.

Foreign Market Value

The home market was viable for SKF with respect to its sales of BBs. However, with respect to its sales of CRBs, there was no viable home market.

The Department used home market price or constructed value (CV) as define in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV) for BBs. With respect to CRBs, the Department used sales to Germany or CV, as appropriate, to calculate FMV.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2000 home market or third country sales transactions for a particular class or kind of merchandise, we selected sales from sample months that corresponded to the sample weeks selected for U.S. sales sampling. The sample months included April, May, July, October, and December of 1991, and February, March, and June of 1992.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV in administrative reviews. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of respondent's home market sales data that we collected. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared the monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (*i.e.*, within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.*, that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that share the following physical characteristics: Load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56. For comparisons to ESP sales, we deducted home market direct selling expenses. Due to the Court of Appeals' decision in *Zenith Electronics Corp* v. *United States*, 92–1043, we made no adjustments for differences in the VAT taxes. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses.

Third country price was based on the delivered prices to unrelated purchasers in Germany. Where applicable, we made adjustments for movement expenses, direct selling expenses, differences in cost attributable to differences in physical characteristics of the merchandise, and differences in packing. We also made adjustments, where applicable, for third country indirect selling expenses to offset U.S. indirect selling expenses deducted in ESP calculations but not exceeding the amount of those U.S. expenses.

We used sales to related customers only where we determined such sales were made at arm's length, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Because we found home market sales below the cost of production for both classes or kinds of merchandise in the previous administrative review period, we initiated cost investigations with respect to BBs and CRBs for SKF.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at

prices below the cost of production, we examined whether such sales were made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV.

To determine if sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not disregard below-cost sales unless there were sales below cost of that model in each month sold. If a model was sold in more than three months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold.

Since SKF did not submit information that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," within the meaning of section 773(b)(2) of the Tariff Act, we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. As a result, we disregarded below-cost sales made by SKF over an extended period of time.

Home market sales of obsolete merchandise and distress sales were not disregarded from our cost analysis because SKF failed to provide documented information on the record demonstrating that such sales were outside the ordinary course of trade.

In accordance with section 773(a)(2) of the Tariff Act, we used constructed value as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit and packing. We included: (1) Actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons to U.S. sales, we deducted home market direct selling expenses and made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions. We made further deductions to CV for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on U.S. sales in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins for the period May 1, 1991 through April 30, 1992 to be:

Company	BBS	CRBs
SKF	4.97	5.65

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on May 24, 1993, in the Department auditorium, at 9 a.m. Any hearing regarding issues related solely to Sweden, if requested, will be held on May 25, 1993, in room 3708, at 2 p.m.

General issues briefs and/or written comments from interested parties may be submitted not later than May 12, 1993. General issues rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than May 19, 1993. Case briefs and comments and all rebuttal briefs regarding issues related solely to Sweden are due no later than May 13, and May 20, 1993, respectively. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or hearings.

The Department shall determine, and the Customs shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other rate" established in the final results of these administrative reviews. This rate represents the highest rate for any firm with shipments in these administrative reviews, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR

353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: April 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-9833 Filed 4-26-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-549-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Thailand; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty Administrative Review.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Thailand. The class or kind of merchandise covered by this order is ball bearings (BBs). The review covers one manufacturer/exporter and the period May 1, 1991, through April 30, 1992. As a result of this review, the Department has preliminarily determined the weighted-average dumping margin for the reviewed firm to be 0.13 percent.

DATES: We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: David S. Levy or Michael R. Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20909) the antidumping duty order on ball bearings (BBs) and parts thereof from Thailand. On July 6, 1992, in accordance with 19 CFR 353.22(c), we initiated an administrative review of this order for the period May 1, 1991, through April 30, 1992 (57 FR 29700). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). This review covers NMB Thai Ltd. and Pelmec Thai Ltd. (Pelmec) and its sales of BBs. Since NMB and Pelmec are related companies, we are treating them as one entity (hereinafter referred to as NMB) for purposes of this review.

Scope of Review

The products covered by this review are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), and constitute the following "class or kind" of merchandise:

1. Ball Bearings and Parts Thereof

These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for movement expenses, discounts, and billing adjustments.

We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Tariff Act. However, as noted in the FMV section of this notice, we followed the instructions of the Court of Appeals for the Federal Circuit in *Zenith Electronics Corp.* versus *United States*, 91-1043 (Zenith) and did not make a circumstance of sale adjustment for VAT taxes. Furthermore, the Department is now examining the Zenith decision in detail and is considering the proper methodology for making this tax adjustment. Interested parties are invited to comment upon this issue.

Foreign Market Value

The home market was viable for NMB with respect to its sales of BBs. As a result, the Department used home market price or constructed value (CV) as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of respondents' home market sales data that we collected. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared the monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (*i.e.*, within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average

price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.*, that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind or merchandise that share the following physical characteristics: Load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. Due to the Court of Appeals' decision in *Zenith Electronics Corp.* v. *United States*, 92–1043, we made no adjustments for differences in the VAT taxes. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses.

We disregarded sales to related customers. We could not determine that such sales were made at arm's length, *i.e.*, at prices comparable to prices at which the firm sold such merchandise to unrelated customers, because no products were sold to both related and unrelated customers.

In accordance with section 773(a)(2) of the Tariff Act, we used constructed value as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit and packing. We also included: (1) Actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations. For comparisons involving ESP transactions, we made further deductions to constructed value for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period May 1, 1991, through April 30, 1992, to be:

Company and BBs

NMB—0.13

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. A general issue hearing, if requested, will be held on May 24, 1993, in the Commerce auditorium, at 9 a.m. Any hearing regarding issues related solely to Thailand, if requested, will be held on May 25, 1993, in room 1617–M–4, at 10 a.m.

General issues briefs and/or written comments from interested parties may be submitted not later than May 12, 1993. General issues rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than May 19, 1993. Case briefs and comments and all rebuttal briefs regarding issues related solely to Thailand are due no later than May 13, and May 20, 1993, respectively. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or hearings.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of AFBs based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash

deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22(c)(5)).

Dated: April 16, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–9834 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Notice of Intent To Revoke Order (In Part)

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews, partial termination of administrative reviews, and notice of intent to revoke order (in part).

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings (BBs) and cylindrical roller bearings (CRBs). The reviews cover four manufacturers/exporters for the period May 1, 1991 through April 30, 1992.

We initiated reviews for two other manufacturers/exporters, ITT Jabsco and SKF (U.K.), but are terminating them because the requests for review were timely withdrawn. Additionally, Societe Nouvelle de Roulements (SNR) withdrew its request for a review of its BB sales. Therefore, we are reviewing SNR's sales only.

We are also announcing our intent to revoke the order covering CRBs from the United Kingdom with respect to Cooper Bearings Ltd. As a result of these reviews, the Department has preliminarily determined that the weighted-average dumping margins for the reviewed firms range from 9.50 to 55.79 percent for BBs, and from 0.00 to 48.97 percent for CRBs.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Amy Beargie (The Barden Corporation (U.K.) Ltd.), Carlo Cavagna (RHP Bearings Ltd.), Maureen McPhillips (Societe Nouvelle de Roulements), Joanna Schlesinger (Cooper Bearings Ltd.), Anna Snider (FAG (U.K.) Ltd.), or Richard Rimlinger; Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20910) the antidumping duty orders on BBs and CRBs and parts thereof from the United Kingdom. On July 6, 1992, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period May 1, 1991 through April 30, 1992 (57 FR 29700).

The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
Barden Corporation (Barden) ...	BBs, CRBs
Cooper Bearings Ltd. (Cooper)	CRBs
FAG (U.K.) Ltd. (FAG-U.K.)	BBs, CRBs
RHP Bearings (RHP)	BBs, CRBs
Societe Nouvelle de Roulements (SNR).	CRBs

Since Barden and FAG-U.K. are related companies, we are treating them as one entity (hereinafter referred to as Barden/FAG) for purposes of this review.

Subsequent to the publication of our initiation notice, we received timely withdrawal requests for ITT Jabsco and SKF (UK) Ltd. We also received a partial withdrawal request with respect to ball bearings sold by SNR. Because there were no other requests for reviews of these companies from any other interested parties, we are terminating the reviews with respect to these requests, in accordance with 19 CFR 353.22(a)(5).

Cooper Bearings Ltd. submitted a request, in accordance with 19 CFR 353.25(b), to revoke the order covering its CRBs from the United Kingdon. The request was accompanied by Cooper's certification that it has not sold CRBs at less than fair value during the period from the date of the original investigation through the present and will not do so in the future. Since we preliminarily determine that Cooper has not sold at less than fair value in this review, and has never sold the subject merchandise at less than fair value, we intend to revoke the order with respect to Cooper's sales of CRBs.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), which constitute the following "classes or kinds" or merchandise:

1. Ball Bearings and Parts Thereof

These products include all AFBs that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radical ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70 8708.50.50, 8708.60.50, 8708.99.50.

2. Cylindrical Roller Bearings and Parts Thereof

These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all

cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of ESP transactions that occurred during the period of review (POR) and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled ESP sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed sales in sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included May 1–5, 1991; July 1–7, 1991; October 21–27, 1991; December 16–22, 1991; February 17–23, 1992, and March 2–8, 1992. We reviewed all PP sales transactions during the POR because there were relatively few PP sales.

USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for movement expenses, discounts and rebates.

We made additional deductions from ESP, where applicable, for direct selling expenses, indirect selling expenses, commissions, and repacking in the United States.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Tariff Act. However, as noted in the FMV section of this notice, we followed the instructions of the Court of Appeals for the Federal Circuit in *Zenith Electronics Corp.* v. *United States*, 92–1043 (Zenith) and did not make a circumstance of sale adjustment for VAT taxes. Furthermore, the Department is now examining the Zenith decision in detail and is considering the proper methodology for making this tax adjustment. Interested parties are invited to comment upon this issue.

With respect to subject merchandise to which value was added in the United States, *e.g.*, parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters prior to sale to unrelated U.S. customers, we deducted any increased value in accordance with section 772(e)(3) of the Tariff Act.

We consider those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on AFBs and not subject to the assessment of antidumping duties. In Roller Chain, Other Than Bicycle, from Japan (48 FR 51801; November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order in such circumstances. We have applied this same principle to these reviews.

Foreign Market Value

The home market was viable for all companies and all classes or kinds of merchandise. The Department used home market prices or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2000 home market sales transactions for a particular class or kind of merchandise, we reviewed sales from eight sample months that corresponded to the sample weeks selected for U.S. sales sampling, and analyzed each transaction made in those months. The sample months included April, May, July, October, and December of 1991, and February, March, and June of 1992.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of respondents' home market sales data that we collected. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared the monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (*i.e.*, within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.*, that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family

consists of all bearings within a class or kind of merchandise that share the following physical characteristics: Load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. Due to the Court of Appeals' decision in *Zenith Electronics Corp.* v. *United States*, 82–1043, we made no adjustments for differences in the VAT taxes. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses.

We used sales to related customers only where we determined such sales were made at arm's length (*i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers).

We initiated a cost investigation with respect to BBs and CRBs sold by RHP because we found home market sales below the cost of production for this company and these classes or kinds of merchandise in the previous administrative review period. In addition, based on allegations submitted by Federal-Mogul in this administrative review, we initiated a cost investigation with respect to BBs sold by Barden/FAG.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales were made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV provided that these below cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV.

To determine if sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not disregard below-cost sales unless there were sales below cost of that model in each month sold. If a model was sold in more than three months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold.

Since neither RHP nor Barden/FAG has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," we were unable to conclude that the costs of production of such sales were recovered within a reasonable period. As a result, we disregarded below-cost sales made by RHP (BBs and CRBs) and Barden/FAG (BBs) over an extended period of time.

Home market sales of obsolete merchandise and distress sales were not disregarded from our cost analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

In accordance with section 773(a)(2) of the Tariff Act, we used CV as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit and packing. we also included: (1) Actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations. For comparisons involving ESP transactions, we made further deductions to constructed value for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins for the period May 1, 1991 through April 30, 1992 to be:

Company	BBs	CRBs
Barden/FAG	9.50	0.00
Cooper Bearings	([2])	0.00
RHP Bearings	55.59	48.97
SNR	([3])	0.00

[1] No. U.S. sales during the review period.
[2] No. review requested.
[3] Request for review withdrawn.

Parties to this proceeding may request disclosure within 5 days and interested parties may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, will be held on May 24, 1993, in the Main Auditorium, at 9 a.m. Any hearing regarding issues related solely to the United Kingdom, if requested, will be held on May 28, 1993, in room 3708, at 2 p.m.

General issues briefs and/or written comments from interested parties may be submitted not later than May 12, 1993. General issues rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than May 19, 1993. Case briefs, comments and rebuttal briefs regarding issues relating solely to the United Kingdom are due not later than May 18, 1993, and May 25, 1992, respectively. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of the issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to

the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of these administrative reviews. This rate represents the highest rate for any firm with shipments in these administrative reviews, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(5).

Dated: April 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–9835 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–485–801]

Ball Bearings and Parts Thereof From Romania Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted an administrative review of the antidumping duty order on ball bearings and parts thereof from Romania. The review covers Tehnoimportexport (TIE), and the period May 1, 1991 through April 30, 1992. We have preliminarily determined that there were no shipments of the subject merchandise by TIE to the United States during the period of review.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Diminich or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20906) an antidumping duty order on ball bearings and parts thereof from Romania. On July 6, 1992, in accordance with section 353.22(c) of the Department's regulations, we initiated an administrative review of that order for the period May 1, 1991 through April 30, 1992 (57 FR 29700). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

This review covers ball bearings and parts thereof exported by TIE.

Scope of Review

The products covered by this review are ball bearings, mounted or unmounted, and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

Preliminary Results of the Review

Because TIE made no shipments during the review period May 1, 1991 through April 30, 1992, we based the cash deposit rate on the last margin found for ball bearings and parts thereof from Romania. We preliminary determine that the cash deposit rate shall continue to be 0.0 percent.

Parties to this proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, will be held on May 24, 1993, in the Main Auditorium, at 9 a.m. Any hearing regarding issues related solely to Romania, if requested, will be held on May 26, 1993, in room 1617–M–4, at 10 a.m.

General issues briefs and/or written comments from interested parties may be submitted not later than May 12, 1993. General issues rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than May 19, 1993. Case briefs and

comments and all rebuttal briefs regarding issues related solely to Romania are due no later than May 14 and May 21, 1993, respectively. The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or hearings.

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of this administrative review. This rate represents the rate for TIE in this administrative review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: April 16, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–9831 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–DS–P

Sanctions for Violation of Administrative Protective Order

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This is a notice of the status of an investigation into charges of the violation of an administrative protective order in an antidumping duty proceeding.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8916.

SUPPLEMENTARY INFORMATION: The International Trade Administration, United States Department of Commerce (ITA), wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to administrative protective order (APO) during the course of those proceedings. In order that the gravity with which the ITA views violations of its APO's might be better appreciated, ITA is publishing the following report on a recent allegation that the provisions of an ITA APO have been violated.

An individual employed by a firm allowed proprietary information protected by an APO to become available to an individual at the law firm who was not authorized by the APO to have access to the information. Following an investigation by the ITA, this individual was held responsible for this violation of the APO.

In this case, the individual involved was (1) required to conduct a seminar at the individual's law firm about handling APO protected information; (2) required to submit to the ITA a written copy of the firm's APO handling procedures; and (3) issued a private reprimand which warned that future violations could result in much graver sanctions.

We consider these sanctions to be appropriate for the following reasons: First, the violation appears to have been inadvertent; second, the named individual cooperated fully with the ITA's investigation; and, third, no apparent harm resulted from the violation.

Serious harm can result from the failure to properly safeguard proprietary information obtained under APO. The ITA will continue to investigate vigorously allegations that the provisions of APOs have not been faithfully observed, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to proprietary information, or disbarment from practice before the ITA.

This notice is published pursuant to 19 CFR 354.15(e) of the Department's regulations.

Editorial Note: This document was received by the Office of the Federal Register on April 22, 1993.

Dated: January 19, 1993.

William Piez,

Deputy Assistant Secretary for Planning.

[FR Doc. 93–9838 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Wednesday, June 9, 1993, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on the strategic planning of the Chemical Science and Technology Laboratory; management and planning of the Advanced Technology Program; review of the Non-Volatile Electronics, Inc., venture under the Advanced Technology Program; Boulder site issues; the NIST strategic vision, the Manufacturing Extension Partnership; NIST budget update; and a laboratory tour.

DATES: The meeting will convene June 9, 1993, at 8:30 a.m. and will adjourn at 5 p.m. on June 9, 1993.

ADDRESSES: The meeting will be held in Conference Room 1103, Radio Building, National Institute of Standards and Technology, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2158.

Dated: April 21, 1993.

Raymond G. Kammer,

Acting Director.

[FR Doc. 93–9839 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 827 (P278D).

SUMMARY: On November 16, 1992, notice was published in the **Federal Register** (57 FR 54051) that a request for a scientific research permit to take marine mammals (P278D) had been submitted by Dr. Brent S. Stewart, Hubbs-Sea World Research Institute, 1700 South Shores Road, San Diego, CA 92109, to conduct scientific research on pinnipeds in the Channel Islands over a five-year period.

Notice is hereby given that on April 20, 1993, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 part 216), the Fur Seal Act of 1966 (16 U.S.C. 1151–1187), the Endangered Species Act (16 U.S.C. 1531–1543), and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), the National Marine Fisheries Service issued the requested Permit for the above activities subject to the Special Conditions set forth therein.

The Permit and other related documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7330, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016).

Dated: April 20, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–9745 Filed 4–26–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Joint Advisory Committee (JAC) on Nuclear Weapons Surety will meet in closed session on May 10–12, 1993, at Albuquerque, NM.

The mission of the Joint Advisory Committee is to advise the Secretary of Defense, Secretary of Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. At this meeting, the Joint Advisory Committee will receive classified briefings on the surety aspects of the nuclear weapons systems in the enduring nuclear weapons stockpile.

In accordance with section 19(d) of the Federal Advisory Committee Act Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this Joint Advisory Committee meetings concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: April 22, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–9771 Filed 4–26–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Domestic Issues Task Force will meet May 6-7, 1993, from 9 a.m. to 5 p.m. in Alexandria, Virginia.

The purpose of this meeting is to continue efforts to forecast emerging demographic and sociological trends and their effect on the Navy of the future. The agenda of the meeting will consist of discussions of key issues related to domestic changes in response to demographic, sociological, cultural, and political phenomena, with emphasis on managing and capitalizing on diversity within the workforce.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, VA 22302-0268, Phone (703) 756-1205.

Dated: April 20, 1993.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-9706 Filed 4-26-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1933–005 California]

Southern California Edison Co.; Availability of Environmental Assessment

April 21, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed an application to amend the license for the Santa Ana River No. 1 & 2 Water Power Project to relocate the 33 kV transmission line between Santa Ana River Project 1, 2, and 3. The project's are located on the Santa Ana River in San Bernardino County, California. The transmission line will consist of 16 H-framed steel structures and 5 tubular steel structures, and will be approximately four miles long. The proposed action is necessary to allow the project to continue to operate. The existing transmission line will be inundated with the construction of the Seven Oaks Dam. Relocating the transmission line to a route above high water will allow Southern California Edison Company to continue to provide reliable power to the public. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that relocating the transmission line would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's

Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–9709 Filed 4–26–93; 8:45 am]

BILLING CODE 6717–01–M

[FERC Nos. JD93–04541T, JD93–04589T, JD93–04590T, and JD93–04591T; Texas–112—Texas–115]

Railroad Commission of Texas, Tight Formation Determinations for the Vicksburg Formation; Informal Conference

April 21, 1993.

Take notice that an informal conference will be covened in the above-referenced proceedings on Tuesday, May 4, 1993, at 9 a.m. The conference will be held in room 6200 at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

For further information, contact Janet Ardinger at (202) 208–0895.

Lois D. Cashell,

Secretary.

[FR Doc. 93–9708 Filed 4–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–295–000]

Arkla Energy Resources Co. and Natural Gas Pipeline Co. of America; Application

April 21, 1993.

Take notice that on April 14, 1993, Arkla Energy Resources Company (AER), 525 Milam Street, Shreveport, Louisiana 71101 and Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93–295–000, a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation and exchange service provided pursuant to AER's Rate Schedule XE–39 and NGPL's Rate Schedule X–45, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that by order issued March 19, 1974, in Docket Nos. CP74–117 (AER) and CP74–156 (NGPL), AER, successor-in-interest to Arkansas Louisiana Gas Company and Arkla Energy Resources, a division of Arkla, Inc., and NGPL were authorized to exchange natural gas pursuant to an agreement dated August 21, 1973. It is stated that the agreement provided for the exchange of natural gas in the Northwest Mooreland Field, Harper County, Oklahoma, delivered by AER to NGPL at a point of interconnection in Woodward County, Oklahoma and redelivered by NGPL to AER at points of interconnection in Beckham County, Oklahoma or Grady County, Oklahoma. AER and NGPL state that this arrangement is no longer necessary or beneficial to the parties and has been terminated pursuant to mutual written agreement of the parties.

No facilities are proposed to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 12, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for AER and NGPL to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–9710 Filed 4–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–63–000]

Great Lakes Gas Transmission Limited Partnership; Compliance Filing

April 21, 1993.

Take notice that on April 15, 1993, Great Lakes Gas Transmission Limited Partnership filed with the Commission its revised Order No. 636 compliance filing. Parties desiring to comment on the filing should file their comments with the Commission on or before May 6, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–9707 Filed 4–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–296–000]

Sea Robin Pipeline Co.; Application

April 21, 1993.

Take notice that on April 14, 1993, Sea Robin Pipeline Company (Sea Robin), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed an application with the Commission in Docket No. CP93–296–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a transportation service for CNG Transmission Corporation (CNG), all as more fully set forth in the application which is open to public inspection.

Sea Robin proposes to abandon a firm transportation service performed under its FERC Rate Schedule X–24 for CNG.[1] Sea Robin is authorized to transport for CNG up to 18,000 Mcf of natural gas per day produced in South Marsh Island Blocks 142 and 143, offshore Louisiana, from a subsea tap on Sea Robin's pipeline system in South Marsh Island Block 127, offshore Louisiana, to a point onshore near Erath, Vermilion Parish, Louisiana. CNG has notified Sea Robin that it wishes to terminate the transportation agreement when the primary term expires on August 1, 1993.

No facilities would be abandoned in this proposal.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 12, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will

[1] See the Commission order issued July 31, 1978, in Docket No. CP78–298 (4 FERC ¶ 61,096).

be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Sea Robin to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–9711 Filed 4–26–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–35–NG]

Meridian Marketing & Transmission Corp.; Application for Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 25, 1993, of an application filed by Meridian Marketing & Transmission Corp. (Meridian) requesting blanket authorization to export up to 36 Bcf of natural gas per year to Mexico over a two-year period beginning with the date of first delivery of the exported volumes. Meridian states it would use existing pipeline facilities to transport the gas and would advise DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time May 27, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW. Washington, DC 20585 (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9482.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Meridian, a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania, is a marketer of natural gas. Meridian would export the gas purchased from U.S. suppliers under short-term and spot market transactions, either on its own behalf or as the agent for others. All sales would result from arms-length negotiations and the prices would be competitive. The requested authorization does not involve the construction of new pipeline facilities.

All parties should be aware that it DOE approves this requested blanket export authorization, it would designate a total authorized volume for the two-year term rather than set an annual limitation in order to maximize Meridian's flexibility of operation.

Meridian's export application will be reviewed under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marektplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. Meridian asserts there is no current need for the domestic gas that would be exported under the proposed agreement. Parties opposing this application bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from person who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issue. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any

request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Meridian's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 20, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–9806 Filed 4–26–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $636,856, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to a June 6, 1986 Remedial Order issued to Metropolitan Petroleum Company, Inc. and Metropolitan Fuel Oil Company (Metropolitan), Case No. LEF–0032. The OHA has determined that the funds obtained from Metropolitan, plus accrued interest, will be distributed to customers who purchased gasoline from Metropolitan during the period March 1, 1979 through July 31, 1979.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

DATE AND ADDRESSES: Applications for Refund must be filed in duplicate, addressed to "Metropolitan Special Refund Proceeding," and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Applications should display a prominent reference to case number "LEF–0032" and be postmarked by September 30, 1993.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $636,856, plus accrued interest, obtained by the DOE pursuant to a June 6, 1986 Remedial Order. In the Remedial Order, the DOE found that, during the period March 1, 1979 through July 31, 1979, Metropolitan had sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has determined to distribute the funds obtained from Metropolitan in two stages. In the first stage, we will accept claims from identifiable purchasers of gasoline from Metropolitan who may have been injured by overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of gasoline which they purchased from Metropolitan. The DOE has obtained information indicating the number of gallons purchased by Metropolitan customers during the Remedial Order period. This information will be made available to applicants, and may be used in place of an applicant's own records to document a refund claim.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund must be postmarked by September 30, 1993. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: April 21, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 21, 1993.

Decision and Order of the Department of Energy

Names of Firms: Metropolitan Petroleum Company, Inc., Metropolitan Fuel Oil Company

Date of Filing: April 18, 1991

Case Number: LEF–0032

On April 18, 1991, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which Metropolitan Petroleum Company, Inc. and Metropolitan Fuel Oil Company (hereinafter referred to collectively as Metropolitan) remitted to the DOE pursuant to a June 6, 1986 Remedial Order. Metropolitan has remitted $636,856 pursuant to the order, to which $58,491 in interest has accrued as of March 31, 1993. In accordance with the provisions of the procedural regulations at 10 CFR part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order. This Decision and Order establishes the procedures which OHA will employ to distribute these funds.

I. Background

During the period relevant to this proceeding, Metropolitan was engaged, *inter alia*, in the business of purchasing and selling motor gasoline. These sales were made to gasoline retailers and to end-users or ultimate consumers in south Florida. The ERA issued a Proposed Remedial Order (PRO) to Metropolitan on February 24, 1982. The PRO alleged that, during the period March 1, 1979 through July 31, 1979, Metropolitan sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations. After considering and rejecting the firm's objections to the PRO, the DOE issued a final Remedial Order on June 3, 1986. *Metropolitan Petroleum Company, Inc.*, 14 DOE ¶ 83,026 (1986). The Remedial Order was appealed to the Federal Energy Regulatory Commission and was affirmed on July 2, 1987. *Metropolitan Fuel Oil Co.*, 40 FERC ¶ 61,013 (1987). On December 28, 1989, the United States sought enforcement of the Remedial Order in the United States District Court for the Southern District of Florida. The court granted plaintiff's motion for summary judgment and ordered Metropolitan to remit the amount of the overcharges, $173,239.09, plus pre-judgment and post-judgment interest. *United States* v. *Metropolitan Petroleum Company, Inc.*, 743 F. Supp. 820 (S.D. Fla. 1990). Metropolitan has fully complied with the court order by remitting $636,856, to which $58,491 in

interest has since accrued as of March 31, 1993, making available a total of $695,347 (the Metropolitan Remedial Order fund) for distribution through subpart V.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501 et seq., *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement a Subpart V proceeding with respect to the Metropolitan Remedial Order fund and have determined that such a proceeding is appropriate. This Decision and Order sets forth the OHA's plan to distribute this fund.

III. Refund Procedures

On November 27, 1992, OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Metropolitan Remedial Order fund. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. *See* 57 FR 57451 (December 4, 1992). More than 30 days have elapsed and the OHA has received no substantive comments concerning the proposed procedures for the distribution of the Metropolitan Remedial Order fund.[1] Consequently, the procedures will be adopted as proposed.

We will implement a two-stage refund procedure for distribution of the Metropolitan Remedial Order fund by which purchasers of gasoline from Metropolitan during the period covered by the Remedial Order may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (i) end-users; (ii) regulated entities, such as public utilities, and cooperatives; and (iii) refiners, resellers and retailers.

A. First Stage Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of gasoline from Metropolitan during the period covered by the Remedial Order. If the gasoline was not purchased directly from Metropolitan, the claimant must establish that the gasoline originated with Metropolitan. Additionally, a refiner, reseller, or retailer claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Metropolitan's overcharges. This showing will generally consist of two distinct elements. First, a refiner, reseller, or retailer claimant will be required to show that it had "banks" of unrecouped increased product costs in excess of the refund claimed.[2] Second, because a showing of banked costs alone is not sufficient to establish injury, the claimant must additionally provide evidence that market conditions during the remedial order period precluded it from increasing its prices to pass through the additional costs associated with the overcharges. *See Vickers Energy Corp./Hutchens Oil Co.*, 11 DOE ¶ 85,070 at 88,105 (1983). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from Metropolitan. *See National Helium Co./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co.* v. *DOE*, 618 F. Supp. 1199 (D. Del. 1985).

Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. *See, e.g., Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable Subpart V regulations at 10 CFR 205.282(e). Accordingly, we will adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will adopt a presumption that the overcharges were dispersed equally in all of Metropolitan's sales of gasoline during the period covered by the Remedial Order. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.[3] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the Remedial Order fund is equal to the number of gallons purchased from Metropolitan during the period covered by the Remedial Order times the per gallon refund amount. In the present case, the per gallon refund amount is $0.0463. We derived this figure by dividing the amount of the Remedial Order fund, $636,856, by 13,746,905 gallons, the volume of gasoline which Metropolitan sold from March 1, 1979 through July 31, 1979. A firm that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[4]

In addition to the volumetric presumption, we will also adopt a number of presumptions regarding injury for claimants in each category listed below.

2. End-Users

In accordance with prior Subpart V proceedings, we will adopt the presumption that an end-user or ultimate consumer of gasoline purchased from Metropolitan whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the Remedial Order. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the period covered by the Remedial Order, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* Accordingly, end-users of gasoline purchased from Metropolitan need only document their purchase volumes from Metropolitan during the period covered by the Remedial Order to make a sufficient showing that they were injured by the overcharges.

3. Regulated Firms and Cooperatives

In order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, *e.g.*, a public utility, or an agricultural cooperative which is required by its charter to pass through cost savings to its member-purchasers, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through

[1] The OHA received submissions from two parties, both indicating the number of gallons of gasoline each party purchased from Metropolitan during the Remedial Order period. In order for these claimed purchases to be considered for refunds in this proceeding, each party must submit Applications for Refund in accordance with the requirements set forth in Section III.B of this Decision and Order.

[2] Claimants who have previously relied upon their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from any cost banks submitted in this refund proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090, at 88,179 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for gasoline) or for any prior month. *See Standard Oil Co. (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030, at 88,082 (1985). If a claimant no longer has records showing its banked costs, the OHA may use its discretion to permit the claimant to approximate those cost banks. *See, e.g., Gulf Oil Corp./Sturdy Oil Co.*, 15 DOE ¶ 85,187 (1986).

[3] If a claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Metropolitan's overcharges. *See, e.g., Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co.*, 20 DOE ¶ 85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed those overcharges. *See Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[4] As in previous cases, we will establish a minimum refund amount of $15. In this determination, any potential claimant purchasing less than 324 gallons of gasoline from Metropolitan would have an allocable share of less than $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. *See Exxon Corp.*, 17 DOE ¶ 85,590, at 89,150 (1988) (*Exxon*).

to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. See *Marathon*, 14 DOE at 88,514–15. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the overcharges, and similarly refunds, would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[5]

4. Refiners, Resellers and Retailers

a. *Small Claims Presumption.* We will adopt a "small claims" presumption that a firm which resold gasoline purchased from Metropolitan and requests a small refund was injured by the overcharges. Under the small claims presumption, a refiner, reseller or retailer seeking a refund of $10,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of gasoline it purchased from Metropolitan during the period covered by the Remedial Order. This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claims the expense might possibly exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund.[6] Furthermore, use of the small claims presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.[7]

b. *Mid-Level Claim Presumption.* In addition, a refiner, reseller or retailer claimant whose allocable share of the refund pool exceeds $10,000, excluding interest, may elect to receive as its refund either $10,000 or 40 percent of its allocable share, up to $50,000, whichever is larger.[8] The use of this presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the overcharges. See *Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed analyses in order to determine product-specific levels of injury. See, *e.g.*, *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 at 88,737 (1987), we determined that based upon the available data, it was more accurate and efficient to adopt a single presumptive level of injury of 40 percent for all mid-level claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach generally to be sound, and we will therefore adopt a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of gasoline from Metropolitan during the Remedial Order period in order to be eligible to receive a refund of 40 percent of its total allocable share, up to $50,000, or $10,000, whichever is greater.[9]

c. *Spot Purchasers.* Finally, we will adopt a rebuttable presumption that a refiner, reseller, or retailer that made only spot purchases from Metropolitan did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. See, *e.g.*, *Vickers*, 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Metropolitan.[10]

B. Refund Application Requirements

To apply for a refund from the Metropolitan Remedial Order fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[11] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) The applicant's use of gasoline purchased from Metropolitan: e.g., consumer (end-user), reseller, cooperative, or public utility;

(3) A monthly purchase schedule covering the period March 1, 1979 through July 31, 1979. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained in detail;[12]

(4) If the applicant was a direct purchaser from Metropolitan, it should provide its customer number. If the applicant was an indirect purchaser from Metropolitan (e.g., it purchased Metropolitan gasoline through another supplier), it should submit the name, address, and telephone number of its immediate supplier and should specify why it believes that the gasoline claimed was originally sold by Metropolitan;

(5) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any

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[5] A cooperative's purchases of gasoline from Metropolitan which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. See *Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.*, 19 DOE ¶ 85,215 (1989).

[6] In many prior proceedings, we have used a $5,000 small claims threshold. However, we have found that an increase in the threshold amount is warranted where a large volumetric refund amount would place many applicants who purchased relatively small volumes over the $5,000 threshold. See, *e.g.*, *Texaco, Inc.*, 20 DOE ¶ 85,147 (1990). Because of the relatively large volumetric amount in this proceeding, $0.0463 per gallon, we are setting the small claims threshold at $10,000. *Id.*

[7] In order to qualify for a refund under the small claims presumption, a refiner, reseller, or retailer must have purchased less than 215,983 gallons of gasoline from Metropolitan during the settlement agreement period.

[8] Under the mid-level presumption, a claimant which purchased between 215,983 gallons and 539,956 gallons of gasoline from Metropolitan would be eligible to receive a principal refund, exclusive of interest, of $10,000. A claimant purchasing between 539,957 gallons and 2,699,784 gallons of petroleum products would be eligible for a principal refund equal to 40 percent of its allocable share, and an applicant with a purchase volume in excess of 2,699,784 gallons would be eligible for a principal refund of $50,000.

[9] A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the overcharges, or that it was injured in an amount less that the presumed level refund, may not necessarily receive a full presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application.

[10] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrated that: (1) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (2) they were forced by market conditions to resell the product at a loss that was not subsequently recouped through the draw down of banks. See, *e.g.*, *Texaco Inc.*, 20 DOE ¶ 85,147 at 88,321 (1990); *Quaker State Oil Refining Corp./ Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

[11] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[12] In the course of its audit of Metropolitan's books, the ERA obtained information indicating the number of gallons purchased by Metropolitan customers during the Remedial Order period. This information will be made available to applicants, and may be used in place of an applicant's own records to document a refund claim.

refund, and a brief description as to how the refund will be passed along;

(6) If the applicant is a retailer, reseller, or refiner whose allocable share exceeds $10,000 (i.e., whose purchases equal or exceed 107,992 gallons), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of $10,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Metropolitan's overcharges. *See* Section III.A.4 *supra*;

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Metropolitan refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) A statement as to whether the applicant is or was in any way affiliated with Metropolitan. If the applicant is or was so affiliated, it should explain this affiliation, including the time period in which it was affiliated; [13]

(9) A statement as to whether the ownership of the applicant's firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (e.g., sale of corporate stock, sale of company assets);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action. If so, an explanation of the case and copies of relevant documents should also be provided;

(11) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Metropolitan Special Refund Proceeding, Case No. LEF–0034." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than September 30, 1993, and sent to: Metropolitan Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585.

In addition, we will adopt the following procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. See *Texaco Inc.*, 20 DOE ¶ 85,147 (1990). Each such filing service shall, contemporaneously with its first filing in the Metropolitan proceeding, submit a statement indicating its qualifications for representing refund applicants and containing a detailed description of the solicitation practices and application procedures that it has used and plans to use.[14] This statement should contain the following information: [15]

(1) A description of the procedures used to solicit refund applications in the Metropolitan proceeding and copies of any solicitation materials mailed to prospective Metropolitan applicants;

(2) A description of how the filing service obtains authorization from its clients to act as their representative, including copies of any type of authorization form signed by refund applicants;

(3) A description of how the filing service obtains and verifies the information contained in refund applications;

(4) A description of the procedures used to forward refunds to its clients;

(5) A description of the procedures used to prevent and check for duplicate filings.

Upon receipt of this information, we may suggest alteration of a filing service's procedures if they do not conform to the procedural requirements of 10 CFR Part 205 and this proceeding.

Secondly, we will require strict compliance with the filing requirements as specified in 10 CFR § 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

Thirdly, in any case where an application has been signed and dated before the issuance of this Decision and Order in this proceeding, we will require a certification statement, signed and dated by the applicant after the date of the issuance of this Decision and Order. This certification should state that the applicant has not filed and will not file any other Application for Refund in the Metropolitan proceeding and that, after having been provided a copy of this Decision and Order, it still authorizes that filing service to represent it.

Fourthly, we will require from each representative a statement certifying that it maintains a separate escrow account at a bank or other financial institution for the deposit of all refunds received on behalf of applicants, and that its normal business practice is to deposit all Subpart V refund checks in that account within two business days of receipt and to disburse refunds to applicants within 30 calendar days thereafter. Unless such certification is received by the OHA, all refund checks approved will be made payable solely to the applicant. Representatives who have not previously submitted an escrow certification form to the OHA may obtain a copy of the appropriate form by contacting: Marcia B. Carlson, HG–13, Chief, Docket & Publications Division, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Finally, the OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service must contain all of the information indicated in this Decision and Order.

C. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided shall be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Metropolitan Remedial Order fund that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted by Metropolitan Petroleum Company, Inc. and Metropolitan Fuel Oil Company, pursuant to the Remedial Order dated June 6, 1986, may now be filed.

[13] Affiliates of firms that have remitted overcharge funds to the DOE are generally not entitled to share in those funds. If an affiliate of Metropolitan was granted a refund, Metropolitan would be indirectly compensated from a Remedial Order fund remitted to settle its own violations. *See Propane Industrial, Inc.* v. *Department of Energy*, No. 8–23, slip op. at 3 (Temp. Emer. Ct. App. January 8, 1993). In addition, Metropolitan presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. *See Marathon Petroleum Co./Pilot Oil Corp.*, 16 DOE ¶ 85,611 (1987), *amended claim denied*, 17 DOE ¶ 85,291 (1988), *reconsideration denied*, 20 DOE ¶ 85,236 (1990).

[14] This statement should be submitted under separate cover and reference the Metropolitan refund proceeding, Case No. LEF–0034.

[15] This information with regard to some filing services has already been requested and received by this Office. Therefore, any filing service that has had more than 10 Applications for Refund approved before the issuance of the Proposed Decision and Order in this proceeding (November 27, 1992) need not submit this information if it has already done so in another proceeding. Instead, such a filing service need only include a copy of the previous submission(s) responsive to items (1)-(5) and provide an update if its response to any of these questions has changed since it first submitted its information. However, in light of the importance of this information, it is prudent for all filing services to review their practices and inform the OHA of any alterations or improvements that may have been made.

(2) Applications for Refund must be postmarked no later than September 30, 1993.

Dated: April 21, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–9809 Filed 4–26–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4616–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Environmental Radiation Ambient Monitoring System (ERAMS) (EPA ICR No. 877.04; OMB No. 2060–0015). This ICR requests renewal of the existing clearance.

Abstract: States and some local governments collect samples of air, pasteurized milk, rain water, surface water and ground water at certain intervals. These samples are sent to EPA's ERAMS, and are tested for radioactive contamination. EPA's ERAMS uses these data to estimate ambient levels of radioactive pollutants in the environment, to recognize trends in radiation levels, to assess the impact of fallout, and other intrusions of radioactive materials.

Burden Statement: Public reporting burden for this collection of information is estimated to average 70 minutes per response including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information.

Respondents: States and some local governments.

Estimated Number of Respondents: 313.

Estimated Total Annual Burden on Respondents: 9,201 hours.

Frequency of Collection: Quarterly, monthly, twice weekly, and on occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC 20460.

and

Ron Minsk, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20530.

Dated: April 20, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–9822 Filed 4–26–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4618–3]

Availability of Draft Model Title V Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA is announcing a series of draft model operating permits under title V of the Clean Air Act (Act) and is asking for public comment. A number of draft model permits are available for public comment; others will be available in coming months.

FOR FURTHER INFORMATION CONTACT: For general information regarding model permits, contact Ray Vogel at (919) 541–3153, Permits Support Section, Mail Drop 15, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711. For information on specific model permits, contact the person shown on the list in today's notice.

ADDRESSES: Send comments on specific model permits to the contact person identified for that model permit in today's notice. Include the name and mail drop number shown on the list and send to the Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Under title V of the Act, States are required to submit permits programs by November 15, 1993 governing the issuance of operating permits to major stationary sources of air pollution.[1] Under that program, permitting agencies will issue operating permits to major sources. As part of its assistance to permitting agencies, the EPA is developing "model permits" that provide example permit terms and conditions. In general, the model permits reflect Federal emissions requirements that apply to particular categories of sources. Where no Federal emissions requirements exist, the model permits allow States to insert State-specific requirements. Permitting agencies may use these model permits as is, modifying them to suit their needs, or use their own permits that meet Federal requirements. States are not required to use the EPA model permits.

All title V permits must contain certain elements set forth in 40 CFR part 70, Operating Permits Program; Final Rule, 57 FR 32250, July 21 1992.[2] These elements include assuring compliance with all "applicable requirements,"[3] which are emissions standards and requirements that apply to the permitted sources under the Act. Permits must also comply with all part 70 requirements.

The EPA's model permits are of two types: specific conditions and general conditions. Specific conditions model permits contain specific applicable requirements that apply to source categories affected by a specific requirement. For example, a volatile organic compounds (VOC) model permit for asphalt plants contains only the VOC requirements, and the particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10) model permits contain only the PM–10 requirements.

The general conditions model permit contains the part 70 requirements and expresses them as permit terms and conditions. By integrating the general conditions permit with one or more of the specific conditions permits, State

[1] "Major source" means any source with the potential to emit 100 tons per year (tpy) or more of VOC, carbon monoxide, nitrogen oxides (NOx), SO2, lead, or PM–10, or with the potential to emit 10 tpy individually or 25 tpy in combination of any hazardous air pollutant. These limits apply nationwide. In certain nonattainment areas, lower limits may apply for VOC, NOx, or PM–10 sources. "Potential to emit" means the maximum capacity of a source to emit air pollutants, considering any control equipment and any federally-enforceable limitations restricting its emitting capability.

[2] The requirements for permit content are contained in § 70.4, 70.6, and 70.7.

[3] "Applicable requirements" are defined in § 70.2. Examples of "applicable requirements" include State implementation plan requirements, terms and conditions of new source review and prevention of significant deterioration permits, NESHAP requirements, maximum achievable control technology requirements, and acid rain requirements.

permitting agencies may assemble a complete permit for a facility.

Specific conditions model permits have been or are being developed to cover many source categories that are subject to applicable requirements, including VOC reasonably available control technology (RACT) guidelines, national emissions standards for hazardous air pollutants (NESHAP), PM–10, lead, and sulfur dioxide (SO_2) requirements. Although many model permits have already undergone extensive review by affected industries and State and local permitting agencies, EPA wants to assure review of these permits by seeking comments from all interested parties.

In the following list, the model permits are grouped by source category. The list shows if a draft model permit is available for a source category, or when it is expected to become available for public review.

STATUS OF MODEL PERMITS

	When draft is available
I. VOC Model Permits Contact: David Sanders (MD–15) (919) 541–3356	
1. Graphic arts	Now.
2. Petroleum storage in fixed roof tanks.	Now.
3. Petroleum refineries	Now.
4. Coating sources (can, coil, paper, fabric, vinyl, metal furniture, large appliances, magnet wire, and misc. metal parts).	Now.
5. Gasoline dispensing (stage I vapor recovery).	Now.
6. Bulk gasoline terminals	Now.
7. Bulk gasoline plant	Now.
8. Leaks from gasoline tank trucks.	Now.
9. Auto and light-duty truck coating operations.	Now.
10. Leaking sources (petroleum refinery, natural gas/gasoline processing, synthetic organic chemical, and polymer and resin manufacturing).	Now.
11. Cutback and emulsified asphalt.	Now.
12. Pneumatic rubber tire manufacturing.	Now.
13. Petroleum storage in external floating roof tanks.	Now.
14. Synthesized pharmaceutical products manufacturing.	Now.
15. High-density polyethylene, polypropylene, and polystyrene resins.	Now.
16. SOCMI—Air oxidation	Now.
17. Petroleum solvent dry cleaners.	Now.
18. Solvent metal cleaning (degreasing).	Now.
19. Flat wood paneling coating.	Now.
II. NESHAP Model Permits Contact: Warren Johnson (MD–13) (919) 541–5124	
1. Beryllium	Fall 1993.
2. Beryllium rocket motor firing.	Fall 1993.
3. Mercury	Now.
4. Vinyl chloride	Now.
5. Leaks of benzene	Fall 1993.
6. Benzene from coke by-product recovery plants.	April 1993.
7. Inorganic arsenic from glass manufacturing plants.	Now.
8. Inorganic arsenic from primary copper smelters.	April 1993.
9. Inorganic arsenic from arsenic trioxide and metallic arsenic.	Fall 1993.
10. Equipment leaks	Fall 1993.
11. Benzene from benzene storage vessels.	April 1993.
12. Benzene from benzene transfer operations.	April 1993.
13. Benzene waste operations.	Fall 1993.
III. PM–10 Model Permits Contact: Charlene Spells (MD–15) (919) 541–5255	
1. Hot mix asphalt plants	April 1993.
2. Nonmetallic metals processing.	April 1993.
3. Grain milling	April 1993.
4. Marine grain elevators	April 1993.
5. Nonprocess fugitive emissions sources.	April 1993.
6. Portland cement plants (lead included).	April 1993.
7. Lime kilns	April 1993.
8. Gypsum processing and products.	April 1993.
9. Primary aluminum plants	April 1993.
10. Pulp mills	April 1993.
11. Elemental phosphorus plants.	April 1993.
12. Petroleum refineries	April 1993.
13. Utility boilers	April 1993.
14. Glass manufacturing (lead included).	April 1993.
15. Nonferrous smelters (lead included).	April 1993.
16. Steel mills (sources with new source performance standards) (lead included).	April 1993.
17. Paint manufacturing (lead included).	April 1993.
IV. Lead Model Permits Contact: Charlene Spells (MD–15) (919) 541–5255	
1. Lead acid battery manufacturing.	April 1993.
2. Secondary lead smelting and refining plants.	April 1993.
3. Secondary lead remelting and consuming plants.	April 1993.
V. SO_2 Model Permits Contact: Laura McKelvey (MD–15) (919) 541–5497	
1. Utility boilers	Spring 1993.
2. Petroleum refineries	Summer 1993.
3. Nonferrous smelters	Summer 1993.
4. Pulp and paper mills	Summer 1993.
5. Portland cement plants	Summer 1993.
6. Industrial boilers	Summer 1993.
7. Sulfuric acid/sulfur recovery plants.	Summer 1993.
8. Natural gas processing	Summer 1993.
9. Coke ovens	Summer 1993.
VI. General Conditions Model Permit Contact: Ray Vogel (MD–15) (919) 541–3153	Summer 1993.
VII. General Permits Contact: Jeff Herring (MD–15) (919) 541–3153	
1. Dry cleaners	Summer 1993.
2. Storage tanks	Summer 1993.
3. Small boilers	Summer 1993.
4. Sheet-fed printers	Summer 1993.
5. Degreasers	Summer 1993.

Additional model permits not listed above may be developed in the future as new requirements and standards are promulgated. Copies of the model permits may be obtained from the Technology Transfer Network (TTN) bulletin board of the Office of Air Quality Planning and Standards. Contact the TTN systems operator at (919) 541–5384 for information on accessing the bulletin board. Persons who are not able to access the bulletin board may obtain copies from the contact person identified at the top of each model permit group.

The public is invited to comment on the draft model permits. Comments should be submitted to the EPA contact persons. Comments must be in writing and, if possible, should also be submitted on an IBM-compatible computer disk in WordPerfect format.

For draft model permits available now, comments will be accepted until 180 days after today's date. For draft model permits available after today's date, comments will be accepted 180 days after the date on which the draft becomes available. Those dates will be posted on the TTN bulletin board. The EPA will review each comment and make revisions to the model permits where appropriate. No response to individual comments is planned.

Dated: April 21, 1993.

Michael Shapiro,

Acting Assistant Administrator.

[FR Doc. 93–9823 Filed 4–26–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL 4617-9]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has contracted with the Bionetics Corporation ("Bionetics") of Hampton, Virginia, and JACA Corporation ("JACA") of Fort Washington, Pennsylvania, to provide assistance in the development and enforcement of regulatory requirements under title II and VI of the Clean Air Act ("the Act"). Both contractors have been authorized access to information submitted to the Agency under sections 114, 208 and 307(a) of the Act. Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: This notice is effective May 4, 1993.

FOR FURTHER INFORMATION CONTACT: Robert E. Kenney, Senior Staff Attorney, Field Operations and Support Division (6406J), Office of Mobile Sources, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 233-9021.

SUPPLEMENTARY INFORMATION: Two contractors have been authorized access to information submitted to EPA under sections 114, 208 and 307(a) of the Clean Air Act. Some of this information may be claimed or determined to be CBI.

Under contract number 68D20172, the Bionetics Corporation, Tenth Floor, suite 1000, Harbour Centre Building, 2 Eaton Street, Hampton, Virginia 23669, provides enforcement support to the Field Operations and Support Division, Office of Mobile Sources, in a number of activities related to Titles II and VI of the Act. These activities include:

- Inspections of fuel and fuel additive dispensing facilities;
- Inspections of fuel and fuel additive refining, importing and distribution facilities;
- Motor vehicle tampering inspections;
- Motor vehicle air conditioning repair inspections;
- Lead phasedown audits;
- Audits of fuel refiner and importer baselines;
- Laboratory analysis of fuel samples;
- Litigation support; and
- Audits of aftermarket catalytic converter warranty cards.

Bionetics may be assisted in these activities by two subcontractors, Patterson and Associates of Houston, Texas (subcontract number C206-001) and AutoResearch Laboratories, Inc. of Chicago, Illinois (subcontract number C206-002).

Under contract number 68D10114, JACA Corporation, 550 Pinetown Road, Fort Washington, Pennsylvania 19034, provides economic and technical support to the Field Operations and Support Division, Office of Mobile Sources, for the development, implementation and enforcement of regulatory programs under Title II of the Act. General types of economic and technical support under this contract include:

- Analyses of the financial operations and financial accountability of fuel refiners, importers, distributors, and retailers, particularly evaluations of their ability to pay civil penalties for violations of fuels regulations;
- Analyses of the effects that possible regulatory or policy changes will have on the economics and operations of the fuel refining, transportation, and distribution industries, including summaries and evaluations of the technical and economic implications of public comments made in response to proposed regulatory or policy changes;
- Support to obtain information for problem identification, guidelines, regulatory development, and resource requirements; and
- General support for investigations or inspections and court reporting for field use.

JACA may be assisted in these contractual support activities by the one or more of the following subcontractors: Consad Research of Pittsburgh, Pennsylvania; Sobotka and Co. of Washington, DC; Michael Walsh of Washington, DC; James Patterson of Houston, Texas; Christopher Weaver of Sacramento, California; Paul Hagstrom of Henderson, Nevada; Roger Ellefson of Wilmington, Delaware; and various court reporting and process serving companies.

In accordance with 40 CFR 2.301(h)(2), EPA has determined that disclosure of confidential business information to Bionetics (and its subcontractors) under contract number 68D20172 and to JACA (and its subcontractors) under contract number 68D10114 is necessary for these entities to carry out the work required by these contracts (and subcontracts issued thereunder). EPA is issuing this notice to inform all submitters of information to the Field Operations and Support Division, Office of Mobile Sources, under section 114, 208, and 307(a) of the Clean Air Act that the Agency may provide access to CBI contained in such submittals to Bionetics and JACA as necessary to carry out work under these contracts. Disclosure of CBI under these contracts may continue until September 30, 1995, for Bionetics and September 30, 1994, for JACA.

As required by 40 CFR 2.301(h)(2), both the Bionetics and JACA contracts include provisions to assure the appropriate treatment of CBI disclosed to contractors and subcontractors.

Dated: April 19, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93-9820 Filed 4-24-93; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-140208; FRL-4578-2]

Access To Confidential Business Information to Certain Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA intends to transfer confidential business information (CBI) collected from the pulp, paper, and paperboard manufacturing industry to four contractors. Transfer of the information will allow the contractors to assist EPA in developing regulations for the land application of sludge from pulp and paper mills using chlorine and chlorine-derivative bleaching processes under section 6 of the Toxic Substances Control Act (TSCA). The information being transferred was collected under the authority of section 308 of the Clean Water Act (CWA), section 114 of the Clean Air Act (CAA), and section 3007 of the Resource Conservation and Recovery Act (RCRA). Interested persons may submit comments on this intended transfer of information to the addresses noted below.

DATES: Comments on the transfer of data are due May 7, 1993.

ADDRESSES: Comments on transfer of data collected under section 308 of the CWA, section 114 of the CAA, and section 3007 of RCRA may be sent to Lynne Blake-Hedges, Regulatory Impacts Branch, Economic Exposure and Technical Division (TS-779), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lynne Blake-Hedges at (202) 260-7241 for general information and Scott Sherlock at (202) 260-1536 for information regarding uses of CBI under TSCA authority.

SUPPLEMENTARY INFORMATION: EPA intends to transfer information, including CBI, to four contractors: Eastern Research Group, Inc. (ERG), 110

Hartwell Ave., Lexington, MA 02173–3198; Abt Associates (Abt), 4800 Montgomery Lane, Suite 500, Bethesda, MD 20814 and 55 Wheeler St., Cambridge, MA 02138–1168; Radian Corporation, 2455 Horsepen Road, Suite 250, Herndon, VA 22071; and RCG/Hagler Bailly, Inc. (RCG), P.O. Drawer O, Boulder, CO 80306.

More specifically, the information being transferred to the contractors includes the following information collected under the authority of section 114 of the CAA, section 308 of the CWA, and section 3007 of RCRA: Information collected through questionnaires and surveys of the industry; all joint EPA industry studies; site visit reports; monitoring and test data; test reports and sampling episodes reports; and analytical summaries of this information and data.

EPA also intends to transfer to ERG, Abt, Radian and RCG all information listed above (including CBI) that may be collected or developed in the future under the authorities listed above. This information is necessary to enable ERG, Abt, Radian, and RCG to carry out the work required by their contracts to support EPA's development of regulations for the pulp, paper, and paperboard industry under section 6 of TSCA. The contractors, contract numbers, and type of support to be provided to EPA are listed in the following table:

EPA Office Receiving Support	Contractor	Contract No.	Type of Support
OPPTS/OPPT/EETD	ERG, Lexington, MA	68–D2–0175	Economic
OPPTS/OPPT/EETD	Abt, Bethesda, MD	68–D2–0175	Economic
OPPTS/OPPT/EETD	Abt, Cambridge, MA	68–D2–0175	Economic
OPPTS/OPPT/EETD	Radian, Herndon, VA	68–D2–0175	Economic
OPPTS/OPPT/EETD	RCG, Boulder, CO	68–D2–0175	Economic

In the case of information claimed to be proprietary and, therefore, confidential, all regulations and confidentiality agreements apply. This transfer would not affect the status of this information as information claimed to be proprietary. The relevant contracts contain all confidentiality provisions required by EPA's confidentiality regulations. Need for access to the information shall continue until September 30, 1993.

In accordance with those regulations, companies who have submitted information claimed to be confidential have until May 7, 1993 to comment on EPA's proposed transfer of this information to ERG and ABT for the proposed outlined above.

Dated: April 19, 1993.

George A. Bonina,

Acting Director, Information Management Division.

[FR Doc. 93–9812 Filed 4–26–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140209; FRL–4580–2]

Access to Confidential Business Information by Versar, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Versar, Inc. (VER), of Springfield, Virginia, and Versar's subcontractors, General Science Corporation (GSC) of Laurel, Maryland, and Syracuse Research Corporation (SYR) of Syracuse, New York for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than May 7, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D3–0013, contractor VER of 6850 Versar Center, Springfield, VA, and its subcontractors GSC of 6100 Chevy Chase Drive, Laurel, MD, and SYR of Merrill Lane, Syracuse, NY will assist the Office of Pollution Prevention and Toxics (OPPT) in providing exposure assessment support for both new and existing chemicals.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D3–0013, VER, GSC, and SYR will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. VER, GSC, and SYR personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of October 15, 1992 (57 FR 47336), VER, GSC, and SYR were authorized for access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA. EPA is issuing this notice to extend VER, GSC, and SYR's access to TSCA CBI under the new contract number 68–D3–0013.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide VER, GSC, and SYR access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, at VER's Springfield, VA site, and at SYR's Syracuse, NY site only.

VER and SYR will be authorized access to TSCA CBI at their facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. GSC will be authorized access to TSCA CBI at EPA Headquarters only. Before access to TSCA CBI is authorized at VER and SYR's sites, EPA will approve their security certification statements, perform the required inspection of their facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, VER, GSC, and SYR will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until March 1, 1996.

VER, GSC, and SYR personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: April 14, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–9814 Filed 4–26–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Concord-Carlisle Regional School District (WIQH (FM)); Concord, MA.	BPED-860424MC	93-115
B. Technology Broadcasting Corporation (WMBR (FM)); Cambridge, MA.	BPED-920326IA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. 307(b) Noncommercial Educational—Both
2. Ultimate—Both

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037; telephone (202) 857-3800.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93-9687 Filed 4-26-93; 8:45 am]

BILLING CODE 6712-01-M

Licensee Order To Show Cause

The Chief, Mass Media Bureau, has before him the following matter:

Applicant, City and State	MM docket No.
H. Gibbs Flanders, Jr., Trustee, Licensee of WJHH(AM); Soperton, GA	93-110

(Regarding the silent status of Station WJHH(AM).)

Pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, H. Gibbs Flanders, Jr., Trustee, has been directed to show cause why the license for Station WJHH(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether H. Gibbs Flanders, Jr., Trustee, has the capability and intent to expeditiously resume broadcast operations of WJHH(AM) consistent with the Commission's Rules.

2. To determine whether H. Gibbs Flanders, Jr., Trustee, has violated sections 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the forgoing issues, whether H. Gibbs Flanders, Jr., Trustee, is qualified to be and remain the licensee of Station WJHH(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Docket Branch (room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202-857-3800).

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-9684 Filed 4-26-93; 8:45 am]

BILLING CODE 6712-01-M

Application for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM Station:

Applicant, City and State	File No.	MM docket
A. KR Partners; Waimea, HI.	BPH-911001MB	93-53
B. KES Communications, Inc.; Waimea, HI.	BPH-911003MH	
C. Lori Lynne Forbes; Waimea, HI.	BPH-911004MH	

Issue Heading and Applicants

1. Financial Qualifications—A
2. Comparative—A, B, C
3. Ultimate—A, B, C

Applicant, City and State	File No.	MM docket
A. Board of Visitors of James Madison University; Crozet, VA.	BPED-911101MA	93-52
B. Community Educational Service Council, Inc.; Crozet, VA.	BPED-920511MB	

Issue Heading and Applicants

1. Comparative Noncommercial Educational FM—A, B
2. Ultimate—A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used above to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete test may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93-9685 Filed 4-26-93; 8:45 am]

BILLING CODE 6712-01-M

Licensee Order To Show Cause

The Chief, Mass Media Bureau, has before him the following matter:

Applicant, City and State	MM docket No.
Honus Shain, Licensee of WKLO(AM); Danville, KY	93-109

(Regarding the silent status of Station WKLO(AM)).

Pursuant to section 312(a)(3) and 4 of the Communications Act of 1934, as amended, Honus Shain has been directed to show cause why the license for Station WKLO(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Honus Shain has the capability and intent to expeditiously resume broadcast operations of WKLO(AM) consistent with the Commission's Rules.

2. To determine whether Honus Shain has violated sections 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the forgoing issues, whether Honus Shain is qualified to be and remain the licensee of Station WKLO(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202–857–3800).

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–9686 Filed 4–26–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pilot Reinsurance Program

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice; Additional comment period.

SUMMARY: On February 3, 1993, the Federal Deposit Insurance Corporation (FDIC) published in the **Federal Register** a notice requesting public comment on all aspects of a planned Pilot Reinsurance Program (Pilot Program) for a 60-day comment period which ended on April 5, 1993. Due to the variety and complexity of issues for comment, the FDIC is now providing an additional 30-day period for public comment. The FDIC is publishing the notice in a form identical to that published on February 3, 1993, with one exception: as a result of providing an additional 30-day period for public comment, the FDIC does not intend to begin actual reinsurance coverage pursuant to the Pilot Program until the semiannual assessment period beginning July 1, 1994. The dates for engaging in the Pilot Program have been amended accordingly.

DATES: Written comments must be received on or before May 27, 1993.

ADDRESSES: Written comments shall be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to room F–402, 1776 F Street, NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in the FDIC's Reading Room, room 7118, 550 17th Street NW., between 8:30 a.m. and 5 p.m. on business days. [FAX number (202) 898–3838]

FOR FURTHER INFORMATION CONTACT: Arthur J. Murton, Deputy Director, Division of Research and Statistics, (202) 898–3938; Jennifer L. Eccles, Senior Financial Analyst, Division of Research and Statistics, (202) 898–8537; or Lisa M. Stanley, Senior Attorney, (202) 898–7494.

SUPPLEMENTARY INFORMATION: On February 3, 1993, the FDIC published a notice in the **Federal Register** (58 FR 6966) requesting public comment on all aspects of a planned Pilot Program. A number of commenters expressed the opinion that the FDIC should provide additional time for consideration of the issues involved in the Pilot Program. In light of these concerns and in view of the variety and complexity of issues to be analyzed, the FDIC is providing an additional 30-day period for public comment on this notice.

As before, the FDIC is soliciting public comment on all aspects of the planned Pilot Program, including the reinsurance process, the terms and conditions of participation by private reinsurers, and the appropriate criteria for determining which insured depository institutions may be included in the Program. As before, the FDIC is also soliciting public comment on alternate methods of structuring a Pilot Program.

In the request for comment published on February 3, 1993, the FDIC stated its intention to commence actual reinsurance coverage pursuant to the Pilot Program beginning January 1, 1994. As a result of providing an additional 30-day comment period, the FDIC does not intend to commence actual reinsurance coverage pursuant to the Pilot Program until the semiannual assessment period beginning July 1, 1994. This request for comment has been amended in accordance with this new date.

I. Background and Authority

Section 322 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law 102–242, requires the Board of Directors of the FDIC, in consultation with the Secretary of the Treasury and individuals from the private sector with expertise in private insurance, private reinsurance, depository institutions, or economics, to conduct a study of the feasibility of establishing a private reinsurance system. The study must include a demonstration project consisting of a simulation, by a sample of private reinsurers and insured depository institutions, of the activities required for a private reinsurance system. These activities include—

(1) Establishing a pricing structure for risk-based premiums;

(2) Formulating insurance or reinsurance contracts; and

(3) Identifying and collecting information necessary for evaluating and monitoring risks in insured depository institutions.

Section 322(a)(3) of FDICIA authorizes the FDIC to engage in actual reinsurance transactions as part of the demonstration project. As part of the new risk-based assessment system required by section 302(a) of FDICIA, the FDIC is authorized to obtain private reinsurance covering not more than 10 percent of any loss the FDIC incurs with respect to an insured depository institution and to base that institution's semiannual assessment, wholly or partially, on the cost of the reinsurance. Pursuant to section 302(g) of FDICIA, the new risk-based assessment system will become effective no later than January 1, 1994.

The FDIC intends to conduct a Pilot Reinsurance Program (Pilot Program) in 1993 through 1995 with reinsurance coverage to commence with the semiannual assessment period beginning July 1, 1994. The FDIC may consider reinsurance information in making assessment risk classification assignments.

Before June 19, 1993, the FDIC must submit to the Congress a report on the study which must include—

(1) An analysis and review of the demonstration project;

(2) Conclusions regarding the feasibility of a private reinsurance system;

(3) Recommendations regarding whether—

(A) A private reinsurance system should be restricted to depository institutions over a certain asset size;

(B) Similar reinsurance systems are feasible for depository institutions

or groups of such institutions with total assets below any recommended asset size restriction; and

(C) Public policy goals can be satisfied by such reinsurance systems; and

(4) Recommendations for administrative and legislative action as may be necessary to establish such reinsurance systems.

Before June 19, 1993, the FDIC intends to submit to the Congress a report on the study. After completion of the Pilot Program, the FDIC intends to submit an additional report to the Congress based on the results of the Pilot Program.

II. Description of Pilot Reinsurance Program

Section 322 of FDICIA requires the FDIC to conduct a private reinsurance study which must include a demonstration project and may include actual reinsurance transactions. In order to ascertain whether establishing a private reinsurance system is feasible, the FDIC has determined to engage in a Pilot Program.[1] The goal of the Pilot Program would be to determine whether private reinsurance may be a useful supplement to federal deposit insurance without compromising the public policy objectives of deposit insurance. The FDIC solicits comments on all aspects of the Pilot Program described below.

Private reinsurers would be invited to participate in the Pilot Program for the purpose of deriving market-based deposit reinsurance prices for eligible insured depository institutions. Participating reinsurers would be required to enter into contracts with the FDIC which set the terms and conditions of participation. The FDIC intends to develop a "Request for Proposal" (RFP) delineating the terms and conditions of participation based in part on comments received in response to this request for comment. Reinsurers would then submit bids or price quotes to the FDIC for reinsurance of selected institutions. The FDIC would select reinsurers to engage in actual reinsurance transactions.

A reinsurer would participate in the reinsurance transactions by agreeing to be liable for some portion of the loss or cost of assistance incurred by the FDIC in connection with an insured depository institution that fails or is provided assistance during the period for which reinsurance coverage is in effect. A reinsurer would assume liability for individual insured depository institutions. All reinsurers would operate under uniform terms with the FDIC and charge the FDIC premiums for assuming risk.

III. Description of Proposed Process

The Pilot Program would commence in 1993, with reinsurance coverage to commence with the semiannual assessment period beginning on July 1, 1994. The Pilot Program would be divided into three phases. The first phase would include the selection of participating reinsurers. The FDIC would issue an RFP to solicit participation in the Pilot Program by all interested reinsurers. The RFP would include detailed terms and conditions of participation in the Pilot Program. Interested reinsurers would be required to demonstrate that they meet the eligibility criteria established by the FDIC. In order to participate in the Pilot Program, a reinsurer must enter into a contractual agreement with the FDIC binding the reinsurer to a set of uniform terms and conditions of participation.

During the second phase of the Pilot Program, participating reinsurers would be provided with approximately six months during which to complete their analysis of insured depository institutions deemed eligible by the FDIC for reinsurance. This phase would culminate in submission of a reinsurance bid to the FDIC by each participating reinsurer. The bid would include prices for each insured depository institution the participating reinsurer is willing to reinsure and a statement of the total volume of reinsurance business desired. All other terms and conditions of reinsurance would have been established previously by the participation contract. The FDIC would assign reinsurance on the basis of price, among other possible factors, for each insured depository institution to be reinsured. Reinsurance would be allocated until the desired volume of business based on total exposure per reinsurer is reached.

The FDIC intends to set a maximum acceptable reinsurance price for all insured depository institutions deemed eligible by the FDIC for reinsurance. The FDIC is interested in receiving comments concerning how a maximum acceptable reinsurance price should be determined and what maximum is appropriate.

During the third phase of the Pilot Program, a separate reinsurance contract would be signed by each reinsurer for each insured depository institution to be reinsured. Reinsurance coverage would be provided for the second semiannual assessment period during 1994 and the first semiannual assessment period during 1995.

The FDIC is considering requiring each participating reinsurer to assume a fixed dollar amount of liability for a particular insured depository institution. The amount of liability would be determined at the time of entering into the contract. Alternatively, the FDIC is considering ceding reinsurance equal to a percentage of the FDIC's loss from the resolution of an insured depository institution with reinsurance or the FDIC's cost of assistance.

The FDIC intends to solicit bids for participation through an RFP during the Summer of 1993. Reinsurers would be selected for participation shortly thereafter. Final Pilot Program participation contracts would be signed during the Fall of 1993. Reinsurers would begin the pricing analysis and submit prices to the FDIC by a deadline in the Spring of 1994. Actual reinsurance transactions would commence with the semiannual assessment period beginning July 1, 1994.

IV. Participants

All segments of the insurance industry and other financial firms would be eligible for participation. One requirement for selection would be the approval of the reinsurer's primary regulator. This requirement would ensure that a participant has adequate financial capacity to participate and that the type of business is authorized by the participant's primary regulator. The FDIC may establish certain financial criteria for participation including a minimum capital requirement. Furthermore, participants would be required to agree to and be bound by the terms and conditions established in the participation contract. These terms and conditions may include a strict confidentiality agreement and provisions relating to conflicts of interest.

The Pilot Program may be difficult to manage if the FDIC seeks reinsurance coverage for all insured depository institutions. Therefore, it may be necessary to select a limited group of insured institutions for which the FDIC will seek coverage. The FDIC is considering limiting the Pilot Program to insured depository institutions with assets over a given asset size, perhaps $1 billion. An alternative under consideration is to select a random sample of insured institutions. The FDIC believes that selecting institutions on the basis of financial condition or

[1] Actual reinsurance transactions would commence with the semiannual assessment period beginning July 1, 1994. Section 7(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b), will authorize the FDIC to obtain private reinsurance in connection with the new risk-based assessment system beginning January 1, 1994.

allowing institutions to opt out of the Pilot Program could severely bias the results of the study. The FDIC seeks comments on the appropriate manner of limiting the number of insured depository institutions in the Pilot Program.

Insured depository institution subsidiaries of a depository institution holding company which meet the criteria established for inclusion in the Pilot Program would be reinsured separately from affiliated insured depository institutions.

V. Process Issues

The FDIC is interested in receiving comments on alternate methods of structuring a Pilot Program. Additionally, the FDIC is interested in receiving comments on all general process issues relating to the Pilot Program under consideration, including:

1. How should the pricing information received by the FDIC during the Pilot Reinsurance Program affect an insured depository institution's assessment rate, if at all?

2. What should be the effect of an insured depository institution being considered "unreinsurable" as determined based on the bids received from participating reinsurers?

3. Should participating reinsurers be reimbursed for development costs? If so, should reinsurers be reimbursed fully or should development costs be shared between the FDIC and reinsurers? How should any reimbursement for development costs factor into the FDIC's acceptance of bids?

4. Should the FDIC accept only one bid for reinsurance for each insured depository institution or accept multiple bids for reinsurance up to the total amount of reinsurance desired?

VI. Issues Related to Terms and Conditions of Participation by Private Reinsurers

The FDIC is interested in receiving comments relating to establishing appropriate terms and conditions of participation in the Pilot Program by private reinsurers, including the following possible terms and conditions:

1. *General terms:* Reinsurance contracts would be entered into between the FDIC and participating reinsurers. An insured depository institution deemed eligible for reinsurance by the FDIC would not be a party to the reinsurance contract.

All reinsurers would be required to agree to a uniform set of terms and must enter into identical participation contracts with the FDIC. Terms and conditions of participation in the Pilot Program and for actual reinsurance would be set forth in contracts prepared by the FDIC. Commenters may wish to recommend specific contract language for consideration by the FDIC. Reinsurers would be required to enter into separate contracts for participation in the Pilot Program and for reinsurance of individual insured depository institutions. Separate reinsurance contracts identifying the insured depository institution to be reinsured and setting the reinsurance premium would be signed for each transaction. Reinsurers would be excluded from any participation in the supervision, resolution, and liquidation processes.

The FDIC intends to reserve the right to cancel a reinsurance contract at any time during the term of the contract. The FDIC does not intend to permit reinsurers to cancel reinsurance during the term of the contract.

2. *Duration:* The FDIC envisions an appropriate term for reinsurance contracts as a period of one to two years. The FDIC requests comments on whether one year or some longer term is appropriate for such contracts.

3. *Pricing:* The FDIC would determine a maximum acceptable reinsurance price for all eligible insured depository institutions. The FDIC would not enter into reinsurance contracts in which the premium quoted exceeds the maximum acceptable reinsurance price, as determined by the FDIC. All bids received with reinsurance prices in excess of this maximum amount would be rejected. Each reinsurer would charge the FDIC directly for the reinsurance premium.

4. *Repricing:* The FDIC seeks comments on whether reinsurers should be permitted to adjust premiums during the term of the reinsurance contract. If so, should there be a cap on the amount of repricing permitted?

5. *Exposure:* The FDIC is considering setting a fixed dollar amount of reinsurer liability for the cost of resolution or assistance at the time of entering into reinsurance contracts. Alternatively, the FDIC is considering ceding reinsurance equal to 1 percent of the FDIC's loss from the resolution of an insured depository institution with reinsurance or the FDIC's cost of assistance. This alternative may be subject to a stop-loss provision whereby the maximum loss exposure to a reinsurer would be tied to the size of the institution. The FDIC requests comment on the appropriate percentage of loss to cede for reinsurance and the appropriate stop-loss provisions.

6. *Information requirements:* Most data necessary for determining reinsurance premiums would be generated based on the quarterly consolidated reports of condition and income and other publicly available information.

The FDIC requests comments on whether access to reports of examination is essential to providing reinsurance. If access to examination reports were permitted for the purpose of formulating a reinsurance bid, such access would be subject to appropriate privacy safeguards, confidentiality agreements, and the receipt of express permission of the appropriate Federal banking agency.

The FDIC is also interested in receiving comments concerning the anticipated burden on insured depository institutions of possible contacts from reinsurers interested in submitting a reinsurance bid for a particular insured depository institution.

7. *Bidding requirements:* Each participating reinsurer would be required to submit a list of reinsurance prices to the FDIC by a deadline established by the FDIC for receipt of bids. Each such reinsurer would be required to specify which insured depository institutions it is willing to reinsure, under the terms previously established by the participation contract. The bid must also state the total volume of reinsurance exposure that the reinsurer is willing to accept, based on the price and exposure established per insured depository institution.

8. Conflicts of interest: The FDIC intends to require interested reinsurers to disclose to the FDIC all potential conflicts of interest prior to entering into the participation contract.

9. *Captive insurance companies:* Insured depository institutions may own or control a subsidiary engaged in insurance or reinsurance activities. The FDIC intends to prohibit such "captive" insurance companies from reinsuring affiliated insured depository institutions.

10. *Eligibility:* The FDIC may require the approval of a reinsurer's regulator in order to affirm that the reinsurer is in sound financial condition and authorized by the regulator to engage in reinsurance business. The FDIC is considering establishing certain minimum financial criteria for participating reinsurers such as a minimum capital requirement to be maintained throughout the duration of the Pilot Program. The FDIC is interested in receiving comments concerning whether minimum financial criteria for participating reinsurers are feasible, and, if so, how the appropriate

minimum requirements should be determined.

VII. Issues Related to Eligibility of Insured Depository Institutions To Be Included in the Pilot Reinsurance Program

The FDIC is interested in receiving comments relating to establishing appropriate criteria for eligibility of insured depository institutions to be included in the Pilot Program.

1. *Insured depository institutions:* All insured depository institutions would be eligible for reinsurance, except insured branches of foreign banks. To make the Pilot Program manageable, the FDIC intends to select a limited group of insured institutions for which the FDIC will seek coverage. As discussed earlier, the FDIC is seeking comments on the appropriate manner of limiting the number of insured depository institutions in the Pilot Program.

2. *Depository institution holding companies:* Insured depository institution subsidiaries of a depository institution holding company which meet the criteria that may be established for inclusion in the Pilot Program would be reinsured separately from affiliated insured depository institutions.

By order of the Board of Directors. Dated at Washington, DC this 20th day of April, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–9779 Filed 4–26–93; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3097–EM]

Georgia; Amendment To Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Georgia, (FEMA–3097–EM), dated March 15, 1993, and related determinations.

EFFECTIVE DATE: April 3, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, verbally on April 3, 1993, and in a letter dated April 5, 1993, to former Acting Director William C. Tidball, the President amended the emergency declaration of March 15, 1993, under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Georgia, resulting from severe snowfall and a winter storm on March 13, 1993, and continuing, are of sufficient severity and magnitude to warrant the expansion of the assistance authorized in my declaration of March 15, 1993, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act").

You are authorized under Title V of the Stafford Act to provide reimbursement for debris removal and emergency protective measures in the affected areas, in addition to the assistance for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles, authorized for five days.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

All other conditions specified in the original declaration remain the same.

Please notify the Governor of the State of Georgia and the Federal Coordinating Officer of this amendment to my emergency declaration.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared emergency:

The counties of Banks, Barrow, Bartow, Carroll, Catoosa, Chattooga, Cherokee, Clayton, Cobb, Dade, Dawson, DeKalb, Douglas, Elbert, Forsyth, Franklin, Fulton, Fannin, Floyd, Gilmer, Gordon, Gwinnett, Habersham, Hall, Hart, Haralson, Jackson, Lumpkin, Murray, Paulding, Pickens, Polk, Rabun, Rockdale, Stephens, Towns, Union, White, Whitfield, and Walker for debris removal and emergency protective measures. (Already designated for assistance for required emergency measures for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles).

The counties of Appling, Bacon, Bulloch, Camden, Chatham, Coffee, Glynn, Lowndes, Thomas, Ware, and Wayne for debris removal and emergency protective measures, in addition to the assistance for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles, authorized for five days beginning on March 13.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–9768 Filed 4–26–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Aruba Bonaire Curacao Liner Association; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010950–010.

Title: Aruba Bonaire Curacao Liner Association.

Parties:

Genesis Container Line Ltd.
King Ocean Service de Venezuela S.A.
Kirk Line, Ltd.
Sea-Land Service, Inc.
Crowley American Transport, Inc.

Synopsis: The proposed amendment revises the space chartering provisions to the Agreement.

Dated: April 21, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–9698 Filed 4–26–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Britton & Koontz Capital Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Britton & Koontz Capital Corporation, Natchez, Mississippi; to acquire Natchez First Federal Savings Bank, Natchez, Mississippi, and thereby engage in operating a savings institution pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Mississippi.

Board of Governors of the Federal Reserve System, April 20, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–9755 Filed 4–26–93; 8:45 am]

BILLING CODE 6210–01–F

Centura Banks, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to engage *de novo* through its subsidiary, CFS Venture Corporation, Rocky Mount, North Carolina, in providing data processing and transmission services to bank trust departments and other providers of fiduciary services pursuant to § 225.25(b)(7); and providing consulting services to banks and other depository institutions regarding the management and operation of their trust departments and the design of computer software and systems pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 20, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–9756 Filed 4–26–93; 8:45 am]

BILLING CODE 6210–01–F

Hollandale Capital Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 21, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Hollandale Capital Corporation, Hollandale, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Hollandale, Hollandale, Mississippi.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Twin River Financial Corporation, Lewiston, Idaho; to become a bank holding company by acquiring 100 percent of the voting shares of Twin River National Bank, Lewiston, Idaho.

Board of Governors of the Federal Reserve System, April 20, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–9758 Filed 4–26–93; 8:45 am]

BILLING CODE 6210–01–F

George W. Marti; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set

forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than May 17, 1993.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. George W. Marti, Cleburne, Texas; to acquire 69.67 percent of the voting shares of Community Bank, Cleburne, Texas.

Board of Governors of the Federal Reserve System, April 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–9752 Filed 4–26–93; 8:45 am]

BILLING CODE 6210–01–F

Mobile National Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 21, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Mobile National Corporation, Mobile, Alabama; to merge with South Alabama Bancorporation, Inc., Brewton, Alabama, and thereby indirectly acquire First National Bank of Brewton, Brewton, Alabama.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FEO Investments, Inc., Hoskins, Nebraska; to acquire 100 percent of the voting shares of Elkhorn Valley Bank, Norfolk, Nebraska, a *de novo* bank.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Bancorp of Louisiana, Inc., West Monroe, Louisiana; to acquire 100 percent of the voting shares of Southern National Bank at Tallulah, Tallulah, Louisiana.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. MCB Financial Corporation, San Rafael, California; to become a bank holding company by acquiring 100 percent of the voting shares of Marin Community Bank, National Association, San Rafael, California.

Board of Governors of the Federal Reserve System, April 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–9753 Filed 4–26–93; 8:45 am]

BILLING CODE 6210–01–F

Bruce B. Morgan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 17, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bruce B. Morgan, Kansas City, Missouri; to acquire 25.87 percent; A. Major Hull, as trustee for the A.M. Hull Revocable Trust, Kansas City, Missouri, to acquire 10.78 percent; Winton A. Winter, Jr., Lawrence, Kansas, to acquire 5.99 percent; Peoples Savings, Inc., Ottawa, Kansas, to acquire 4.89 percent; Frank C. Sabatini, IRA, Topeka, Kansas, to acquire 5.92 percent; Sabatini Company, Inc., Pension Plan, Topeka, Kansas, to acquire 4.89 percent; and David O. Smith, Louisburg, Kansas, to acquire 10.82 precent of the voting shares of Valley Bancshares, Inc., Atchison, Kansas, and thereby indirectly acquire Valley State Bank, Atchison, Kansas.

Board of Governors of the Federal Reserve System, April 20, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–9759 Filed 4–26–93; 8:45 am]

BILLING CODE 6210–01–F

NationsBank Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina; to engage *de novo* through NationsBank Capital Markets, Inc., Charlotte, North Carolina, in debt and equity securities underwriting and dealing activities pursuant to Board order. *J.P. Morgan & Co., Inc., The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, and Security Pacific Corporation*, 75 Federal Reserve Bulletin 192 (1989).

Board of Governors of the Federal Reserve System, April 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–9754 Filed 4–26–93; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 03–29–93 AND 04–09–93

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
W.R. Grace & Co., Union Carbide Corporation, UOP	93–0467	03/29/93
W.R. Grace & Co., Allied-Signal Inc., UOP	93–0468	03/29/93
Chiron Corporation, Fujisawa Pharmaceutical Company, Fujisawa Pharmaceuticals, Inc	93–0741	03/29/93
Hanson PLC, The Ray and Nadine Watt Family Trust, Watt/Hancock Homes of Arizona, Inc	93–0749	03/29/93
Minorco, PacifiCorp, Pikes Peak Mining Company	93–0750	03/29/93
The RTZ Corporation PLC, PacifiCorp, NERCO, Inc	93–0751	03/29/93
Cominco Ltd., Cominco Ltd., Cominco Fertilizers Nitrogen Partnership	93–0787	03/29/93
Blockbuster Entertainment Corporation, Spelling Entertainment Group Inc., Spelling Entertainment Group Inc	93–0792	03/29/93
Philip Morris Companies Inc., United Biscuits (Holdings) plc, Callard & Bowser (USA) Inc	93–0793	03/29/93
Georges Marciano, Farah Incorporated, Farah Incorporated	93–0799	03/29/93
Gerald W. Schwartz, Adrian VanderStarre, R.J. Tower Corporation	93–0805	03/29/93
Craig O. McCaw, Craig O. McCaw, Modesto Cellular Partnership	93–0812	03/29/93
Vinten Group plc, Incentive AB, Bogen Photo Corp	93–0815	03/29/93
PepsiCo, Inc., Darrell J. Valenti, Valenti Southeast, Inc. and Bay Food Brokers Inc	93–0816	03/29/93
Fund American Enterprises Holdings, Inc., Zurich Insurance Company, Zurich Reinsurance Centre Holdings, Inc	93–0818	03/29/93
Warburg, Pincus Capital Company, L.P., Richard J. Rice, Long Distance Service of Washington, Inc	93–0821	03/29/93
Healthtrust, Inc.—The Hospital Company, Healthtrust, Inc.—The Hospital Company, Woodland Heights Medical Center. L.P	93–0825	03/29/93
Cardinal Distribution, Inc., Solomons Company, Solomons Company	93–0826	03/29/93
Enron Corp., The Williams Companies, Inc., Louisiana Resources Company, Louisiana Gas	93–0734	03/30/93
Loving Enterprises, Inc., Exxon Corporation, Exxon Corporation	93–0756	03/30/93
Koninklijke Van Ommeren NV, Exxon Corporation, Exxon Corporation	93–0757	03/30/93
Great Lakes Chemical Corporation, Grow Group, Inc., Grow Group (Acqua Chem Division)	93–0784	03/30/93
ERLY Industries Inc., American Rice, Inc., American Rice, Inc	93–0785	03/30/93
Cabot Oil & Gas Corporation, President and Fellows of Harvard College, Harken Anadarko Partners, L.P	93–0790	03/30/93
International Paper Company, Ingram & Company, Ingram & Company	93–0804	03/31/93
Merry-Go-Round Enterprises, Inc., Melville Corporation, Rosedale Chess King, Inc	93–0822	03/31/93
The RTZ Corporation PLC, Sun Company, Inc., Cordero Mining Co	93–0758	04/01/93
Cross Timbers Oil Company, L.P., Royal Dutch Petroleum Company, Shell Oil Company	93–0811	04/02/93
Horizon Cellular Telephone Company, L.P., ACC Corp., Danbury Cellular Telephone Co.	93–0835	04/02/93
FS Equity Partners 11, L.P., EnviroSource, Inc., EnviroSource, Inc	93–0837	04/02/93
Hoechst AG, Publicker Industries Inc., American Cryogas Industries, Inc	93–0782	04/07/93
American Express Company, Atlantic States Bankcard Association, Inc., Atlantic States Bankcard Association, Inc	93–0808	04/07/93
United Meridian Corporation, Saratoga Partners, L.P., Norfolk Holdings, Inc	93–0824	04/07/93
CS Holding, Swiss Volksbank, Swiss Volksbank	93–0830	04/07/93
American Financial Corporation, Robert Dyson, Leader National Insurance Company	93–0841	04/07/93
Allied Clinical Laboratories, Inc., Washoe Health Systems, Inc., Sierra Nevada Laboratories, Inc	93–0783	04/09/93
Gerald W. Schwartz, Alberto Ardissone, ASAA International, Inc., N.V	93–0802	04/09/93
Leandro P. Rizzuto, Southwestern Bell Corporation, Southwestern Bell Telecommunications, Inc	93–0834	04/09/93
American Greetings Corporation, Morton Nyman, Al Nyman & Son, Inc	93–0854	04/09/93
The Community Mutual Insurance Company, Phoenix Home Life Mutual Insurance Company, Home Life Financial Assurance Corporation	93–0859	04/09/93

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 03-29-93 AND 04-09-93—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Rival Company, Odyssey Partners, L.P., Pollenex Corporation	93-0865	04/09/93
Universal Foods Corporation, ACX Technologies, Inc., ZeaGen, Inc	93-0871	04/09/93
John Hancock Mutual Life Insurance Company, Leucadia National Corporation, Colonial Penn Annuity and Life Insurance Company	93-0873	04/09/93

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay
or
Renee A. Horton, Contact Representatives
Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-9776 Filed 4-26-93; 8:45 am]
BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletins FTR 6, Supplement 4 and FTR 7, Supplement 3]

Federal Travel Regulation; Reimbursement for Actual Subsistence Expenses in Presidentially Declared Disaster Areas of Florida

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of bulletins.

SUMMARY: The attached bulletins inform agencies of a modification to, and the extension for an additional 30-day period of, the special actual subsistence expense ceiling for official travel to certain Florida localities designated Presidentially declared disaster areas as a result of Hurricane Andrew.

EFFECTIVE DATES: The extended period applies to official travel performed during April 21, 1993 through May 20, 1993.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703-305-5745.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301-8.3(c) and at the official request of the Acting Director of the Federal Emergency Management Agency (FEMA), has extended for an additional 30 days the period during which agencies may approve a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to any one of the Presidentially declared disaster areas in Florida named in GSA Bulletins FTR 6 and 7. During this period agencies may approve actual and necessary subsistence expense reimbursement for lodging only not to exceed 300 percent of the lodging portion of the applicable maximum locality per diem rate. The attached GSA Bulletin FTR 6, Supplement 4 and GSA Bulletin FTR 7, Supplement 3 are issued to extend the effective dates for these four Florida counties.

Dated: April 20, 1993.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

2 Attachments

ATTACHMENT 1

[GSA Bulletin 6, Supplement 4]

April 20, 1993

To: Heads of Federal agencies

Subject: Reimbursement for actual subsistence expenses in Presidentially declared disaster areas of Florida.

1. *Purpose.* This supplement informs agencies of a modification to, and the extension for an additional 30-day period of, the special actual subsistence expense ceiling described in GSA Bulletin FTR 6 (57 FR 40466, Sept. 3, 1992), as extended by Supplement 1 (57 FR 44751, Sept. 29, 1992), Supplement 2 (57 FR 54793, Nov. 20, 1992), and Supplement 3 (58 FR 5730, Jan. 22, 1993) for official travel to certain Florida localities designated Presidentially declared disaster areas as a result of Hurricane Andrew.

2. *Explanation of change.* The Administrator of General Services, pursuant to 41 CFR 301-8.3(c) and at the official request of the Acting Director of the Federal Emergency Management Agency (FEMA), has extended for an additional 30 days the period during which agencies may approve, in accordance with paragraph 3 of GSA Bulletin FTR 6, a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to a Presidentially declared disaster area in Florida named in paragraph 4 of GSA Bulletin FTR 6. For Florida counties named in GSA Bulletin FTR 6, the extended period covers April 21, 1993 through May 20, 1993. During this period agencies may approve actual and necessary subsistence expense reimbursement for *lodging only* not to exceed 300 percent of the lodging portion of the applicable maximum locality per diem rate.

3. *Expiration date.* This supplement expires on August 31, 1993.

4. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703-305-5745.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

ATTACHMENT 2

[GSA Bulletin FTR 7, Supplement 3]

April 20, 1993

To: Heads of Federal agencies

Subject: Reimbursement for actual subsistence expenses in Presidentially declared Florida disaster area.

1. *Purpose.* This supplement informs agencies of a modification to, and the extension for an additional 30-day period of, the special actual subsistence expense ceiling described in GSA Bulletin FTR 7 (57 FR 44751, Sept. 29, 1992), as extended by Supplement 1 (57 FR 54793, Nov. 20, 1992) and Supplement 2 (58 FR 5730, Jan. 22, 1993) for official travel to Collier County, Florida, designated a Presidentially declared disaster area as a result of Hurricane Andrew.

2. *Explanation of change.* The Administrator of General Services, pursuant to 41 CFR 301-8.3(c) and at the official request of the Acting Director of the Federal Emergency Management Agency (FEMA), has extended for an additional 30 days the period during which agencies may approve, in accordance with paragraph 3 of GSA Bulletin FTR 7, a higher maximum daily rate for the reimbursement of actual subsistence

expenses of Federal employees on official travel to the Presidentially declared disaster area of Collier County, Florida named in paragraph 4 of GSA Bulletin FTR 7. For Collier County, Florida the extended period covers April 21, 1993 through May 20, 1993. During this period agencies may approve actual and necessary subsistence expense reimbursement for *lodging only* not to exceed 300 percent of the lodging portion of the applicable maximum locality per diem rate.

3. *Expiration date.* This supplement expires on August 31, 1993.

4. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 93–9720 Filed 4–26–93; 8:45 am]

BILLING CODE 6820–24–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Solicitation of Nominations for Membership on the U.S. Advisory Board on Child Abuse and Neglect

Purpose

Pursuant to the terms of the Child Abuse Prevention and Treatment Act (the Act), the Department of Health and Human Services is soliciting nominations for seven vacancies (seats) on the U.S. Advisory Board on Child Abuse and Neglect (the Board).

Membership

The Board consists of 15 members appointed by the Secretary of Health and Human Services (the Secretary). Thirteen are appointed from the general public and two from the Federal Government. In making all 15 appointments, the Secretary is required by the Act to ensure that ethnic and racial minorities and diverse geographic areas are represented.

All 15 persons appointed must possess general knowledge about child maltreatment (i.e., policy; prevention; intervention; treatment; and research). In addition, among the 13 members from the general public, each of 11 must represent one of the following areas:

- The legal aspects of child maltreatment;
- The psychological aspects;
- The social services aspects;
- The medical aspects;
- The role of State and local government in the prevention and treatment of child abuse and neglect;
- The role of organizations providing services to disabled persons;
- The role of organization providing services to adolescents;
- The role of elementary and secondary school teaching;
- The role of parent self-help organizations;
- The role of parent's groups; and
- The role of voluntary groups.

In order to qualify for selection as such a representative, each individual must possess specific knowledge in the area which he/she represents.

Responsibilities and Duties

Among the responsibilities the Act requires the Board to perform is the preparation of an annual report to the Secretary of Health and Human Services, appropriate committees of the Congress, and the Director of the National Center on Child Abuse and Neglect. In addition, the Board holds hearings, conducts symposia, and issues position papers.

In its annual reports, the Board is charged with evaluating the nation's efforts to accomplish the purposes of CAPTA and developing recommendations about ways that those efforts can be improved. The 1990 report of the Board is entitled, Child Abuse and Neglect: Critical First Steps in Response to a National Emergency; the 1991 report, Creating caring communities: Blueprint for an Effective Federal Policy on Child Abuse and Neglect; and the 1992 report, The Continuing Child Protection Emergency: A Challenge to the Nation.

The Board usually meets three times each year, and, occasionally, four times. Meetings last three to four days. Between meetings, much of its work is accomplished by conference call. Service on the Board is extremely demanding of both time and effort.

Duties of Board members are:

- To serve as the Board authority in one or more areas of expertise, keeping current on developments in those areas;
- To be conversant with the extensive array of background information provided to members prior to meetings and conference calls;
- To attend meetings;
- To participate in conference calls;
- To suggest materials to staff for distribution as background information;
- To author portions of Board publications;
- To edit Board publications; and
- To avoid all possible conflicts of interest between Board membership and non-Board activities.

Terms of Office

The length of the terms to which persons from the general public are appointed is a maximum of four years. When an appointment is made to replace a member who has resigned before the end of his/her term, the term of the newly appointed member will expire on the date on which the original appointment would have expired. Once appointed, a person from the general public may be reappointed to one additional term at the discretion of the Secretary.

Nomination

The Department is soliciting nominations for the seven seats to be occupied by members possessing specific expertise in:

- The legal aspects of child maltreatment;
- The psychological aspects;
- The medical aspects;
- The role of organizations providing services to disabled persons;
- The role of organizations providing services to adolescents;
- The role of parent self-help organizations; and
- The role of parents' groups.

Two of the seven seats to be filled are or will be vacant as a result of resignations. The term of the seat for the person with expertise in the psychological aspects of child maltreatment will expire on May 29, 1995. The term of the seat for the person with expertise in the role of parents' groups in the prevention and treatment of child abuse and neglect will expire on May 29, 1996. The terms of the other five seats will expire on May 29, 1997.

Nominations may be made for one's self or for someone else. The same individual may be nominated for a seat in more than one category. Nominations should be made in the form of a letter which indicates the seat or seats for which the nominee is being nominated and provides information about the qualifications for office of the nominee. A current curriculum vita for the nominee should be attached to the letter. (If the nominee is not the person submitting the nomination, a letter from the nominee indicating a willingness to serve should be attached). All nominations will be evaluated. To assist in that evaluation, persons submitting nominations may wish to provide the following kinds of information about the nominee's qualifications:

- What general knowledge about child maltreatment (i.e., policy;

prevention; intervention; treatment; and research) does the nominee possess and how has he/she gained that knowledge?

• What specific knowledge does the nominee possess about the aspect of child maltreatment which he/she is being nominated to represent on the Board and how has he/she gained that knowledge? (If the individual is being nominated for more than one seat, separate answers should be provided setting forth the individual's specific knowledge in connection with each seat).

• What materials has the nominee authored, what presentations has he/she made, what meetings has he/she planned, et cetera, which shed light on both the general and/or specific knowledge of the nominee?

• What skills does the nominee possess which will allow him/her to contribute substantially to the conduct of Board business and what highlights and achievements in the nominee's career shed light on such skills?

• Does the nominee possess other abilities which are relevant to his/her appointment to the Board?

• Will the nominee's schedule permit him/her to devote a significant segment of time to Board activities?

• Is the nominee's ethnic or racial background that of an American Indian or Alaskan Native, Asian or Pacific Islander, African-American, or Hispanic?

Each letter of nomination should be accompanied by at least one but no more than three letters of reference attesting to the nominee's qualifications for office. Authors of reference letters may include but are not limited to: Elected officials (Federal, State, or local); persons in the field of child maltreatment; and persons in the subject area of the seat being sought.

The Secretary will select the seven persons to be named to the Board from among those individuals either who are nominated in response to this announcement or who are otherwise qualified to serve. After the Secretary reaches a decision, those persons selected to serve will receive a letter of invitation. Service will begin on September 24, 1993 with the new members in attendance as invited observers during the fifteenth Board meeting on September 21–23, 1993.

Nomination packages (letter of nomination; attachment(s); and accompanying letter(s) of reference) must be postmarked no later than May 21, 1993. Packages received with a postmark later than May 21, 1993 will not be considered.

Nominations should be sent to the: U.S. Advisory Board on Child Abuse and Neglect, room 303–D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Contact person for more information: Marilyn J. Gosdeck, Special Projects Specialist, U.S. Advisory Board on Child Abuse and Neglect, Room 303–D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Telephone: (202) 690–8604.

Dated: April 20, 1993.

Preston Bruce,

Acting Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 93–9792 Filed 4–26–93; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 93N–0019]

TPC Products, Inc.; Proposal to Withdraw Approval of New Animal Drug Applications; Opportunity for Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing an opportunity for hearing on a proposal to withdraw approval of three new animal drug applications (NADA's) because the applicant, TPC Products, Inc., has failed to submit required annual reports.

DATES: Requests for hearing, including data, information, and analyses relied on to justify a hearing are to be submitted by May 27, 1993.

ADDRESSES: Requests for hearing in response to this notice should be identified with Docket No. 93N–0019 and sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8722.

SUPPLEMENTARY INFORMATION: An applicant is required to report periodically to FDA concerning each of its approved NADA's in accordance with 21 CFR 510.300. TPC Products, Inc., P.O. Box 4308, 2021 North Grove St., Fort Worth, TX 76106 (last known address), previously (pre-1982) known as Texas Phenothiazine Co., holds three approved NADA's: (1) NADA 3808 for the use of phenothiazine drench in cattle, (2) NADA 5224 for the use of phenothiazine and lead arsenate drench in sheep and goats, and (3) NADA 13–685 for the use of trichlorfon and phenothiazine as a parasitacide in horses. TPC Products, Inc., has not submitted annual reports for the NADA's held by the firm and has not responded to the agency's requests by certified mail for submission of these reports.

Therefore, notice is given to TPC Products, Inc., and to all other interested persons that the Director, Center for Veterinary Medicine, proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)) withdrawing approval of the NADA's and all amendments and supplements thereto on the ground that the applicant has failed to submit the reports required under 21 CFR 510.300. Upon withdrawal of NADA 13–685, the corresponding regulation (21 CFR 520.2520h) will be revoked.

In accordance with section 512 of the act and the regulations promulgated under it (21 CFR parts 510 and 514), the applicant is hereby given an opportunity for a hearing to show why approval of the NADA's should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products named above.

An applicant who decides to seek a hearing shall file on or before May 27, 1993, a written notice of appearance and request for hearing, including data, information, and analyses relied on to justify a hearing as specified in 21 CFR 514.200.

The failure of an applicant to file a timely written notice of appearance and request for hearing as required by 21 CFR 514.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the action proposed for the drug product and constitutes a waiver of any contentions about the legal status of the drug product. The drug product may not thereafter lawfully be marketed, and FDA will begin appropriate regulatory action to remove it from the market. Any new animal drug product marketed without an approved NADA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that justifies a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accordance with 21 CFR 510.300. If the submission is not complete or if a request for hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs will enter summary

judgment against the person(s) who requests a hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice must be filed in two copies. Except for information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 512(e) (21 U.S.C. 360b(e))) and under authority delegated to the Director, Center for Veterinary Medicine (21 CFR 5.84).

Dated: April 20, 1993.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 93–9778 Filed 4–26–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below have potential uses in the treatment or diagnosis of cancer, as well as in other health care fields. The inventions are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Ms. Marjorie D. Hunter, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidentiality Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

05/895,082 . Anti-Neoplastic 4,4-Bis-(Substituted Aminoalkyl Amino)-Anthraquinones.

05/928,252 . 7-0(2,6-Dideoxy-a-L-Lyxo-Hexopyranosyl)-Daunomycinone, Desmethoxy Daunomycinone Adriamycinone and Carminomycinone (U.S. Patent No. 4,201,773).

06/050,100 . Anti-Neoplastic 1,4-Bis-(Substituted Aminoalkyl Amino)-Anthraquinones (U.S. Patent No. 4,310,666).

06/180,373 . Nitroimidazoles of Low Toxicity and High Activity as Radiosensitizers of Hypoxic Tumor Cells (U.S. Patent No. 4,371,540).

06/182,632 . Method for Producing 3,6-Bis(Carboethoxcyamino)-2,5-Diaziridinyl 1,4-Benzoquinone (U.S. Patent No. 4,337,196).

06/243,775 . Synthesis of Ethyl-4(3'-Methoxypenyl)-1-Methyl Piperdine-3-Carboxylate (U.S. Patent No. 4,435,572).

06/294,368 . Process for the Production of 2-B-D-Robofuranosylthiazole-4-Carboxamide (U.S. Patent No. 4,451,648).

06/317,056 . 5-Iminodoxorubicin (U.S. Patent No. 4,353,894).

06/341,123 . Carbamate Compounds (U.S. Patent No. 4,686,304).

06/408,942 . 2-halo Derivatives of Daunomycin, Desmethoxy Daunomycin, Adriamycin, and Carminomycin (U.S. Patent No. 4,427,664).

06/468,950 . 2',5'-Riboadenylate-Morpholinoadenylate Nucleotides (U.S. Patent No. 4,515,781).

06/906,353 . Leukoregulin, An Antitumor Lymphokine, and Its Therapeutic Uses (U.S. Patent No. 4,849,506.

07/069,867 . Anti-Human Ovarian Cancer Immunotoxins and Methods of Use Thereof (U.S. Patent No. 4,958,009).

07/182,222 . Flavone 8-Acetic Acid and Interleukin-2 for Cancer Therapy (U.S. Patent No. 5,096,707).

07/279,186 . Acylaminoalkylpyridine- amides as Inhibitors of Metastasis (U.S. Patent No. 5,030,642).

07/281,951 . Monoclonal Antibody Specific for Bombesin (U.S. Patent No. 5,109,115).

07/289,723 . Method and Kit for Detecting Human Exposure to Genotoxic Agents (U.S. Patent No. 5,096,808).

07/355,744 . Therapeutic Application of an Anti-Invasive Compound (U.S. Patent No. 5,132,315).

07/360,363 . Platinum Complexes Derived From B-Silyamines.

07/437,819 . SCL Gene, and a Hematopoietic Growth and Differentiation Factor Encoded Thereby (U.S. Patent No. 5,132,212).

07/539,287 . Method of Administering Suramin Sodium in the Treatment of Cancers.

07/556,420 . The PDQ Cancer Treatment Information System.

07/649,182 . Cancer Therapy Using Interleukin-2 and Flavone Compounds (U.S. Patent No. 5,126,129).

07/655,502 . Non-Mitogenic Competitive HGF Antagonist.

07/695,004 . Human SCLC Autocrine Growth Factors and Monoclonal Antibody Blocking the Same.

07/695,024 . Recombinant Virus Expressing Human Carcinoembryonic Antigen and Methods of Use Thereof.

07/764,695 . Oncoimmunins.

07/767,331 . Recombinant Immunotoxin.

07/770,026 . Blockage of Cell Adhesion Molecules.

07/775,081 . Method of Diagnosing Cancer Susceptibility or Metastatic Potential.

07/789,652 . Method for Quantitatively Measuring Collagenase.

07/822,042 . Blockage of Cell Adhesion Molecules.

07/822,043 . Autotaxin: Motility Stimulating Protein Useful in Cancer Diagnosis and Therapy.

07/826,470 . SCL Gene, and A Hematopoietic Growth and Differentiation Factor Encoded Thereby.

07/827,043 . AAMP–1.

07/835,637 . Novel Antitumor Compound Compositions and Method of Use.

07/869,933 . Isolation, Characterization, and Use of the Human B Subunit of the High Affinity Receptor for Immunoglobulin E.

07/875,438 . 06-Substituted Guanine Derivatives Possessing 06-Alkylguanine-DNA Alkyltransferase Depleting Activity for Use in Enhancing the Therapeutic Effectiveness of Chemotherapeutic Alkylating Agents.

07/877,523 . Phosphorothioate Derivatives of Cyclic AMP Analogues.

07/879,649 . Recombinant Virus Expressing Human Carcinoembryonic Antigen and Methods of Use Thereof.

07/880,525 . Method for Designing Cancer Treatment Regimens and Methods and Pharmaceutical Compositions for the Treatment of Cancer.

07/882,223 . Use of Inhibitors of 3-Hydroxy-3-Methylglutaryl Coenzyme A Reductase as a Modality in Cancer Therapy.
07/888,292 . Use of Purinergic Receptor Agonists as Antineoplastic Agents.
07/894,891 . Signal Transduction Inhibitor Compounds.
07/901,261 . A Method for the Treatment of Cancer by Use of the Cooper Complex of S-(Methylthio)-DL-Homocysteine or the L-Enantiomorph Thereof.
07/903,588 . MET Expression is a Prognostic Indicator in Human Breast Cancer Progression.
07/914,630 . Hepatic Growth Factor Receptor is the MET Proto-Oncogene.
07/916,250 . Tumoricidal Activity of Benzoquinonoid Ansamycins Against Prostate Cancer and Other Primitive Neural Malignancies.
07/925,762 . 7,8-Dihydroxy-Isoquinoline-3-Carboxylates as Protein Kinase Inhibitors.
07/946,061 . MET Functions in Alteration of Cell-to-Cell Interactions Scatter Factor/HGF.
07/949,266 . Human MU-Crystallin: A Novel Protein Expressed in Human Retina.
07/952,796 . DNA Clones for the Expression of Pigment Epithelium Derived Factor and Related Proteins.

Dated: April 13, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–9713 Filed 4–26–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, June 7–8, 1993. The meeting will be held in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland. The meeting of the Subcommittee on Planning will be held on June 7 in Building 31, Room 2A03.

The Council meeting will be open to the public on June 7 from 9:30 a.m. until 5 p.m. The agenda includes a report by the Director, NICHD, an overview of the Method to Extend Research in Time (MERIT) Award mechanism, and a report by the Division of Epidemiology, Statistics, and Prevention Research, NICHD. The meeting will be open on June 8 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on June 7 from 8 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the full Council will be closed to the public on June 8 from 8 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NICHD, 6100 Executive Boulevard, room 5E03, National Institute of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research, and 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: April 20, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–9712 Filed 4–26–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Public Law 92–463, notice is hereby given of meetings of committees of the National Institute of Neurological Disorders and Stroke (NINDS). These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice.

The Council meeting will be open to the public on June 3, 1993, as listed below. The agenda includes a report by the Director, NINDS, a report by the Special Assistant for Extramural Activities, NINDS, and a scientific presentation by an NINDS grantee. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary or the Scientific Review Administrator listed for the meeting.

Name of Committee: The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council.

Date: June 2, 1993.

Place: National Institutes of Health, Bldg. 31, Conference room 8A28, 9000 Rockville Pike, Bethesda, MD 20892.

Open: 1 p.m.–3 p.m.

Closed: 3 p.m.—recess.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Dates: June 3–4, 1993.

Place: National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Open: June 3, 9 a.m.–1 p.m.

Closed: June 3, 1 p.m.—recess; June 4, 8:30 a.m.—adjournment.

Executive Secretary: Constance W. Atwell, Ph.D., Special Assistant for Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9248.

Name of Committee: Neurological Disorders Program Project Review A Committee.

Dates: June 16, 17 & 18, 1993.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: June 16, 1993, 7:30 p.m.–8 p.m.

Closed: June 16, 8 p.m.—recess, June 17, 1993, 8:30 a.m.—recess, June 18, 8:30 a.m.—adjournment.

Scientific Review Administrator: Dr. Katherine Woodbury, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223.

Name of Committee: Training Grant and Career Development Review Committee.

Dates: June 17, 18, 1993.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: June 17, 8 a.m.–8:30 a.m.

Closed: June 17, 8:30—recess, June 18, 8 a.m.—adjournment.

Scientific Review Administrator: Dr. Herbert Yellin, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Dates: June 24–26, 1993.

Place: Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Open: June 24, 7 p.m.–7:30 p.m.

Closed: June 24, 7:30 p.m.—recess, June 25, 8:30 a.m.—recess, June 26, 8:30 a.m.—adjournment.

Scientific Review Administrator: Dr. Paul Sheehy, Federal Building, room 9C–10, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: April 20, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–9714 Filed 4–26–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–03–4332–03]

Battle Mountain District Advisory Council Meeting in Battle Mountain, NV

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and CFR part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on May 19 and 20, 1993. The meeting will begin on May 19 at 2:15 p.m. at the Battle Mountain District Office. The afternoon will include a tour of the newly constructed District Office. The meeting will reconvene at 8 a.m. on May 20. The agenda will include: An address by the State Director; budget, position management, and program emphasis update; mine shaft hazard abatement; commercial OHV recreational events on public lands; issues concerning Austin Grazing Allotment.

The meeting is open to the public. Interested persons may make statements beginning at 11:30 a.m. If you wish to make an oral statement, please contact James D. Currivan by May 14, 1993.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain, Nevada, 89820 or phone (702) 635–4000.

Dated: April 15, 1993.

James D. Currivan,

District Manager, Battle Mountain District.

[FR Doc. 93–9696 Filed 4–26–93; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–920–03–4212–13; AZA 22643]

Arizona, Exchange of Public and Private Lands; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction, notice of issuance of exchange documents.

SUMMARY: On March 17, 1993, a notice of issuance of exchange documents was published in 58 FR 14421. In the 2d paragraph under **SUPPLEMENTARY INFORMATION,** the number of acres conveyed by Mr. Menges to the United States is 160.00 (not 548.64). The correct acreage was given in the **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Evelyn Stob, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 650–0353.

Mary Jo Yeas,

Chief, Branch of Lands Operations.

[FR Doc. 93–9731 Filed 4–26–92; 8:45 am]

BILLING CODE 4310–84–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–381]

T & P Railway Abandonment—In Shawnee, Jefferson and Atchison Counties, KS

AGENCY: Interstate [1] Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts, under 49 U.S.C. 10505, from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by T And P Railway, Inc. of its 41-mile line between Topeka and Parnell, KS, subject to environmental, historic preservation, and public use conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 27, 1993. Formal expressions of intent to file an offer [2] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 7, 1993, petitions to stay must be filed by May 12, 1993, and petitions to reopen must be filed by May 24, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–381 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Fritz R. Kahn, Suite 700, The McPherson Building, 901 15th Street, NW, Washington, DC 20005–2301.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: April 8, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–9800 Filed 4–26–93; 8:45 am]

BILLING CODE 7032–01–P

[1] This decision includes Docket No. AB–381 (Sub-No. 1X), T And P Railway—Abandonment Exemption—In Shawnee, Jefferson, and Atchison Counties, KS.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d (1987).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA

In accordance with section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), as well as Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Amendment to Consent

Decree in *United States* v. *Harris Corporation*, No. 91–624–CIV–ORL–19, was lodged with the United States District Court for the Middle District of Florida on April 15, 1993. Under this amendment, the definition of Operable Unit #1 ("OU #1") under the Consent Decree entered by the Court on October 25, 1991, is changed to include additional property at the Harris Corporation Superfund Site ("Site") located in Palm Bay, Brevard County, Florida.

Under a remedial action plan for the Site, approved by the State of Florida under a state consent order, Harris is to expand the existing on-site groundwater withdrawal and treatment system to include additional Site property known as the Building #100 property. The proposed amendment to the Consent Decree adopts these changes and requires Harris to expand the current groundwater extraction and treatment system to include the Building #100 property.

The Department of Justice will receive for a period of (30) days from the date of this publication, comments relating to the proposed Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Harris Corporation*, *DOJ* #90–11–3–620.

The Amendment to Consent Decree may be examined at the offices of the United States Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, and at the Consent Decree Library, 1120 G Street, NW. 4th Floor, Washington, DC (20005), 202–624–0892. A copy of the proposed Amendment to Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005). In requesting a copy, please enclose a check in the amount of $1.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–9703 Filed 4–26–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (IPACT–I)

Notice is hereby given that, on January 14, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a ("IPACT–I"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

As of November 12, 1992, Schering-Plough Corporation's membership in IPACT–I ended. No other changes have been made in the membership, objectives, or planned activities of IPACT–I.

On August 7, 1990, IPACT–I filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 6, 1990 (55 FR 36710).

The last notification was filed with the Department on February 28, 1992, identifying changes in its membership. A notice was published in the **Federal Register** on May 5, 1992 (57 FR 19310).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–9704 Filed 4–26–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II)

Notice is hereby given that, on January 14, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 ("IPACT–II"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

As of November 12, 1992, Schering-Plough Corporation's membership in IPACT–II ended. No other changes have been made in the membership, objectives, or planned activities of IPACT–II.

On February 21, 1992, IPACT–II filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 2, 1991 (56 FR 13489).

The last notification was filed with the Department on February 7, 1992, identifying changes in its membership. A notice was published in the **Federal Register** on March 11, 1992 (57 FR 8675).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–9705 Filed 4–26–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,804]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Anadrill (a division of Schlumberger Technology Corporation) a/k/a The Analysts, Inc., headquartered in Sugarland, Texas and operating out of the following locations:

TA–W–27,804A	Anchorage, AK
TA–W–27,804B	Bakersfield, CA
TA–W–27,804C	Houma, LA
TA–W–27,804D	Lafayette, LA
TA–W–27,804E	New Orleans, LA
TA–W–27,804F	Hobbs, NM
TA–W–27,804G	Williston, ND
TA–W–27,804H	Oklahoma City, OK
TA–W–27,804I	Alice, TX
TA–W–27,804J	Kilgore, TX
TA–W–27,804K	Houston, TX
TA–W–27,804L	Odessa, TX
TA–W–27,804M	Casper, WY

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 25, 1992, applicable to the workers of the subject firm.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the claimants' wages were paid under a predecessor unemployment insurance (UI) account number bearing the name: The Analysts, Inc.

Accordingly, the Department is amending the certification to properly reflect the correct UI tax status for the above certified worker group.

The amended notice applicable to TA–W–27,804 is hereby issued as follows:

All workers engaged in employment related to exploration and drilling at Anadrill, a Division of Schlumberger Technology Corporation, also known as (a/k/a) The Analysts, Inc., headquartered in Sugarland, Texas (TA–W–27,804) and operating out of the below cited locations who became totally or partially separated from employment on or after August 28, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–27,804A Anchorage, AK
TA–W–27,804B Bakersfield, CA
TA–W–27,804C Houma, LA
TA–W–27,804D Lafayette, LA
TA–W–27,804E New Orleans, LA
TA–W–27,804F Hobbs, NM
TA–W–27,804G Williston, ND
TA–W–27,804H Oklahoma City, OK
TA–W–27,804I Alice, TX
TA–W–27,804J Kilgore, TX
TA–W–27,804K Houston, TX
TA–W–27,804L Odessa, TX
TA–W–27,804M Casper, WY

Signed at Washington, DC, this 19th day of April 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–9787 Filed 4–26–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,078]

Beaver Dam Products, Beaver Dam, WI; Negative Determination on Reconsideration

On April 7, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Beaver Dam Products in Beaver Dam, Wisconsin. This notice was published in the **Federal Register** on April 16, 1993 (58 FR 19846).

Investigation findings show that the Beaver Dam Products is a subsidiary of the Chrysler Corporation. The workers produce automotive components for Chrysler cars. All of Beaver Dam's auto component production in 1991 and 1992 went to Chrysler's assembly plant at Belvidere, Illinois where they are used in the production of automobiles.

The union states that Canadian components have replaced those of Beaver Dam's because Chrysler's New Yorker and 5th Avenue cars formerly produced at Belvidere are now being assembled in Canada and imported into the U.S.

In order for component workers to be certified for trade adjustment assistance there must be increased imports of articles like or directly competitive to the component produced at the worker's firm which contributed importantly to decreased employment, sales or production. Since there are no company imports of Beaver Dam's components, the only way the workers can be certified is if there was a reduced demand for their production by a parent or controlling firm which produces an article and whose workers are independently certified for trade adjustment assistance and the reduced demand for the components must relate directly to the decreased employment, sales and/or production at Beaver Dam. These conditions have not been met. There are no Chrysler plants producing the New Yorker or 5th Avenue cars which have workers who are currently under a worker group certification.

Findings on reconsideration show that Chrysler will not need Beaver Dam's production in the 1994 model year (MY) because of the introduction of new models. A new model called the Neon will go into production at Belvidere in September, 1993 for which Belvidere will produce its own components. Production of the New Yorker is being transferred to Canada. The 94MY New Yorker is a different car from its 93 model counterpart. The 94 model is built on a different chassis requiring different components. Other findings show that the production of the 5th Avenue is being discontinued at the end of the 93MY.

Conclusion

After reconsideration, I affirm the original notice of negative determination to apply for adjustment assistance to workers and former workers of Beaver Dam Products in Beaver Dam, Wisconsin.

Signed at Washington, DC, this 16th day of April 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–9788 Filed 4–26–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,286]

Cox Exploration Co., Corpus Christi and Dallas, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Cox Exploration Company, Corpus Christi, Texas and Dallas, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued:

Signed at Washington, DC this 19th day of April, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93–9789 Filed 4–26–93; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Koch Gathering Systems et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than May 7, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 12th day of April, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles producted
Koch Gathering Systems (Wkrs)	Wichita, KS	04/12/93	04/01/93	28,531	Gathers natural gas.
'Totes', Inc, Distribution Cnt (Wkrs)	Lancaster, PA	04/12/93	04/02/93	28,532	Distribution center.
TRW Vehicle Safety Systems (UAW)	Washington, MI	04/12/93	04/01/93	28,533	Seat belt components.
University of Oklahoma FAA/ATC Div (Wkrs).	Oklahoma City, OK	04/12/93	03/24/93	28,534	Air traffic control training center.
Thomson Co (Co)	Gibson, GA	04/12/93	03/29/93	28,535	Men's and boys' slacks.
Shenango, Inc (Wkrs)	Sharpsville, PA	04/12/93	03/30/93	28,536	Ingot molds and stools.
Pierce Corp (Wkrs)	Eugene, OR	04/12/93	03/24/93	28,537	Irrigation systems.
Outokumpu Copper (USWA)	Kenosha, WI	04/12/93	03/26/93	28,538	Copper alloy products.
Apparel Service Industries (Wkrs)	Hialeah Gardens, FL.	04/12/93	03/30/93	28,539	Women's apparel.
South Buffalo Railroad (Wkrs)	Lackawanna, NY	04/12/93	03/29/93	28,540	Railroad maintenance.
Cable Electric Products, Inc (Co)	Providence, RI	04/12/93	03/30/93	28,541	Electric lights.
Hamilton Digital Controls, Inc (Wkrs)	Utica, NY	04/12/93	04/01/93	28,542	Magnetic tape heads.
Planters/Lifesavers Co (BCTW)	Amsterdam, NY	04/12/93	03/22/93	28,543	Packaging equipment.
NERCO Minerals Co (Co)	Portland, OR	04/12/93	03/30/93	28,544	Precious metals.
NERCO, Inc (Co)	Portland, OR	04/12/93	03/31/93	28,545	Oil, gas, precious metals and coal.
OSRAM Sylvania (Wkrs)	Wellsboro, PA	04/12/93	03/31/93	28,546	Ceramic floor tiles.
3M Telecom Resources Division (Co)	Eatontown, NJ	04/12/93	04/07/93	28,547	Fiber optic cables and connectors.
Crown Cork & Seal Co., Inc (SMW)	North Bergen, NJ	04/12/93	03/26/93	28,548	Metal cans.
Conner Fence, Inc (Wkrs)	Odessa, TX	04/12/93	03/18/93	28,549	Chainlink fencing.
Bolen Leather Products (Wkrs)	Springfield, TN	04/12/93	03/22/93	28,550	Leather pouches and aprons.
Alta Products (Wkrs)	Williamsport, PA	04/12/93	03/29/93	28,551	Bedroom slippers.
Act II, dba Arctic Coiled Tubing (Co)	Anchorage, AK	04/12/93	03/29/93	28,552	Downhole oil services.
NERCO Coal Corp (Co)	Portland, OR	04/12/93	03/31/93	28,553	Coal.
Smith Energy Services (Co)	Farmington, NM	04/12/93	03/31/93	28,554	Oil services.
Smith Energy Services (Co)	Midland, TX	04/12/93	03/31/93	28,555	Oil services.
Smith Energy Services (Co)	Longmont, CO	04/12/93	03/31/93	28,556	Oil services.
Smith Energy Services (Co)	Vernal, UT	04/12/93	03/31/93	28,557	Oil services.
Smith Energy Services (Co)	Casper, WY	04/12/93	03/31/93	28,558	Oil services.
Smith Energy Services (Co)	Denver, CO	04/12/93	03/31/93	28,559	Oil services.
Smith Energy Services (Co)	Houston, TX	04/12/93	03/31/93	28,560	Oil services.

[FR Doc. 93–9790 Filed 4–26–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,173]

Texaco Exploration and Production, Inc., Midland Division (West Texas), Midland, TX; Revised Determination on Reconsideration

On April 16, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Texaco Exploration and Production, Inc., Midland Division, Midland, Texas. This notice will soon be published in the Federal Register.

The company claims that the Department was inconsistent in its determinations by certifying the workers at Texaco Exploration and Production in Velma, Oklahoma (TA–W–28,249) and denying the workers at Texaco Exploration and Production in Midland, Texas.

The investigation files show that a predominant portion of the crude oil and natural gas produced by Midland is sold internally.

The findings also show that the production of both crude oil and natural gas at Midland decreased in 1991 compared to 1990 and in the first 10 months of 1992 compared to the same period in 1991. Significant worker separations began in 1992 and will continue into 1993.

Findings on reconsideration show increased company imports of crude oil in 1991 compared to 1990 and in the first 10 months of 1992 compared to the same period in 1991.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil and natural gas produced at the Midland Division of Texaco Exploration and Production, Inc., in Midland, Texas contributed importantly to the decline in sales or production and to the total or partial separation of workers at Texaco Exploration and Production, Inc. in Midland, Texas. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Texaco Exploration and Production, Inc., Midland, Texas and operating at various locations in the Midland Division (West Texas) who became totally or partially separated from employment on or after December 12, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of April 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93-9791 Filed 4-26-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,461; TA-W-27,462]

Transco Energy Corp. Aviation Department, Houston, TX and Transco Energy Corp. Administration, Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 24, 1992, applicable to the workers of the subject firms except the Transcontinental Gas Pipe Line Corporation in Houston, Texas.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firms. The investigation findings show that the claimants' wages for all the above firms were reported under the Transcontinental Gas Pipe Line Corporation Unemployment Insurance (UI) tax account.

Accordingly, the Department is amending the certification to properly reflect the correct UI tax status for the above certified worker groups.

The amended notice applicable to TA-W-27,461 and TA-W-27,462 is hereby issued as follows:

All workers of Transco Exploration and Production Company a/k/a Transcontinental Gas Pipe Line Corporation, headquartered in Houston, Texas (TA-W-27,462A) and operating at various other locations in Colorado (TA-W-27,462B; Louisiana (TA-W-27,462C) and Texas (TA-W-27,462D) engaged in the exploration and production of crude oil and natural gas who became totally or partially separated from employment on or after November 28, 1992 and

All workers of Transco Energy Corporation, Administration (TA-W-27,462) and the Aviation Department (TA-W-27,461) a/k/a Transcontinental Gas Pipe Line Corporation, Houston, Texas engaged in the support for the exploration and production of crude oil and natural gas who became totally or partially separated from employment on or after June 8, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

I further determine that all workers at Transco Gas Pipe Line Corporation, headquartered in Houston, Texas (TA-W-27,462E) engaged in the transportation of natural gas and natural gas liquids are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 19th day of April 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-9786 Filed 4-26-93; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on May 11-12, 1993, at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., room S-3215A and B, Washington, DC. The meeting is open to the public and will begin at 9 a.m. on each day.

The agenda for this meeting includes work group reports; OSHA status reports on rulemaking activity regarding hazardous waste operations training, scaffolds, fail protection, steel erection, lead, asbestos, air contaminants and the incorporation by reference of national consensus standards; the incorporation of general industry (part 1910) standards in part 1926; and OSHA reports on the proposed rule for occupational exposure to glycol ethers and on targeting inspections at construction workplaces. The Advisory Committee will also discuss the use of joint labor-management committees to address safety and health issues.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee.

FOR ADDITIONAL INFORMATION CONTACT: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N-3647, 200 Constitution Avenue NW., Washington, DC 20210, Telephone 202-219-8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 22nd day of April 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

[FR Doc. 93-9826 Filed 4-26-93; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Application No. D-9357, et al.]

Proposed Exemptions; Day Runner, Inc. 401(k) Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be aversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations,

room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Day Runner, Inc. 401(k) Plan (the Plan); Located in Fullerton, California

[Application No. D–9357]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan to Day Runner, Inc. (the Employer), the sponsor of the Plans, of a guaranteed investment certificate (the GIC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); provided that (1) the sale is a one-time transaction for cash; (2) the Plan does not suffer any loss or incur any expenses in the transaction; and (3) the Plan receives no less than the fair market value of the GIC at the time of the transaction.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan with a cash or deferred compensation arrangement intended to meet the requirements of section 401(k) of the Code. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts. As of December 31, 1992, there were approximately 385 participants and total assets of $492,229 in the Plan. The Employer is a California publicly-held corporation engaged in the manufacture and distribution of Day Runner personal organizers, with its headquarters in Fullerton, California. The trustees of the Plan are Dennis Marquardt and Lee Coffey (the Trustees), each of whom is an officer of the Employer.

2. The Plan document authorizes the Employer to select the investment options offered to Plan participants. After the Employer selects such investment vehicles, the Plan participants direct the investment of their Accounts among the selected options. From January 1, 1991, the effective date of the Plan, until July 16, 1991, all Accounts were solely invested in four different investment funds (the Funds) offered and managed by Mutual Benefit under a group annuity contract. The Funds include a guaranteed certificate account (the GCA Fund) which invests in guaranteed investment certificates issued by Mutual Benefit. The sole asset of the GCA Fund is the GIC, a benefit-responsive guaranteed investment certificate issued by Mutual Benefit with respect to the Plan's investments in the GCA Fund during 1991. The terms of the GIC provide that principal deposits made during 1991 earn interest at the rate of 8.25 percent (the Contract Rate) through the GIC's maturity date of March 31, 1996, at which time a final payment (the Maturity Payment) is due in the amount of total principal deposits plus interest at the Contract Rate, less previous withdrawals. Pre-maturity withdrawals from the GIC are allowed to enable the GCA Fund to effect benefit distributions, in-service withdrawals, participant loans, and participant-directed transfers of Account balances to other Funds (collectively, the Withdrawal Events). As of December 31, 1992, the GIC had an accumulated book value of $34,141.07, representing total principal deposits plus interest at the Contract Rate, less previous withdrawals, and constituting approximately 7.45 percent of the total assets of the Plan as of that date.

3. On July 16, 1991, Mutual Benefit was placed in conservatorship and rehabilitation by the insurance commissioner of the State of New Jersey (the Commissioner).[1] Since the commencement of the conservatorship, payments on all Mutual Benefit guaranteed investment certificates, including the GIC, have been suspended.[2] Consequently, the GCA Fund has been and remains unable to withdraw amounts from the GIC for Withdrawal Events. The Commissioner and Mutual Benefit are developing a plan of rehabilitation with respect to all of Mutual Benefit's guaranteed investment certificate obligations outstanding as of the commencement of the conservatorship. On July 16, 1991, the GCA Fund ceased making deposits under the GIC, and shortly thereafter the Employer contracted with Fidelity Institutional Retirement Services Company (Fidelity) to replace Mutual Benefit in providing investment options for Plan participants. Since July 16, 1991, all contributions to the Plan have been invested, pursuant to Participant directions, among five funds offered and managed by Fidelity.

The Employer represents that it is unknown whether, when, or under what circumstances Mutual Benefit will resume payments for Withdrawal Events, or whether it will make the Maturity Payment, with respect to the GIC. In order to eliminate risk associated with continued investment in the GIC, and to allow GCA Fund assets invested under the GIC to be transferred to Fidelity management, the Employer proposes to purchase the GIC from the Plan, and is requesting an exemption for such transaction under the terms and conditions described herein.

[1] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

[2] On August 7, 1991, the Superior Court of New Jersey removed restrictions on withdrawals from Mutual Benefit's "separate accounts", which enabled the Trustees to withdraw all the Funds from the Mutual Benefit group annuity contract except the GCA Fund.

4. The Employer proposes to purchase the GIC from the Plan by paying the Plan cash in the amount of the GIC's accumulated book value, representing total principal deposits plus interest at the Contract Rate less previous withdrawals, as of the date of the purchase. The Plan will not incur any expenses with respect to the transaction. The Trustees represents that they have determined that the purchase price of the GIC, at its accumulated book value, is in excess of the GIC's fair market value, due to the financial instability of Mutual Benefit. The Trustees also represent that the sale of the GIC to the Employer under the terms proposed will be in the best interests of the participants and beneficiaries of the Plan because it will eliminate the risk of loss on the Plan's investment in the GIC and will allow the Trustees to place the GCA Fund assets under new management.

5. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The transaction enables the Plan to avoid any risk associated with continued holding of the GIC and to redirect the GCA fund's assets to new management; (2) The Plan will receive cash for the GIC in the amount of the accumulated book value as of the sale date, which the Trustees have determined to be in excess of the fair market value of the GIC; (3) The Plan will not incur any expenses or experience any loss with respect to the transaction; and (4) The Trustees have determined that the Plan's sale of the GIC to the Employer on the basis of the GIC's book value is in the best interests of the participants and beneficiaries of the Plan.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Aldrich, Eastman, & Waltch, L.P. and Aldrich, Eastman & Waltch, Inc. (collectively, AEW) Located in Boston, Massachusetts

[Application No. D–8324]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Part I—Exemption for Payment of Certain Fees to AEW

The restrictions of section 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of certain initial investment fees (the Investment Fee) and disposition fees (the Disposition Fee) to AEW by employee benefit plans for which AEW provides investment management services (the Client Plans), pursuant to an investment management agreement (the Agreement) entered into between AEW and the Client Plans either individually, through the establishment of a single client separate account (Single Client Account), or collectively as participants in a multiple client commingled account (Multiple Client Account), provided that the conditions set forth below in Part III are satisfied.

Part II—Exemption for Investments in a Multiple Client Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any investment by a Client Plan in a Multiple Client Account (collectively, the Accounts) managed by AEW, provided that the conditions set forth below in Part III are satisfied.

Part III—General Conditions

(a) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Investment Fee and Disposition Fee, shall be approved in writing by a fiduciary of a Client Plan which is independent of AEW and its affiliates and, in the case of a Multiple Client Account for which ultimate investment discretion is exercised by a bank trustee, a fiduciary which is independent of the bank trustee and AEW and its affiliates (the Independent Fiduciary). Notwithstanding the foregoing, AEW may authorize the transfer of cash from a Single Client Account to a Multiple Client Account provided that: (1) The Multiple Client Account has similar investment objectives and the identical fee structure as the Single Client Account; (2) the Agreement governing the Single Client Account authorizes AEW to invest in a Multiple Client Account; (3) AEW receives no additional fees from the Single Client Account for cash invested in the Multiple Client Account and no additional Investment Fee is paid with respect to cash transferred to the Multiple Client Account; and (4) the transfer occurs within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account or, in the event AEW's binding commitment to make the transfer occurs more than six months after such Fiduciary's decision, AEW obtains an additional authorization from the Independent Fiduciary.

(b) The terms of any investment in an Account and of any Investment Fee or Disposition Fee shall be at least as favorable to the Client Plans as those obtainable in arm's-length transactions between unrelated parties.

(c) At the time any Account is established and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan shall have total net assets with a value in excess of $50 million; and

(2) No Client Plan shall invest, in the aggregate, more than five percent (5%) of its total assets in any Account or more than ten percent (10%) of its assets in all Accounts established by AEW.

(d) Prior to making an investment in any Account, the Independent Fiduciary of each Client Plan investing in an Account shall receive offering materials from AEW which disclose all material facts concerning the purpose, structure and operation of the Account, including any fee arrangements.

(e) With respect to its ongoing participation in an Account, each Client Plan shall receive the following written information from AEW:

(1) Audited financial statements of the Account prepared by independent public accountants selected by AEW no later than 90 days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by AEW relating to the overall financial position and operating results of the Account and, in the case of a Multiple Client Account, the value of each Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of fees paid to AEW during the period covered by such report;

(3) Annual appraisals indicating the fair market value of the Account's assets as established by an MAI licensed real estate appraiser independent of AEW and its affiliates which is approved by the Client Plan prior to investing in the Account; and

(4) In the case of any Multiple Client Account, a list of all other investors in the Account.

(f) The total fees paid to AEW shall constitute no more than reasonable compensation.

(g) The Investment Fee shall be equal to a specified percentage of the net value of the Client Plan assets allocated to the Account which shall be payable either:

(1) At the time assets are deposited (or deemed deposited in the case of reinvestment of assets) in the Account; or

(2) In periodic installments, the amount (as a percentage of the aggregate Investment Fee) and timing of which have been specified in advance based on the percentage of the Client Plan's assets invested in real property as of the payment date; provided that (i) the installment period is no less than three months, and (ii) if the percentage of the Client Plan assets which have actually been invested by a payment date is less than the percentage required for the aggregate Investment Fee to be paid in full through that date (both determined on a cumulative basis), the Investment Fee paid on such date shall be reduced by the amount necessary to cause the percentage of the aggregate Investment Fee paid to equal only the percentage of the Client Plan assets actually invested by that date. The unpaid portion of such Investment Fee shall be deferred to and payable on a cumulative basis on the next scheduled payment date (subject to the percentage limitation described in the preceding sentence).

(h) The Disposition Fee shall be payable after the Client Plan has received distributions from the Account in excess of an amount equal to 100% of its invested capital plus a pre-specified annual compounded cumulative rate of return (the Threshold Amount), except that in the case of AEW's removal or resignation, AEW shall be entitled to receive a Disposition FEE payable either at the time of removal or, in the event of AEW's resignation, upon termination of the Account subject to the requirements of paragraph (k) below, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value (in accordance with independent appraisals), only to the extent that the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of AEW's removal or resignation. Both the Threshold Amount and the amount of the Disposition Fee, expressed as a percentage of the amount distributed (or deemed distributed) from the Account in excess of the Threshold Amount, shall be established by the Agreement and agreed to by the Independent Fiduciary of the Client Plan.

(i) The Threshold Amount for any Disposition Fee shall include at least a minimum rate of return to the Client Plan, as defined below in Part IV(f).

(j) For any sale of property in an Account which shall give rise to the payment of a Disposition Fee to AEW prior to the termination of the Account, the sales price of the property shall be at least equal to a target amount (the Target Amount), as defined in Part IV(g), in order for AEW to sell the property and receive its Disposition Fee. If the proposed sales price of the property is less than the Target Amount, the proposed sale shall be disclosed to and agreed to by the Independent Fiduciary for a Single Client Account or the responsible independent fiduciaries of Client Plans and other authorized persons acting for investors in a Multiple Client Account (the Responsible Independent Fiduciaries), as defined in Part IV(e) below. If the proposed sales price is less than the Target Amount and the Independent Fiduciary's or Responsible Independent Fiduciaries' approval is not obtained, AEW shall still have the authority to sell the property, if the Agreement provides AEW with complete investment discretion for the Account, provided that the Disposition Fee which would have been payable to AEW is paid only at the termination of the Account.

(k) In the event AEW resigns as investment manager for an Account, the Disposition Fee shall be calculated at the time of resignation as described above in paragraph (h) and allocated to each property based upon the relationship that the appraised value of such property bears to the total appraised value of the Account. Each amount arrived at through this calculation shall be multiplied by a fraction, the numerator of which shall be the actual sales price received by the Account on disposition of the property (or in the case of a property which has not been sold prior to the termination of the Account, the appraised value of the property as of the termination date) and the denominator of which shall be the appraised value of the property which was used in connection with determining the Disposition Fee at the time of resignation, provided that this fraction shall never exceed 1.0. The resulting amount for each property shall be the Disposition Fee payable to AEW upon termination of the Account.

(l) AEW or its affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (m) of this Part III to determine whether the conditions of this exemption have been met, except that: (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of AEW or its affiliates, the records are lost or destroyed prior to the end of the six year period; and (2) no party in interest, other than AEW, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (m) below.

(m) (1) Except as provided in paragraph (m)(2) and notwithstanding any provisions of sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (1) of this Part III shall be unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Client Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to a Client Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of a Client Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (m)(1)(ii)–(iv) shall be authorized to examine the trade secrets of AEW and its affiliates or any commercial or financial information which is privileged or confidential.

Part IV—Definitions

(a) An *affiliate* of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term *control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term *management services* means:

(1) Development of an investment strategy for the Account and identification of suitable real estate-related investments;

(2) Directing the investments of the assets of the Account, including the determination of the structure of each investment, the negotiation of its terms and conditions and the performance of all requisite due diligence;

(3) Timing and directing the disposition of any assets of the Account and directing the liquidation of the Account;

(4) Administration of the overall operation of the investments of the

Account, including all applicable leasing, management, financing and capital improvement decisions;

(5) Establishing and maintaining accounting records of the Accounts and distributing reports to Client Plans as described in Part III; and

(6) Selecting and directing all services providers of ancillary services as defined in this Part IV.

(d) The term *ancillary services* means:

(1) Legal services;

(2) Services of architects, designers, engineers, hazardous materials consultants, contractors, leasing agents, real estate brokers, and others in connection with the acquisition, construction, improvement, management and disposition of investments in real property;

(3) Insurance brokerage and consultation services;

(4) Services of independent auditors and accountants in connection with auditing the books and records of the Accounts and preparing tax returns;

(5) Appraisal and mortgage brokerage services; and

(6) Services for the development of income-producing real property.

(e) The term *Responsible Independent Fiduciaries* means with respect to a Multiple Client Account the Independent Fiduciary of each Client Plan invested in the Account and other authorized persons acting for investors in the Account which are not employee benefit plans as defined under section 3(3) of the Act (such as governmental plans, university endowment funds, etc.) that are independent of AEW and its affiliates and are persons other than the bank trustee for the Account, that collectively hold at least 50% of the interests in the Account.

(f) The term "Threshold Amount" means with respect to any Disposition Fee an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return that is at least a minimum rate of return determined as follows:

(1) A non-fixed rate which is at least equal to the rate of change in the consumer price index (CPI) during the period from the deposit of the Client Plan's assets in the Account until distributions of the Client Plan's assets from the Account equal or exceed the Threshold Amount; or

(2) A fixed rate which is at least equal to the rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed 10 years.

(g) The term "Target Amount" means a value assigned to each property in the Account established by AEW either (1) at the time the property is acquired, by mutual agreement between AEW and the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, or (2) pursuant to an objective formula approved by such fiduciaries at the time the Account is established. However, in no event will such value be less than the acquisition price of the property.

The availability of this exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

Effective Date: If granted, this exemption will be effective as of the date this notice of proposed exemption appears in the **Federal Register.**

Summary of Facts and Representations

1. AEW is a privately-owned real estate investment management company, located in Boston, Massachusetts, and is an investment adviser registered under the Investment Advisers Act of 1940. AEW manages approximately $4 billion worth of assets for a variety of clients, including employee benefit plans. Most of AEW's investment management business has been shifted to a Delaware limited partnership, AEW, L.P. In this regard, AEW is the general partner of AEW Holdings, L.P., which is the general partner of AEW, L.P. AEW's client accounts consist of either separate accounts for a single client or commingled accounts for multiple clients.

2. AEW will offer the investment arrangement described below involving the payment of an Investment Fee or a Disposition Fee (collectively, the Fees) to Client Plans that seek to invest in real estate and have aggregate net plan assets with a fair market value in excess of $50 million.[3] AEW will serve as an investment manager for all Single Client Accounts and for most Multiple Client Accounts. In general, AEW will have complete discretion for identifying appropriate investments, making investment decisions, and managing and disposing of the properties acquired for the Accounts. However, with respect to certain Single Client Accounts, AEW will not exercise absolute investment discretion and will be required to obtain approval for certain investment decisions from the Independent Fiduciary of the Client Plan. Such approvals will typically be obtained from the Client Plan sponsor or an investment committee appointed by the Client Plan sponsor. With respect to Multiple Client Accounts, ultimate investment discretion will be exercised by either AEW or a bank trustee of the Account which is unrelated to AEW and its affiliates (the Bank Trustee).

3. Single Client Accounts will be established pursuant to Agreements negotiated with the Client Plans. The terms of AEW's compensation will be established in the Agreement governing the Single Client Account and will be fully disclosed to the Independent Fiduciary prior to the investment of assets of the Client Plan in the Single Client Account. If agreed to by the Independent Fiduciary, the compensation arrangement involving the payment of the Fees (as described in Item 6 below) will be included in the Agreement.[4] The term of each Account will be predetermined in the Agreement and approved by the Independent Fiduciary of the Client Plan (see Item 9 below).

Multiple Client Accounts will be organized either as a group trust as defined in IRS Revenue Ruling 81–100, as a limited partnership, or as a common law trust.[5] In the case of a Multiple Client Account that is a group trust, the Account could be structured in one of two ways. First, the group trust could be maintained by a totally independent Bank Trustee which has discretionary investment control over the assets of the trust. In this situation, AEW would serve as a non-discretionary investment adviser to the Bank Trustee. The Bank Trustee would

[3] In the case of multiple plans maintained by a single employer or a single controlled group of employers, the assets of which are invested on a commingled basis (e.g. through a master trust), this $50 million threshold will be applied to the aggregate assets of all such plans.

[4] Section 404 of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries. Thus, the Department expects a plan fiduciary, prior to entering into any performance-based compensation arrangement with an investment manager, to fully understand the risks and benefits associated with the compensation formula following disclosure by the investment manager of all relevant information pertaining to the proposed arrangement. In addition, a plan fiduciary must be capable of periodically monitoring the actions taken by the investment manager in the performance of its duties and must consider, prior to entering into the arrangement, whether such plan fiduciary is able to provide adequate oversight of the investment manager during the course of the arrangement.

[5] The applicant represents that in some instances a Client Plan's investment in a Multiple Client Account that is a common or collective trust fund maintained by a bank will be exempt from the restrictions of section 406(a) of the Act by reason of section 408(b)(8). The Department expresses no opinion herein whether all of the conditions of section 408(b)(8) will be satisfied in such transactions.

select AEW and have the power to remove AEW with the approval of Client Plans invested in the Account, pursuant to the terms of the Agreement governing the Account (as discussed below). However, AEW would not have such powers with respect to the Bank Trustee. Second, AEW could organize a non-bank maintained group trust for which AEW would serve as the discretionary investment manager with the Bank Trustee serving as a directed trustee. AEW would have the power to select and remove the Bank Trustee. In the case of a Multiple Client Account organized as a common law trust, AEW would serve as the investment manager and, in most cases, AEW would appoint a Bank Trustee to act as a directed trustee. However, in some cases, an affiliate of AEW may be approved to act as the trustee by the Client Plans investing in the Account, pursuant to the terms of the Agreement. In the case of a Multiple Client Account organized as a limited partnership, AEW would serve as the general partner with investment discretion for assets held in the partnership.

For any Multiple Client Account, various decisions regarding the Account other than investment management decisions for the Account (such as the initial decision to allocate Client Plan assets to the Account, the decision to reinvest income or proceeds in the Account, decisions with respect to the removal of AEW or the termination of the Account) will be made by the Responsible Independent Fiduciaries. AEW represents that in all instances the Responsible Independent Fiduciaries will be acting for Account investors that collectively hold at least 50% of the interests in the Account. The exact percentage required for such decisions will be specified in the governing documents of the Account. In addition, AEW states that in no case will the Bank Trustee be deemed a Responsible Independent Fiduciary for purposes of decisions which are required to be made by such fiduciaries under the documents governing the Account.

The decision to invest assets of a Client Plan in any Multiple Client Account will be made by the Independent Fiduciary of such Client Plan, based upon full written disclosure of the compensation arrangement involving the Fees prior to such investment. Notwithstanding the foregoing, AEW may authorize the transfer of cash from a Single Client Account to a Multiple Client Account where: (i) The Multiple Client Account has similar investment objectives and the identical fee structure as the Single Client Account; (ii) the Agreement governing the Single Client Account authorizes AEW to invest in a Multiple Client Account; (iii) AEW receives no additional fees from the Single Client Account for cash invested in the Multiple Client Account and no additional Investment Fee is paid for cash transferred to the Multiple Client Account; and (iv) the transfer occurs within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account or, in the event the transfer would occur after six months, AEW obtains an additional authorization from the Independent Fiduciary. AEW states that the six month period for the Client Plan's authorization to make a transfer of cash to the Multiple Client Account would relate to AEW's decision to make a binding commitment to invest such cash in the Multiple Client Account, rather than the actual date the cash is transferred to the Account. AEW represents that its commitment to invest the cash would normally occur within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account. However, if more than six months has transpired since the Independent Fiduciary's decision to invest the assets in the Single Client Account, AEW will obtain an additional authorization from such fiduciary. The approval will occur following written disclosure to the Independent Fiduciary of AEW's binding commitment to make a cash transfer to the Multiple Client Account which will be deemed approved unless such fiduciary objects within a reasonable time.

AEW may not receive an Investment Fee for cash invested by AEW in the Multiple Client Account if the Investment Fee was previously paid for such assets when the Client Plan invested in the Single Client Account. Otherwise, after a transfer of cash, the fee structure for the Multiple Client Account will govern all fees received by AEW for such Client Plan assets. The precise terms of AEW's compensation arrangement will be established as part of the documents pursuant to which the Multiple Client Account is organized and can be amended only with the approval of the Responsible Independent Fiduciaries.

4. The applicant represents that the investment objectives of each Account will be to obtain current income and capital appreciation, primarily through the purchase of real estate-related assets, including fee interests, leaseholds, joint venture participations, partnership interests, options with respect to real estate, mortgage loans and interests in any of the foregoing. The Accounts may be designed as either "blind" accounts for which AEW will select the real estate investments after the Client Plans have invested therein or "pre-identified property" accounts for which AEW identifies particular properties for investment prior to the Client Plans' investments in the Accounts.

5. AEW will provide management services, as defined in Part IV(c) above, to the Accounts. In some cases, AEW and the Independent Fiduciary acting on behalf of the Client Plan may agree in advance that in addition to management services, AEW will also provide all day to day property management services required to maintain the properties. AEW represents that day-to-day property management services will include all locally performed services related to property maintenance and repair, rent collection, leasing and tenant relations, supervision of capital improvements, and payment of local expenses such as real estate taxes and utilities. In the event AEW provides day-to-day property management services, the percentage used in determining AEW's on-going management fee (as discussed in Item 6 below) will be increased to reflect the additional services to be provided by AEW (either directly or by independent contractors retained by AEW at its expense). Alternatively, AEW and the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account may agree that management services provided by AEW for an Account will not include day to day property management services, in which event such services will be provided by independent contractors selected and supervised by AEW at the expense of the Account, the Client Plans, or the plan sponsors, as determined by the parties prior to the investment in the Account.

AEW will not provide any ancillary services, as defined in Part IV(d) above. Ancillary services are those services provided in connection with the acquisition, construction, improvement, management and disposition of investments in real property, such as services provided by attorneys, architects, designers, engineers, hazardous materials consultants, contractors, leasing agents and real estate brokers. Independent service providers will be retained by AEW to provide all ancillary services at the expense of the Account, the Client Plan or the plan sponsor, as determined by the parties prior to investment in the Account.

6. AEW proposes to have the Client Plans pay for investment management

services rendered to the Accounts based upon a multi-part fee structure which will be approved in advance by the Independent Fiduciaries of the Client Plans. In addition to an on-going investment management fee (the Management Fee) paid to AEW typically quarterly by the Client Plan, the fee structure may include the following fees: (i) The Investment Fee, a one-time initial fee paid at the time the Client Plan's assets are invested in the Account either as a lump-sum or in periodic installments as discussed below; and (ii) the Disposition Fee, a fee payable upon a distribution (or a deemed distribution) of the assets from the Account after the Client Plan has received (or would receive) a return of all its invested capital plus a certain pre-specified rate of return on its investments in the Account. AEW requests an exemption for the payment by Client Plans of the Investment Fee and the Disposition Fee under circumstances described below.

With respect to the Investment Fee, such fee will be a one-time fee intended to cover the expense of organizing the Account, identifying suitable investments, and completing the initial purchases of properties for the Account, based on the assets allocated by the Client Plan to the Account. If additional assets are allocated to the Account at a later date at the express direction of a Client Plan (including amounts which are reinvested in the Account rather than distributed to the Client Plan), an Investment Fee will be paid for such additional assets. However, an additional Investment Fee will not be paid for any cash of a Single Client Account which is transferred by AEW to a Multiple Client Account pursuant to the Agreement (as described above in Item 3).

The Investment Fee will be equal to a pre-specified percentage of the net value of the Client Plan assets which are allocated to the Account. The exact percentages to be used in determining the Investment Fee will be negotiated between AEW and the Client Plan prior to the initial investment of any assets of the Client Plan in an Account.

The Investment Fee will be payable either: (a) at the time assets are deposited (or deemed deposited in the case of a reinvestment) in the Account;[6] or (b) in periodic installments, the amount (calculated as a percentage of the aggregate Investment Fee) and timing of which have been specified in advance based on the percentage of the Client Plan's assets invested in real property as of the payment date.[7] AEW states that the installment period will never be less than three months. In addition, if the percentage of the Client Plan assets which have actually been invested by a payment date is less than the percentage required for the aggregate Investment Fee to be paid in full through that date (both determined on a cumulative basis), the Investment Fee paid on such date will be reduced by the amount necessary to cause the percentage of the aggregate Investment Fee paid to equal only the percentage of the Client Plan assets actually invested by that date. The unpaid portion of such Investment Fee will be deferred to and payable on a cumulative basis on the next scheduled payment date (subject to the percentage limitation described in the preceding sentence).[8]

With respect to the Management Fee, such fee will be paid throughout the term of the Account on a pre-specified periodic basis. The amount of this fee will be based on a percentage of the net fair market value of the Client Plan assets in the Account (i.e. without regard to any leveraged amounts) as of the last day of each period, and will be pro-rated for any partial periods. The exact percentages to be used in determining the Management Fee will be negotiated between AEW and the Client Plan prior to the initial investment of any Plan assets in the Account. As described above, the Management Fee may or may not cover day-to-day property management services.

The Management Fee will be based upon property values as determined at least annually by an MAI licensed real estate appraiser independent of AEW and its affiliates. For any appraisal of a property used to determine the Management Fee, AEW will initially notify in writing the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account regarding the identity of the appraiser whom AEW proposes to retain to value the property. The Independent Fiduciary or the Responsible Independent Fiduciaries will have an opportunity to approve or disapprove the suggested appraiser with an approval being deemed to have occurred unless such fiduciaries object to the appraiser within a reasonable time. Once approved, the appraiser could perform all future valuations of the particular property unless either (i) the Independent Fiduciary or Responsible Independent Fiduciaries affirmatively withdraw the prior approval of the appraiser, or (ii) AEW suggests a different appraiser, in which case an approval by such fiduciaries would again be required. AEW states that if there have been capital improvements to a property since the date of the most recent appraisal, the cost of such capital improvements will be added to the appraisal in determining the property's value. In addition, AEW states that if any internal appraisal by AEW results in a lower value than the most recent independent appraisal (as adjusted in either case for subsequent capital improvements), the fee will be based on the lower valuation.

In lieu of either or both the Investment Fee and/or the Management Fee, AEW and Independent Fiduciaries of the Client Plans may agree to an alternative fee arrangement for an Account (the Alternative Fee) which is based upon either a fixed amount or amounts or an objective formula to be negotiated (in either case) between AEW and the Client Plan prior to the initial investment of any Client Plan assets in the Account. Any such Alternative Fees are not covered by the requested exemption.[9]

The Disposition Fee will be payable either: (i) After the Client Plan has

[6] Under this approach, the value of the assets in the Account, for purposes of determining the amount of the Investment Fee, would be equal to the total dollar amount the Client Plan invested in the Account.

[7] Under this approach, the value of the assets in the Account will be determined by the acquisition price of the property less any debt assumed by the Account with respect to the property. Therefore, if AEW purchases a property for the Account for $50 million and assumes a mortgage on the property in the amount of $20 million, the net asset value of the Account for the property would be $30 million. AEW's Investment Fee would be a pre-specified percentage of $30 million.

[8] For example, the Agreement governing the Account might provide that the Investment Fee would be payable at the end of a six, twelve, eighteen and twenty-four month period after the date on which the Account was established. If at the end of six months 25% or more of the assets of the Account had been invested, 25% of the Investment Fee would be paid. If at the end of twelve months fifty percent (50%) or more of the assets had actually been invested, the next 25% of the Investment Fee would be paid, and so on. Alternatively, if at the end of the six month period only fifteen percent (15%) of the assets in the Account had been invested, only 15%, rather than 25%, of the Investment Fee would be paid at the end of the six month period. The remaining ten percent (10%) of the Investment Fee would be deferred to the next period, in this case twelve months, and added to the additional 25% that would be payable at the end of twelve months. If at the end of the twelve month period 50% of the assets of the Account had been invested, 35% of the Investment Fee would be payable (i.e., the original 25% plus the 10% left over from the preceding six month period). This process will continue at six month increments until 100% of the assets in the Account have been invested.

[9] AEW represents that both the Management Fee and the Alternative Fee would be covered by section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2). However, the Department expresses no opinion as to whether the payment of such fees, as described herein, would meet the conditions of section 408(b)(2) of the Act.

actually received distributions from the Account, or (ii) in the case of the removal or resignation of AEW, based on deemed distributions from the Account (as discussed in Item 8 below), equal to its invested capital plus a pre-specified annual compounded rate of return (i.e. the Threshold Amount). The Disposition Fee will be equal to a fixed percentage (or several fixed percentages) of all amounts distributed from an Account in excess of the Threshold Amount (or several Threshold Amounts). In this regard, AEW represents that there is a possibility that several Threshold Amounts may be established with different percentages being utilized to determine the Disposition Fee depending upon which Threshold Amount has been exceeded. AEW states that this structure will allow a Client Plan to negotiate an arrangement pursuant to which the amount of the Disposition Fee will increase as the level of investment performance increases.[10] Both the annual rate of return used in determining the Threshold Amount(s) and the percentage(s) used to determine the amount of the Disposition Fee will be negotiated between, and agreed to by, AEW and the Client Plan prior to the Client Plan's initial investment in the Account.

With respect to the determination of the Threshold Amount, AEW represents that all amounts invested by a Client Plan in an Account will have to earn a pre-specified rate of return, which is at least equal to the minimum rate of return specified in Part IV(f) above, for the entire period such assets are in the Account and must actually be distributed (or deemed distributed) back to the Client Plan in order for the Threshold Amount to be reached. AEW states that a bookkeeping account will be maintained for each Client Plan which will show the amount required to be distributed from the Account to satisfy the Threshold Amount. When a certain amount is invested in the Account on a particular date, this bookkeeping account will initially equal the invested amount and will thereafter be increased to reflect the threshold rate of return compounded on an annual basis. Whenever a distribution (whether it arises from income, sale of assets, or otherwise) is made from the Account to the investing Client Plans, the amount of this bookkeeping account will be reduced by the full amount of the distribution. Thereafter, the required return will be added to this reduced amount until the next distribution is made when the bookkeeping account will be reduced to reflect the amount of that distribution. Only when this bookkeeping account is reduced to zero will the Threshold Amount be satisfied. At this time, the Disposition Fee will be payable to AEW on all further distributions from the Account.

AEW states that for any sale of property in an Account which causes the payment of a Disposition Fee and which occurs prior to the termination of the Account, the sales price for the property will be at least equal to a Target Amount in order for AEW to be able to sell the property and receive its Disposition Fee. The Target Amount for each property in an Account will be established by AEW either at the time the property is acquired, by mutual agreement between AEW and the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, or pursuant to a formula approved by such fiduciaries at the time the Account is established. If the proposed sales price of the property is less than the Target Amount, the proposed sale will be disclosed to the Independent Fiduciary or Responsible Independent Fiduciaries for approval in order for AEW to receive its Disposition Fee as a result of the sale. Such approval will be deemed to have occurred unless the Independent Fiduciary or Responsible Independent Fiduciaries object to the sale within a reasonable time prior to the transaction. If the proposed sales price is less than the Target Amount and the Independent Fiduciary's or Responsible Independent Fiduciaries' approval is not obtained, AEW will still have the authority to sell the property in situations where the Agreement provides AEW with complete investment discretion for the Account. However, in such instances and in all other circumstances where the sales price is less than the Target Amount and the Independent Fiduciary's or Responsible Independent Fiduciaries' approval is not obtained (such as where a Bank Trustee has ultimate investment discretion for the Account), the Disposition Fee which would have been payable to AEW will be paid only at the termination of the Account.

7. All income and proceeds from the sale of the assets of the Account will be applied first to pay expenses of the Account. These expenses will include the maintenance of reasonable reserves in connection with Account assets, whether such reserves are for repayment of existing or anticipated obligations or for contingent liabilities. Subject to the written approval of the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries (as defined herein) for a Multiple Client Account, all income and proceeds in excess of the amount required to pay the Account's expenses may be reinvested in the Account, provided that such Account fiduciaries: (i) Approve the reinvestment of income and/or proceeds from the sale of the Client Plans' assets in the Account no more than ninety (90) days before such assets become available for distribution; and (ii) approve the payment to AEW of the Investment Fee on the amounts reinvested in the Account.

If the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account do not consent to the reinvestment of the income and proceeds of the Account, in excess of the amount reasonably necessary for Account purposes, then such amounts will be distributed from the Account to the Client Plans. Only actual distributions from an Account, and not any amounts reinvested as described above, will be included in calculating whether the Threshold Amount has been reached for purposes of the payment of the Disposition Fee.

8. AEW may be removed as the investment manager for an Account at any time, without cause, upon the delivery of a notice of removal to AEW by the Independent Fiduciary for a Single Client Account or by the Responsible Independent Fiduciaries for a Multiple Client Account. AEW may resign as investment manager of an Account at any time, without cause, upon written notice to the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account.

With respect to a Single Client Account, such removal or resignation will not become effective until a successor investment manager is appointed by the Independent Fiduciary for the Account.

With respect to a Multiple Client Account, the removal of AEW will become effective when either: (i) A successor investment manager is appointed by the Responsible Independent Fiduciaries; or (ii) sixty (60) elapse, whichever is sooner. Any resignation by AEW for a Multiple Client Account will become effective when either: (i) A successor investment

[10] For example, a Client Plan could negotiate a Disposition Fee whereby AEW would receive 10% of all distributions from the Account once an initial Threshold Amount (i.e. return of all invested capital plus an 8% annual return) has been achieved and 20% of all distributions once a second Threshold Amount (i.e. return of all invested capital plus a 12% annual return) has been achieved.

manager is appointed by Responsible Independent Fiduciaries; or (ii) 180 days elapse, whichever is sooner.

Upon removal of AEW as investment manager, AEW will be entitled to receive a Disposition Fee is the Client Plans would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of AEW's removal. Such Disposition Fee will be determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value, in accordance with appraisals by an independent MAI appraiser mutually agreed upon by AEW and the Client Plans. If AEW and the Client Plans cannot agree on an appraiser, then the fair market value of such assets for the assumed sale will be equal to the average of the two closest appraisals generated by three independent MAI appraisers—one selected by AEW, one selected by the Client Plans, and the third selected by the two appraisers chosen by the parties.

Upon AEW's resignation as investment manager, AEW will not receive a Disposition Fee until the Account is terminated. The amount of the Disposition Fee will be based upon a deemed distribution of the assets of the Account at their fair market value at the time of such resignation, as determined by an independent MAI appraiser mutually agreed to by AEW and the Client Plans. However, if AEW and the Client Plans cannot agree on an MAI appraiser, the procedure described above will be followed.

The Disposition Fee will be calculated at the time of resignation and allocated to each property based upon the relationship that the appraised value of such property bears to the total appraised value of the Account. However, the amount of the Disposition Fee for each property will be multiplied by a fraction, the numerator of which will be the actual sales price received by the Account on the disposition of the property (or in the case of a property which has not been sold prior to termination of the Account, the appraised value of the property as of the termination date) and the denominator of which will be the appraised value of the property which was used in connection with determining the Disposition Fee at the time of resignation, provided that this fraction will never exceed 1.0. The resulting amount for each property will be the Disposition Fee payable to AEW upon termination of the Account. Thus, even if the values of the properties decline after AEW's resignation. AEW will still receive the Disposition Fee for the period of time that it acted as an investment manager for the Account if the Client Plans would have received distributions from the Account (based on an assumed sale of the assets at their fair market value) in excess of an amount equal to the Threshold Amount at the time of AEW's resignation, subject to the operation of the fraction discussed above. The fraction ensures that an appropriate reduction in the Disposition Fee will be made upon termination of the Account if the value of any property in the Account declines after AEW resigns as the investment manager.

9. A Single Client Account will terminate upon expiration of the period of years specified as the term for the Account in the Agreement or upon the removal or resignation of AEW. However, the period of years specified in the Agreement may be extended by the Independent Fiduciary of the Client Plan. In addition, a Single Client Account may be terminated at any time by the Independent Fiduciary of the Client Plan upon ninety (90) days written notice to AEW.

A Multiple Client Account will terminate upon the occurrence of any of the following events: (i) The affirmative decision of the Responsible Independent Fiduciaries; (ii) the failure of the Responsible Independent Fiduciaries to appoint a successor investment manager; or (iii) upon expiration of the period of years specified as the term of the Account in the Agreement, provided that the period of years is not extended by the Responsible Independent Fiduciaries.

Upon termination of a Single Client Account, the assets of the Account will be distributed to the Client Plan in cash or in kind as agreed to by AEW and the Independent Fiduciary. However, in the case of a Multiple Client Account, such distributions will be agreed to by the Responsible Independent Fiduciaries for the Account.

AEW will be entitled to the Disposition Fee upon termination of the Account for all remaining distributions made from the Account if the Threshold Amount has been or would be reached at such time. In the case of in kind distributions of assets of the Account, the Disposition Fee will be based on the fair market value of the assets of the Account as determined by an independent MAI appraiser mutually agreed to by AEW and the Client Plans. If AEW and the Client Plans cannot agree on an appraiser, then the same procedure discussed in Item 8 above will be followed.

10. Each Client Plan will receive throughout the term of an Account the following information:

(a) Quarterly and annual reports prepared by AEW relating to the overall financial position and operating results of the Account and, in the case of a Multiple Client Account, the balance of each Client Plan's interest in the Account. In addition, such reports will include a statement regarding the amount of all fees paid to AEW during the period covered by the report.

(b) Annual appraisals indicating the current fair market value of all properties owned by the Account as established by an independent MAI appraiser.

(c) In the case of a Multiple Client Account, a list of the investors in the Account.

(d) Audited financial statements prepared by independent public accountants selected by AEW, within 90 days of the end of the Account fiscal year.

The Independent Fiduciary for the Client Plan, as well as other authorized persons described above in paragraph (m)(1) of Part III, will have access during normal business hours to AEW's records for the Accounts in which the Client Plan has an interest.

11. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because, among other things:

(a) Each investment is authorized in writing by an Independent Fiduciary of a Client Plan and, in the case of a Multiple Client Account for which ultimate investment discretion is exercised by a Bank Trustee, an Independent Fiduciary which is independent of such Bank Trustee and AEW and its affiliates;

(b) No Client Plan may establish a Single Client Account or invest in a Multiple Client Account unless the Client Plan has total net assets with a value in excess of $50 million. In addition, a Client Plan may not invest, in the aggregate, more than five percent (5%) of its total assets in any one Account or more than ten percent (10%) of its total assets in all Accounts established by AEW;

(c) Prior to making an investment in any Account, an Independent Fiduciary for each Client Plan will receive offering materials disclosing all material facts concerning the purpose, structure and operation of the Account, including any fee arrangements;

(d) AEW will provide each Independent Fiduciary of a Client Plan with periodic written disclosures with respect to the financial condition of the

Account, the fees paid to AEW, the balance of each Client Plan's interest in the Account, annual independent appraisals of the Account's assets and, in the case of a Multiple Client Account, a list of other investors in the Account;

(e) The total fees paid to AEW will constitute no more than reasonable compensation; and

(f) The timing and formula for determining the Fees will be established and agreed to by the Independent Fiduciary for each Client Plan prior to the Client Plan's investment in the Account and will be based on pre-specified percentages of the Client Plan's assets invested in the Account or distributed (or deemed distributed) from the Account.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams or Ms. Lyssa Hall of the Department, telephone (202) 219–8883 or 219–8971. (These are not toll-free numbers.)

Citizens First National Bank of New Jersey Employee Stock Ownership Plan (the Plan) Located in Glen Rock, New Jersey

[Application No. D–9271]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (a) the past acquisition by the Plan of certain transferable subscription rights (the Rights) for the purchase of common stock of Citizens First Bancorp, Inc. (CFB), a party in interest with respect to the Plan, which were issued to shareholders of record, as of August 26, 1992, pursuant to a stock rights offering (the Rights Offering), and (b) the holding and exercise of the Rights by the Plan during the subscription period, provided that (1) the acquisition of the Rights occurred in connection with the Rights Offering made available to all shareholders of CFB, (2) all holders of the common stock of CFB were treated in the same manner with respect to the Rights Offering, including the Plan, and (3) all decisions regarding the acquisition, holding, and disposition of the Rights by the Plan was exercised by a qualified, independent fiduciary of the Plan, which made all determinations as to whether and how the Plan should exercise or sell the Rights received by the Plan through the Rights Offering.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of August 26, 1992.

Summary of Facts and Representations

1. Citizens First National Bank of New Jersey (the Employer), the sponsoring employer of the Plan, is a national banking association organized in 1920, which is a full service commercial bank providing a broad spectrum of personal, commercial, and trust services, including secured and unsecured personal and business loans, real estate financing, and letters of credit. The Employer operates 43 banking offices located in the northern New Jersey counties of Bergen, Hudson, Morris, and Passaic and 7 offices in Ocean City County in southern New Jersey.

CFB is a bank holding company incorporated in New Jersey and registered under the Bank Holding Company Act of 1956, as amended. As of June 30, 1992, the Consolidated Financial Statements of CFB had total assets of $2.4 billion, total deposits of $2.3 billion, and total shareholder's equity of $88.6 million. CFB commenced business in 1982 when it acquired all the outstanding capital stock of the Employer. The Employer accounts for substantially all of the consolidated assets, revenues, and operating results of CFB.

2. The Plan is an employee stock ownership plan within the meaning of section 407(d)(6) of the Act. It has 761 participants, of which 551 participants have account balances, and total assets of $3,217,293, as of December 31, 1991. Less than 1 percent of the assets of the Plan is held in cash or cash equivalents. The remainder of the assets of the Plan consist of common stock issued by CFB.

The Plan is administered by a Committee, as named fiduciary, consisting of three individuals appointed by the Board of Directors of the Employer, who are outside Directors of both the Employer and CFB. The Committee directs the administration of the Plan in accordance with its terms and possesses all powers necessary to carry out the terms of the Plan, including the appointment of investment managers to manage the acquisition and disposition of any assets of the Plan.

The current trustee (the Trustee) of the Plan is the Employer, which is subject to written instructions from the Committee.

3. On August 26, 1992, (the Record Date), CFB issued Rights to the holders of record of its common stock (the Common Stock), enabling such shareholders to purchase additional shares of the Common Stock for a price of $2.50 per share (the Subscription Price). Shareholders of record of CFB received one Right for each share of the Common Stock held by them as of the close of business on the Record Date. The Rights Offering expired on September 23, 1992, after which date, if not exercised, the Rights expired and became worthless.

Each Right entitled the registered holder of the Common Stock on the Record Date to subscribe for one share of the Common Stock (The Basic Subscription Privilege) at the Subscription Price. Each Right also included the right to subscribe (the Oversubscription Privilege) at the Subscription Price for an unlimited number of shares of the Common Stock that are not otherwise purchased pursuant to the exercise of the Basic Subscription Privilege, subject to reduction by CFB in certain circumstances and subject to proration.[11] Only owners of the Common Stock that purchased at least one share of the Common Stock pursuant to the exercise of the Basic Subscription Privilege were entitled to exercise the Oversubscription Privilege.

In addition, CFB entered into purchase agreements (the Standby Purchase Agreements) with 14 institutional investors which agreed to purchase at the Subscription Price of $2.50 per share a total of 18,289,191 shares of the Common Stock offered but not subscribed for in the Rights Offering. Also, pursuant to the Standby Purchase Agreements the Directors of CFB and the Directors of the Employer were committed to purchase up to 3,136,082 shares of the Common Stock under the Rights Offering.

The Common Stock issued by CFB, is listed and traded on the American Stock Exchange. During the Rights Offering both the Rights and the Common Stock were traded on the American Stock Exchange.

A total of 28,394,932 shares of the Common Stock were sold pursuant to the Rights Offering. Of this total, 21,425,273 shares were purchased through the exercise of Rights: 19,149,680 through the Basic Subscription Privilege and 2,275,593 shares through the Oversubscription Privilege. The Standby Agreements generated the sale of 6,937,193 shares to the institutional investors and the sale of 32,466 shares to the Directors of CFB. The gross proceeds generated for CFR

[11] CFB did not limit any purchase of the Common Stock pursuant to the Rights Offering.

from the Rights offering totalled $70,987,330. All sales of the Common Stock were made at the Subscription Price of $2.50 per share.

The Plan received 981,787 Rights from the Rights Offering and, in four different transactions during September 1992, sold 748,253 Rights through the services of Shearson Lehman American Express (Shearson) on the American Stock Exchange for an average price of $.80 per Right, netting a return to the Plan, after brokerage commissions, of $583.835. The proceeds from the sale of the Rights were used by the Plan to exercise the remaining 233,534 Rights it held in order to purchase at the Subscription Price an additional 233,534 shares of the Common Stock.[12]

4. Prior to the commencement of the Rights Offering, amendments were made to the Plan and Trust documents to allow the Plan to participate in the Rights offering and to allow for the appointment of an independent fiduciary to make all decisions for the Plan with respect to the receipt, holding, and disposition of the Rights issued to the Plan by CFB.

On August 11, 1992, the Committee retained U.S. Trust Company of California, N.A. (U.S. Trust) as the independent fiduciary for the Plan with respect to the Right Offering. U.S. Trust was organized in 1978 as a non-deposit trust company, located in Los Angeles, California. In 1991, following a change in the banking laws of California and the acquisition of a Los Angeles bank, U.S. Trust gained the ability to take deposits and became a full-service trust company. U.S. Trust is one of six subsidiaries wholly-owned by U.S. Trust Corporation. U.S. Trust Corporation, which was incorporated in New York in December 1977 and became a bank holding company under the Bank Holding Company Act of 1956, as amended, has total assets of approximately $2.9 billion, total deposits of approximately $2.1 billion, and shareholders' equity of approximately $182 million, as of December 31, 1991.

As independent fiduciary for the Plan, U.S. Trust had the power, authority, and responsibility to make all decisions for the Plan regarding the receipt, holding, and disposition of the Rights under the Rights Offering.

5. U.S. Trust represents that it was an active participant with respect to the Rights Offering throughout August and September 1992. In addition, U.S. Trust represents that, although not formally retained prior to August 11, 1992 by the Committee, it began performing due diligence for the Plan approximately one week prior to August 11, 1992, and was involved in negotiations with CFB regarding all aspects of the impact of the Right Offering upon the Plan. Prior to the Rights Offering on August 26, 1992, negotiations with CFB on behalf of the Plan were undertaken by U.S. Trust to obtain possible alternatives to the Rights Offering in an attempt to avoid a possible violation of the prohibited transaction provisions of the Act. Legal counsel determined that the federal and state statutes pertaining to the Rights Offering required CFB to treat the Plan in the same manner as all other shareholders of the Common Stock.

U.S. Trust represents that, recognizing that the Plan is required to primarily invest in securities of the Employer, it conducted extensive due diligence and financial analysis to determine the prudent disposition of the Rights. A determination was made that, in order to maximize the value of the Rights for the benefit of the Plan, a portion of the Rights should be sold and the proceeds used to exercise the Rights in order to obtain additional shares of the Common Stock. U.S. Trust used a number of computer generated models to determine the appropriate numbers of Rights to sell and the proper timing for the sales.

U.S. Trust represents that it acted throughout the Rights Offering in a prudent manner and in the best interests of the participants of the Plan, enabling the Plan to add substantial value to its assets without risking other assets of the Plan.

Furthermore, U.S. Trust represents that under the Rights Offering the best interests of the Plan and its participants and beneficiaries were served and the rights of the participants and beneficiaries were protected as required under the Act.

6. In summary, the applicant represents that the transactions satisfied the statutory criteria of section 408(a) of the Act for the following reasons: (a) The acquisition of the Rights by the Plan resulted from an independent act by CFB as a corporate entity and all holders of the common Stock were treated in a like manner, including the Plan; (b) all decisions regarding the acquisition, holding, and exercise or other disposition of the Rights by the Plan were made by an independent fiduciary, including the determinations as to whether and how the Plan would exercise or sell the Rights acquired through the Rights Offering; (c) the Rights and the Common Stock were both traded on a national securities exchange from which current price information was readily ascertainable, and the terms and conditions of the Rights Offering were readily ascertainable from public documents distributed to Common Stock shareholders, including the Plan, and filed with the U.S. Securities and Exchange Commission and the national securities exchanges; and (d) other than brokerage commissions to Shearson, the Plan paid no commissions or other expenses in connection with the receipt, holding and disposition of the Rights, or the application for exemption from the prohibited transaction provisions of the Act.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bentley Nevada Corporation Profit Sharing 401(k) Plan (the Plan) Located in Minden, Nevada

[Application No. D–9265]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of certain parcels of real property (the Property) to Mr. Donald E. Bentley (Mr. Bentley), President and Chief Executive Officer and sole owner of the sponsoring employer (the Employer), a party in interest with respect to the Plan, provided that (a) the Plan receives not less than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, and (b) the Plan will not incur any expenses incident to the Sale.

Summary of Facts and Representations

1. The Employer, the Bentley Nevada Corporation, is a Nevada corporation, which is wholly owned by Mr. Bentley. It has manufacturing and product development facilities in Minder, Nevada, Houston, Texas, and Warrington, England. Also, it has sales and service offices throughout many parts of the world. Approximately 1,252 individuals are employed by the

[12] On January 27, 1993, the closing price of the Common Stock on the American Stock Exchange was $5.25 per share, yielding an aggregate value of $1,226,053.50 for the 233.534 shares acquired by the Plan from exercising its Rights obtained from the Rights Offering.

Employer in capacities involving product development, manufacturing, sales, services, and administration. The Employer is a worldwide engineering/manufacturing organization in the design and application of proximity systems for the measurement of high-speed rotating machinery.

2. The Plan is a profit sharing 401(k) plan with 960 participants and total assets of approximately $16,860,320, as of June 30, 1992. Recently the Plan was amended to provide for participant directed accounts for both the salary deferral accounts and the profit sharing accounts. The current fiduciaries of the Plan are Messrs. Raymond J. Case (Chief Financial Officer of the Employer), Donald W. Tally (Controller of the Employer), and Donald E. Halvorson (Manager of Revenue and Service Accounting of the Employer). Mr. Halvorson replaced Mr. Roger G. Harker as a fiduciary of the Plan on July 1, 1991. Sanwa Bank acted as custodial trustee for the assets of the Plan, with the exception of the Property, from 1988 until July 1, 1991, when the current fiduciaries took over all trust responsibilities for the Plan.

3. The Property consists of undeveloped land located in Churchill County, Nevada (the Churchill Parcel) and in Douglas County, Nevada (the Douglas Parcels) that was acquired from unrelated persons with respect to the Plan, the Employer, and Mr. Bentley. The Churchill Parcel was purchased on December 8, 1977, and The Douglas Parcels was purchased on December 8, 1978. The purchase price of the Property totalled $833,405, and the Plan expended from 1979 through 1992 the sum of $92,542 for property taxes. Also, the Plan incurred an expense of $9,362 on the Douglas Parcels for engineering costs for water rights and parceling.

The Property was purchased by the Plan in anticipation of realizing capital gains from marketing the Property when nearby properties were developed as the local population and the tourist activity grew. The fiduciaries of the Plan were represented by the applicant to have been expecting at the time of the purchase of the Churchill Parcel the construction of a nearby hotel that would employ 6,000 people, resulting in new construction of commercial and residential facilities in the area of the Property. Neither the anticipation nor the expectations of the fiduciaries have materialized, and neither the anticipation or the expectations of the fiduciaries are forseeable in the near future.

The applicant represents that neither the Churchill Parcel nor the Douglas Parcels are located near or adjoining to land owned by the Employer or Mr. Bentley. In addition, the applicant represents that neither the Churchill Parcel nor the Douglas Parcels had been leased to nor used by any party in interest with respect to the Plan.

Mr. Jerry W. Thran, a Certified General Appraiser, State of Nevada (#125) from Minden, Nevada, determined that the fair market value of the Douglas Parcels was $1,400,000, as of August 7, 1992, and the fair market value of the Churchill Parcel was $29,500, as of August 31, 1992.

The Douglas Parcels are described by the independent appraiser to consist of 800.15 acres of 30 vacant lots/sites located on U.S. Highway 395 South, approximately 16 miles south of Gardnerville, Nevada and 6 miles north of Topaz Lake on the California/Nevada state line.

The appraiser described the highest and best use currently of the Douglas Parcels is vacant lands for grazing, and the highest and best use of the Douglas Parcels in the future is single family ranchette sites of 2.45 acres to 327 acres. Future changes and development is described by the appraiser as a slow change over the next 5 to 15 years. Water and sewer services are described as available for the Douglas Parcels through private wells and septic/leach line systems.

The Churchill Parcel is described by the appraiser to consist of 589.56 acres of vacant land located approximately 10 miles east of Fernley and 1.5 miles north of Interstate Highway 80.

The appraiser described the highest and best use for the Churchill Parcel as a potential trade with the Bureau of Land Management for other lands in other Nevada communities. The Churchill Parcel is described by the appraiser as having no access except over adjoining land and no dedicated easements from a public road.

4. The applicant represents that the fiduciaries of the Plan desire to sell the Property to Mr. Bentley. This proposed Sale of the Property is to be undertaken in order to replace the Property with more beneficial and liquid investments and to overcome the illiquid impediment that the Property causes. In addition, the fiduciaries of the Plan represent that it is not in the best interests of the Plan or its participants and beneficiaries to incur additional expenses and risks in an attempt to develop the Property now or in the foreseeable future.

The Applicant represents that several unrelated persons during 1990 and 1991 have expressed interest and/or made offers to purchase the Douglas Parcels from the Plan. However, none of them could be accepted by the Plan because either they lacked sufficient, independent financing and required an exchange with the Plan of undesirable properties and/or required the Plan to accept promissory notes as partial payment of consideration. All of the offers were for less than the current fair market value as determined by the independent appraiser.

In a letter, dated February 22, 1993, Marsha L. Tomerlin of ITILDO, Inc., Realtors, an independently owned and operated member of Coldwell Banker Residential Affiliates, Inc., located at Minden, Nevada, represents that she is familiar with the Douglas Parcels and has attempted to market the Douglas Parcels on a number of occasions. Miss Tomerlin also represents that there are two chronic problems with marketing the Douglas Parcels: (a) The inability of the prospective purchaser to increase the permitted housing density on the property, and (b) the inability of the prospective purchaser to finance the transaction or to obtain financing for the purchase price. In addition, Miss Tomerlin reiterates that the Douglas Parcels not only lacks owner financing but easy development potential which are both essential for marketing of large properties.

Mr. Bentley is offering to purchase the Property for the total sum of $1,435,000 in cash with no expenses being incurred by the Plan from the transaction. Mr. Bentley represented that the transaction will be helpful to the Plan and at the same time be a diversification and long term investment for his estate.

The applicant represents that proposed transaction will be in the best interests of the Plan and its participants and beneficiaries because the Plan will not continue to hold an illiquid investment which has proven difficult to sell, and the funds generated from the Sale can be put to better use to fund the participant directed investments. Also, the applicant represents that the rights of the participants and beneficiaries will be protected because the Sale will be a one-time transaction for cash with the Plan incurring no expenses, and the purchase price will be determined by an independent, qualified appraiser on the date of the Sale.

5. In summary, the applicant represents that the proposed Sale will satisfy the criteria of section 408(a) of the Act because (a) the Sale of the Property involves a one-time transaction; (b) the Plan will not incur any expenses incidental to the Sale; (c) the Sales price will be determined from appraisals of the Property prepared by a qualified, independent appraiser; (d) the Sale will permit the Plan to realize

liquid funds that can be reinvested at the direction of the participants in more liquid assets; and (e) the Plan will not have to risk its assets in the development of the Property.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of April 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–9784 Filed 4–26–93; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 93–26; Exemption Application No. D–8978, et al.]

Grant of Individual Exemptions; United Company Profit Sharing and Retirement Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

United Company Profit Sharing and Retirement Plan (the Plan) Located in Bristol, Virginia

[Prohibited Transaction Exemption 93–26; Exemption Application No. D–8978]

Exemption

The restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply retroactively to a series of loans (the Past Loans) [1] made on a revolving basis by the Plan to the Employer in accordance with the following conditions:

(1) The terms and conditions of the Past Loans were at least as favorable to the Plan as those obtainable by the Plan under similar circumstances in arm's length transactions with unrelated third parties;

(2) The exemption applies to the Past Loans up to an aggregate amount of the outstanding balances of such loans that did not exceed twenty-five percent (25%) of the assets of the Plan;

(3) Within sixty (60) days of the grant of this proposed exemption, the Employer will file with the Internal Revenue Service (IRS) the Form 5330, and will pay excise tax, if any is then deemed to be due and owing with respect to the amounts above twenty-five percent (25%) of the assets of the Plan borrowed by the Employer under the Past Loans.

(4) An independent fiduciary, on behalf of the Plan, negotiated, reviewed, and approved the terms and conditions of the Past Loans prior to entering into such Past Loans;

(5) An independent fiduciary, on behalf of the Plan, monitored the Employer's compliance with the terms of the Past Loans to ensure that the Plan and its participants and beneficiaries

[1] On August 8, 1989, the Department received an exemption application (D–8146) from the United Company (the Employer) requesting prospective relief for a series of loans to the Employer by the Plan on a revolving basis for a term of five (5) years. The Notice of proposed exemption for D–8146 was published in the Federal Register on January 29, 1990, 55 FR 2903. The granted exemption for D–8146 was published as PTE 90–17 in the Federal Register on April 6, 1990, at 55 FR 12968.

were protected throughout the duration of such Past Loans;

(6) The Past Loans were at all times secured by collateral which was valued at not less than 200 percent (200%) of the aggregate balance of all outstanding Past Loans from the Plan to the Employer;

(7) The Plan incurred no fees, commissions, or other charges as a result of the Past Loans; and

(8) The Plan suffered no loss as a result of the Past Loans.

EFECTIVE DATES: This exemption is effective beginning August 31, 1990, through December 29, 1991, the date by which all of the Past Loans were repaid.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 18, 1993, at 58 FR 8989.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Mid-Hudson Medical Group P.C. Profit Sharing Trust (the Plan) Located in Fishkill, New York

[Prohibited Transaction Exemption 93–27; Exemption Application No. D–9153]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the continued leasing (the Lease) of certain improved real property (the Property) by the Plan to Mid-Hudson Medical Group, P.C. (the Employer), a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) The Property represents no more than 25% of the value of the Plan's assets; (b) the terms of the Lease are, and will remain, at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) the fair market rental value of the Property has been, and will continue to be determined on an annual basis by a qualified, independent appraiser; (d) the Plan's independent fiduciary has determined, as of June 30, 1992, that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (e) the Plan's independent fiduciary will continue to monitor the transaction and the conditions of the exemption and take whatever action is necessary to enforce the Plan's rights under the Lease; and (f) the Employer will pay to the Internal Revenue Service all applicable excise taxes due by reason of the Lease during the period from July 1, 1984 through June 29, 1992 within 90 days of the publication in the **Federal Register** of this notice of grant of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 24, 1993 at 58 FR 11251.

EFFECTIVE DATE: This exemption is effective June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

International Rectifier Corporation Profit Sharing and Retirement Plan (the Plan) Located in El Segundo, California

[Prohibited Transaction Exemption 93–28; Exemption Application No. D–8747]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply (1) effective September 30, 1986, to the past leasing of two parcels of real property (the Properties) from the Plan to International Rectifier Corporation (the Employer), a party in interest with respect to the Plan, and (2) to the proposed sale for cash of the Properties from the Plan to the Employer, in accordance with the following conditions:

(1) The terms and conditions of the past leasing of the Properties were at least as favorable to the Plan as those obtainable under similar circumstances in arm's-length transactions with unrelated third parties;

(2) The exemption for the past leasing of the Properties applies with respect to twenty-five percent (25%) of the Plan's assets only, as determined by reference to the combined fair market values of the Properties;

(3) The terms and conditions of the leases were reviewed, approved and monitored by an independent fiduciary on behalf of the Plan;

(4) Within 60 days of the grant of this exemption, the Employer will file with the Internal Revenue Service the Form 5330 and will pay an excise tax if any is deemed to be due with respect to the amounts above 25 percent of the assets of the Plan involved in the leases of the Properties to the Employer on or after September 30, 1988;

(5) The sale of the Properties will be for cash and the Plan will receive no less than the greater of $2,150,000 or the fair market value of the Properties at the time of sale;

(6) The fair market value of the Properties will be established by a real estate appraiser independent of the Employer; and

(7) The Plan will pay no commissions or other expenses in regard to the sale.

EFFECTIVE DATE: This exemption is effective as of September 30, 1988.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 18, 1993, at 58 FR 8993.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of April, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–9783 Filed 4–26–93; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before June 11, 1993. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Justice, Executive office for United States Trustees (N1–60–92–5). Case files and related records.

2. Department of State (N1–59–93–6). Routine administrative records of the Bureau of International Organization Affairs, Office of the Chief of Protocol, Records Management Division, and Automated Data Processing Division.

3. Department of State, Foreign Service Posts (N1–84–93–8). Case files on voluntary agency employees.

4. Defense Contract Audit Agency (N1–372–93–1). Committee Files.

5. Defense Logistics Agency (N1–361–93–4). Records relating to the Host Enrollee Program and energy market research.

6. Federal Emergency Management Agency (N1–311–92–5). Source materials consisting of duplicate copies of FEMA records used by the agency historian.

7. Federal Emergency Management Agency (N1–311–92–6). Outputs from the Capability and Hazard Identification Program with the Fiscal Management Information System.

8. National Oceanic and Atmospheric Administration, National Weather Service (N1–27–93–1). Manuscript charts and maps, 1948–1960; storm studies, 1819–1965; and cooperative project files, 1947–1975.

9. Office of Secretary of Defense (N1–330–92–10). Facilitative and background records relating to drug enforcement activities.

10. Railroad Retirement Board (N1–184–93–7). Administrative and facilitative records of the Bureau of Unemployment and Sickness Insurance.

11. Tennessee Valley Authority, Generating Group (N1–142–93–3). Reduction of retention periods for recording instrument charts for fossil and hydroelectric generating plants.

Dated: April 19, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–9797 Filed 4–26–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

April 22, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45, part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by May 24, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the

Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. The application received is as follows:

1. Applicant

Wayne Z. Trivelpiece, Old Dominion University, P.O. Box 955, Bolinas, CA 94924.

Activity for Which Permit Requested

Taking. Importation into the U.S.

Enter Site of Special Scientific Interest. As part of a continuing study to the behavioral ecology and population biology of penguins and their principal avian predators, the applicant proposes banding of up to 6,000 penguins, use of tracking equipment on up to 150 penguins; all birds are released unharmed after capture. The investigator's principal study site has been SSSI #8, and a permit to continue research within that area is requested. A permit to import salvaged carcasses and skeletons of penguins and Antarctic flying birds is requested, the specimens would be returned to the applicant's university for educational purposes.

Location

South Shetland Islands, Antarctica

Dates

10/01/93–04/01/94.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–9798 Filed 4–26–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:*

10 CFR Part 74—Material Control and Accounting of Special Nuclear Material

NUREG 1065—Acceptance Criteria for the Low Enriched Uranium Reform Amendments

NUREG/CR 5734—Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Enrichment Facilities, and

NUREG 1280—Standard Format and Content Acceptance Criteria for the Material Control and Accounting (MC&A) Reform Amendment

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Submission of the material control and accounting plan and the fundamental nuclear material control plan are one-time requirements which have been completed by all current licensees. Specified inventory and material status reports are required annually or semiannually. Other reports are submitted as events occur.

5. *Who will be required or asked to report:* Persons licensed under 10 CFR parts 70 or 72 who possess and use certain forms and quantities of special nuclear material.

6. *An estimate of the number of responses annually:* 22.

7. *An estimate of the total number of hours needed annually to complete the requirement or request:* 52,811 hours (an average of 406 hours per response plus 4,876 hours per recordkeeper).

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* 10 CFR part 74 establishes requirements for material control and accounting of special nuclear material, and specific performance-based regulations for licensees authorized to possess and use strategic special nuclear material, or to possess and use, or produce, special nuclear material of low strategic significance. The information is used by NRC to make licensing and regulatory determinations concerning material control and accounting of special nuclear material. Submission or retention of the information is mandatory for persons subject to the requirements. The revision reflects an increase in burden because of the addition of requirements for enrichment plants, added by a rulemaking previously approved by OMB.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0123), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 16th day of April, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–9765 Filed 4–26–93; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. *Type of submission, new revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 313—Application or Material License.

3. *The form number if applicable:* NRC Form 313.

4. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every five years.

5. *Who will be required or asked to report:* Persons desiring a specific license to possess, use, or distribute byproduct or source material.

6. *An estimate of the number of responses annually:* 4,340.

7. *An estimate of the total number of hours needed annually to complete the requirement or request:* 39,060 (an average of nine hours per response).

8. *An indication of whether Section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* Applicants must submit NRC Form 313 to obtain a specific license to possess, use, or distribute byproduct or source material. The

information is reviewed by the NRC to determine whether the applicant is qualified by training and experience and has equipment, facilities, and procedures which are adequate to protect the health and safety of the public and minimize danger to life or property.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0120), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 16th day of April, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–9766 Filed 4–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–409]

La Crosse Boiling Water Reactor; Relocation of Local Public Document Room

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to relocate the local public document room (LPDR) collection for the La Crosse Boiling Water Reactor.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) intends to relocate the LPDR collection for records pertaining to the La Crosse Boiling Water Reactor (BWR) from the La Crosse Public Library, La Crosse, Wisconsin, to another location (to be determined). The La Crosse Public Library, which has maintained the LPDR collection since 1972, has asked that the document collection be relocated due to the decline in its use since the facility is no longer operating. The collection currently consists of approximately 30 linear feet of paper copy records, one seven drawer and two ten drawer microfiche storage cabinets, and a microfiche reader printer with table. The paper copy records include documents pertaining only to the La Crosse BWR dated prior to 1981 and collection reference materials. The microfiche covers all NRC publicly available documents since 1981. The purpose of this notice is to invite public comment on possible LPDR sites.

DATES: Comment period expires May 27, 1993. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information Act/ Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number 301–492–4344, or toll-free 1–800–638–8081.

SUPPLEMENTARY INFORMATION: Among the factors the NRC will consider in selecting a location for the collection are:

(1) Whether the institution is an established document repository with a history of impartially serving the public;

(2) The physical facilities available, including shelf space, patron work space, and copying and micrographic equipment;

(3) The willingness and ability of the library staff to maintain the LPDR collection and assist the public in locating records;

(4) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evening and weekend hours;

(5) The accessibility of the library to the handicapped;

(6) The proximity of the library to the La Crosse BWR located in Genoa, Wisconsin.

Public comments are requested on libraries in the vicinity of the La Crosse BWR that might be considered for selection as the location for this NRC local public document room collection.

Dated at Bethesda, Maryland, this 21 day of April, 1993.

For the Nuclear Regulatory Commission,

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 93–9761 Filed 4–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–412]

Duquesne Light Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–73, issued to Duquesne Light Company (DLC, the licensee), for operation of the Beaver Valley Power Station, Unit 2 located in Shippingport, Pennsylvania.

The proposed amendment would modify Table 4.3–1 of the Technical Specifications (TS) to add a footnote which states: "Complete verification of OPERABILITY of the manual reactor trip switch circuitry shall be performed prior to startup from the first shutdown MODE 3 occurring after April 6, 1993."

On April 5, 1993, DLC discovered a testing inadequacy for the manual reactor trip function in TS 4.3.1.1.1. The testing inadequacy was discovered as a result of DLC's review of NRC Information Notice 93–15 which alerted licensees to the potential testing inadequacy. Although there was strong evidence indicating that the manual trip system was fully functional, the TS action required by TS 3.0.3 and 4.0.3 would require plant shutdown until the test inadequacy was corrected. The licensee requested the NRC to exercise discretionary enforcement to permit continued operation until the next scheduled or unscheduled shutdown into MODE 3 operation, at which time the manual trip functional test would be performed using a corrected procedure. The NRC determined that this course of action involved minimum or no safety impact. On April 6, 1993, the NRC verbally granted discretionary enforcement, which was documented in a letter to DLC on April 9, 1993.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment

request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability or consequences of an accident previously evaluated is not significantly increased. The reactor trip breaker shunt and undervoltage trip actuation circuitry is redundant and reliable. Should the manual actuation of the shunt trip fail to operate, the diversity and redundancy of the reactor protection system would enable it to perform its design function. If a manual reactor trip signal did not reach the shunt trip coil, the de-energization of the undervoltage relay would cause the reactor trip breakers to open. Additionally, when the undervoltage relay is de-energized, the auto shunt trip relay (STA) also is de-energized. This action closes a contact which will energize the shunt trip coil and open the reactor trip breakers.

An additional back-up to the manual reactor trip function is contained in the Emergency Operating Procedures. These procedures direct the plant operators to perform the following actions in the event that the reactor trip breakers do not open when required:

1. Manually inserting control rods, and
2. Initiation of an emergency boration, and
3. Local opening of the reactor trip breakers and de-energization of the motor generator sets.

Therefore, since the response of the plant to an accident is unchanged, there is no significant increase in either the probability or consequences of an accident previously evaluated as a result of this proposed change.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not affect the operation or response of any plant equipment or introduce any new failure mechanisms. The current accident analyses are unchanged and bound all expected plant transients.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The ability of the Solid State Protection System (SSPS) to initiate a reactor trip via the undervoltage coil and indirectly energize the shunt trip coil has been verified. Should a reactor trip be required, this is the portion of the reactor trip system which would likely function to open the reactor trip breakers. It is unlikely that a manual reactor trip would be required. In the unlikely event that the operator was required to initiate a manual reactor trip and the signal did not reach the shunt trip coil, the de-energization of the undervoltage coil would cause the reactor trip breakers to open. Additionally, when the undervoltage coil is de-energized, the auto shunt trip relay (STA) is also de-energized. This action closes a contact which will energize the shunt trip coil and open the reactor trip breakers.

The reactor trip system will continue to function as designed with no adverse impact as a result of the delay in performing the Operating Surveillance Test (OST) on the reactor trip breakers. Since the response of the plant is unchanged, there is no significant safety impact resulting from the delay in performing the surveillance testing.

The reactor trip breakers and reactor trip bypass breakers are fully functional and capable of opening in response to a Main Control Board manual trip actuation. Therefore, the proposed license amendment does not impact accident analyses or the associated radiological consequences nor does it impact systems associated with the control of radiological or non-radiological effluents.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examinedat the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of request for hearing and petitions for leave to intervene is discussed below.

By May 27, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's

property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Dr. Walter R. Butler: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 14, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 20th day of April 1993.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Senior Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–9763 Filed 4–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–250]

Florida Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–31 issued to the Florida Power and Light Company (the licensee) for operation of the Turkey Point Nuclear Generating Unit 3 located in Dade County, Florida.

The proposed amendment would revise the Technical Specifications (TS) 3.3.3.2 relating to the Moveable Incore Detector System to reduce the minimum number of operable detector thimbles from 38 to 25 and to increase the minimum number of detector thimbles per quadrant from two to three whenever the number of operable thimbles is less than 38. To compensate for this reduction in the number of detector thimbles, TS 3/4.2.2, Heat Flux Hot Channel Factor—$F_Q(Z)$ and TS 3/4.2.3, Nuclear Enthalpy Rise Hot Channel Factor—F(delta)H, and their associated bases would also be revised to increase their measurement uncertainty factors. The proposed amendment would be applicable to Turkey Point Unit 3 only for the remaining period of its Cycle 13.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different king of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR

50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment allows operation with a fewer number of operable incore detector thimbles [than] currently permitted by the Technical Specifications. These detectors are used to monitor peaking factors; and the number of operable detectors have no impact on the probability or consequences of an accident previously evaluated. An increase in the Fq measurement uncertainty to accommodate a decrease in the number of operable detector thimbles reduces the operational margin to the Technical Specifications limit of 2.32. The 2.32 Fq limit is not affected by this proposed amendment and the results of the Loss of Coolant Accident (LOCA) analyses for Turkey Point remain valid. The increase in the F[delta]H measurement uncertainty to accommodate the decrease in operable detector thimbles reduces the operational margin to the Technical Specification limit of 1.62. The 1.62 F[delta]H limit measurement is not affected by this proposed amendment and the results of the non-Loca (DNBR) analyses remain valid.

An increase in the measured peaking factor uncertainties representing a reduction in the margin to the Technical Specifications limit is applied to ensure that the reduction in the number of operable detector thimbles conservatively calculates the limiting peaking factors in the core, thus ensuring that the monitoring duty of the incore detector system is met. This proposed amendment is only applicable to the current cycle (i.e., Cycle 13) for Turkey Point Unit 3 and sufficient margin exists to ensure that the Technical Specifications are not violated. The proposed amendment does not involve a significant increase in the probability of an accident previously evaluated since the proposed amendment does not change the Turkey Point Unit 3 plant design or operation of the facility as previously evaluated by the NRC.

The increase in uncertainties applied to F[delta]H and Fq does not change the limiting peaking factors used in the UFSAR Chapter 14 safety analyses. By maintaining the Technical Specifications limits of 2.32 and 1.62 Fq and F[delta]H respectively, FPL can assure that the consequences to all LOCA and non-LOCA accident analyses will not change and are bound by the safety analyses for Turkey Point. Therefore, the consequences of any accident previously evaluated have not changed.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since the proposed change will not affect plant safety analysis assumptions or the physical design of the facility. No new failure mode is introduced as a result of the reduction in the minimum required number of operable incore detector thimbles.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The operation and physical characteristic of the facility is unchanged by this proposed Technical Specification amendment. By increasing the measurement uncertainties with increasing number of failed detector thimbles the margin of safety is not reduced by the reduction in the number of operable detector thimbles. The increased uncertainty factors ensures that the margin of safety assumed in the Technical Specification limits of 2.32 and 1.62 on Fq and F[delta]H is not exceeded.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petition for leave to intervene is discussed below.

By May 27, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Florida International University, University Park, Miami, Florida 33199. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the

petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted,. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in providing the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to reply to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow, petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, and supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 13, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Florida International University, University Park, Miami, Florida 33199.

Dated at Rockville, Maryland, this 20th day of April 1993.

L. Raghaven,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of the Nuclear Reactor Regulation.

[FR Doc. 93–9764 Filed 4–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Tennessee Valley Authority (licensee) for an amendment to Facility Operating License Nos. DPR–77 and DPR–78 issued to the licensee for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Soddy Daisy, Tennessee. Notice of Consideration of Issuance of this amendment has not been published in the **Federal Register.**

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to increase the allowed outage time specified for the centrifugal charging pumps for 3 days to 7 days with one charging pump inoperable.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated April 20, 1993.

By May 27, 1993, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC., 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to the Office of the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated August 28, 1991, and (2) the Commission's letter to the licensee dated April 20, 1993.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga,

Tennessee 37402. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 20th day of April 1993.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Acting Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–9762 Filed 4–26–93; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued April 21, 1993.

Before Commissioners: George W. Haley, Chairman; John W. Crutcher; W. H. "Trey" LeBlanc, III; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A93–15

Name of Affected Post Office: Lodi, Texas 75564

Name(s) of Petitioner(s): J.C. McKnight and others

Type of Determination: Closing

Date of filing of appeal papers: April 19, 1993

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before May 4, 1993.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

April 19, 1993: Filing of Petition

April 21, 1993: Notice and Order of Filing of Appeal

May 14, 1993: Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]

May 24, 1993: Petitioners' Participant Statement or Initial Brief [see 39 CFR 3001.115(a) and (b)]

June 14, 1993: Postal Service Answering Brief [see 39 CFR 3001.115(c)]

June 29, 1993: Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)]

July 6, 1993: Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]

August 17, 1993: Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 93–9727 Filed 4–26–93; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32185; File No. SR–Amex–93–10]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change by American Stock Exchange, Inc., Relating to an Extension of a Pilot Program Which Permits Specialists to Grant Stops in a Minimum Fractional Change Market

April 21, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend amendments to Amex Rule 109 for an additional three months until July 20, 1993.[3] The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 17, 1992, the Commission approved amendments to Exchange Rule 109 for a one-year pilot program.[4] The amendments permit a specialist, upon request, to grant to stop [5] in a minimum fractional change market [6] for any order of 2,000 shares or less, up to a total of 5,000 shares for all stopped orders, without obtaining prior Floor Official approval. A Floor Official,

[3] The Amex originally requested a one-year extension of its Rule 109 pilot program. The Commission; however, believes that additional information is necessary before the Commission can review the Amex's proposal and determine whether the program should be extended for such a period. To allow the pilot to continue while this information is being gathered and evaluated, the Amex has agreed to a three-month extension. Letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated April 19, 1993 ("Amendment No. 1").

[4] See Securities Exchange Act Release No. 30603 (April 17, 1992), 57 FR 15340 (April 27, 1992) (File No. SR–Amex–91–05) ("1992 Approval Order"). Commission approval of these amendments expires on April 20, 1993. The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program to continue without interruption.

[5] When a specialist agrees to a floor broker's request to "stop" a market order, the specialist is obligated to execute the order at the best bid or offer, or better if obtainable. See Amex Rule 109(a).

[6] Amex Rule 127 sets forth the minimum fractional changes for securities traded on the Exchange.

however, must authorize a greater order size or aggregate share threshold.

During the course of the pilot program, the Exchange has monitored compliance with the rule's requirements; analyzed the impact on orders on the specialist's book resulting from the execution of stopped orders at a price that is better than the stop price; and reviewed market depth in a stock when a stop is granted in a minimum fractional change market. The Exchange believes that the amendments to Rule 109 have provided a benefit to investors by providing an opportunity for price improvement, while increasing market depth and continuity without adversely affecting orders on the specialist's book. The Exchange's findings in this regard have been forwarded to the Commission under separate cover.[7]

The Exchange is proposing to extend the pilot program for an additional three month period,[8] in order to provide an opportunity for the Exchange and the Commission to further study and monitor the effects of the pilot program.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendments to Rule 109 are consistent with these objectives in that they provide a market mechanism which contributes to continuity and depth in the markets for exchange-traded securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–93–10 and should be submitted by May 18, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b)(5)[9] and section 11(b)[10] of the Act. The Commission believes that the amendments to Rule 109 should further the objectives of section 6(b)(5) and section 11(b) through pilot program procedures designed to allow stops, in minimum fractional change markets, under limited circumstances that provide for the possibility of price improvement to customers whose orders are granted stops.[11]

In its order approving the pilot procedures,[12] the Commission asked the Amex to study the effects of stopping stock in a minimum fractional change market. Specifically, the Commission expressed interest in (1) the percentage of stopped orders executed at the stop price, versus the percentage of such orders receiving a better price; (2) whether limit orders on the specialist's book were being bypassed due to the execution of stopped orders at a better price; (3) market depth, including a comparison of the size of stopped orders to the size of the opposite side of the quote and to any quote size imbalance; and (4) specialist compliance with the pilot program's procedures.

On March 12, 1993, the Exchange submitted to the Commission its monitoring report regarding the amendments to Rule 109.[13] The Commission believes that, although this monitoring report provides certain useful information concerning the operation of the pilot program, the Amex must provide further data before the Commission can fairly and comprehensively evaluate the Amex's use of the pilot procedures. To allow such additional information to be gathered and reviewed, without compromising the benefit that investors might receive under Rule 109, the Commission believes that it is reasonable to extend the pilot program for an additional three months. During this extension, the Commission expects the Amex to respond fully to the concerns set forth below.

First, the monitoring report indicates that 54.9% of orders stopped in minimum fractional change markets received price improvement. The Commission, therefore, believes that the pilot procedures provide a benefit to investors by offering the possibility of price improvement to customers whose orders are granted stops in minimum fractional change markets. Assuming that most stopped orders fall within Rule 109's size parameters, the amendments would mainly affect small public customer orders, which the Commission envisioned could most benefit from professional handling by the specialist.

During the pilot extension, the Commission requests that the Amex continue to monitor the percentage of stopped orders executed at the stop price, as compared to the percentage of such orders receiving a better price. To determine who receives the benefit of price improvement, the Amex should also calculate, for the same sample of orders, the percentage of stopped orders which are for 2,000 shares or less.[14]

In terms of how the pilot program affected customer limit orders existing on the specialist's book,[15] the Amex

[7] See letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated March 11, 1993 ("monitoring report").

[8] See Amendment No. 1, *supra*, note 3.

[9] 15 U.S.C. 78f (1988).

[10] 15 U.S.C. 78k (1988).

[11] For a description of Amex procedures for stopping stock in minimum fractional change markets, and of the Commission's rationale for approving those procedures on a pilot basis, *see* 1992 Approval Order, *supra*, note 4. The discussion in the aforementioned order is incorporated by reference into this order.

[12] See, *supra*, note 4.

[13] See, *supra*, note 7.

[14] The Commission believes that an effective compliance program should include continuous surveillance of how often stopped orders fall within the pilot's size parameters.

[15] When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives an improved price, limit orders at the stop price are bypassed and, if

report merely states that "in virtually all cases" such orders were executed at their limit price. The Commission historically has been concerned that book orders may get bypassed when stock is stopped.[16] To reassure the Commission that Rule 109 does not harm public customers with orders on the specialist's book, the Amex should provide detailed facts supporting its conclusion that the pilot's impact on book orders is "minimal."

The Commission therefore requests that the Amex conduct a more rigorous review of this issue. Specifically, the Amex should attempt to measure how often limit orders on the opposite side of the market from a stopped order are entitled to, but do not receive, immediate execution. At a minimum, the Amex should determine how often such limit orders are executed by the close of the day's trading.[17] Finally, the Amex should conduct a one-day review of all book orders in the five stocks receiving the greatest number of stops, and should submit to the Commission both raw trade data for,[18] and a description of the final disposition of,[19] each such order.

Third, the Amex's monitoring report found that market depth increased when stopped orders received price improvement. According to the report, however, there was little, if any, increase in depth when such orders were executed at the stop price. From the Commission's perspective, this response does not directly or fully address the substantive issues raised by the pilot program. The Amex has stated, both to the Commission[20] and to its members,[21] that specialists can only stop stock in a minimum fractional change market when (1) an imbalance exists on the opposite side of the market and (2) such imbalance is of sufficient size to suggest the likelihood of price improvement. Commission approval of this pilot program turned, in large part, on such representations. However, based on the Exchange's monitoring report, it does not appear that the Amex has established a formal system for routinely measuring, in some quantitative way, the size of the market imbalance and the sufficiency of that imbalance.

The Commission, therefore, wishes to emphasize strongly that Rule 109 can only be implemented when it is clear that the imbalance on the opposite side of the market from the order being stopped is of sufficient size to suggest the likelihood of price improvement. No other market condition (no matter how great the likelihood of price improvement) justifies a specialist's stopping stock in a minimum fractional change market. In summary, the Commission believes that the requirement of a sufficient market imbalance is the most critical aspect of the pilot program.[22] Strict adherence to this standard is necessary to ensure that stops are only granted, in a minimum fractional change market, when the benefit (*i.e.*, price improvement) to orders being stopped far exceeds the potential of harm to orders on the specialist's book.[23]

To evaluate how this standard is being applied in practice, the Commission requests that the Amex conduct a comprehensive quantitative analysis of market depth.[24] In its next monitoring report, the Amex should compare the size of the stopped order to the size of the opposite side of the quote and to any quote size imbalance.[25] The Amex should break individual orders down as follows: 2,000 shares or less; 2,001 to 5,000 shares; 5,001 to 10,000 shares; and over 10,000 shares. The Amex should provide the requested information in the form of an average for all buy orders stopped, and then for all sell orders stopped, in each of the above size ranges. Furthermore, when a Floor Official approves a stop that causes the total number of stopped shares to exceed 5,000 shares, the Amex should provide the Commission with information comparing the aggregate size of all orders stopped to the size of the opposite side of the quote and to any quote size imbalance.[26] The Amex should provide the requested information in the form of an average for multiple buy orders, and then for multiple sell orders, which require such Floor Official approval. Finally, the Amex should calculate, as of the time a stop is granted, the ratio of the size of the bid to the size of the offer.[27] The Amex should provide the requested information in the form of an average for all buy orders stopped, and then for all sell orders stopped, in each of the aforementioned order size ranges.[28]

Finally, the Amex report describes its efforts regarding compliance with the pilot procedures. According to the Exchange, every order that exceeded Rule 109's parameters received Floor Official approval. In this regard, the Commission believes that the Exchange has sufficient means to determine whether a specialist complied with the amendments' order size and aggregate share thresholds and, if not, whether Floor Official approval was obtained for

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the market turns away from that limit, may never be executed.

As for book orders on the same side of the market as the stopped stock, the Commission believes that Rule 109's requirements make it unlikely that these limit orders would not be executed. Under the Amex's pilot program, an order can be stopped if and only if a substantial imbalance exists on the opposite side of the market. See, *infra*, text accompanying notes 20–23. Given that non-discretionary requirement, the stock would probably trade away from the large imbalance, resulting in execution of orders on the book.

[16] See, *e.g.*, SEC, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

[17] In the past, the Amex has stated that it does not have the electronic display book technology necessary to make this determination. Telephone conversation between William Iommi, Executive Director, Trading Analysis Division, Amex, and Beth Stekler, Attorney, Division of Market Regulation, on April 6, 1993. However, use of such a display book on the Amex floor is expected to begin on April 28, 1993. See Securities Exchange Act Release No. 32140 (April 14, 1993) (File No. SR–Amex–92–46). The Amex has stated that the electronic book will be phased in, floor-wide, over the remainder of this year. Telephone conversation between William Iommi, Executive Director, Trading Analysis Division, Amex, and Beth Stekler, Attorney, Division of Market Regulation, on April 19, 1993. The Commission expects that the Amex will thereafter be able to assess whether the relevant limit orders had, as of the close, been executed, cancelled or remained on the book.

[18] In this regard, the Commission would like the Amex to submit the documentation the Amex is relying upon to support its conclusions about the final disposition of these limit book orders. See, *infra*, note 19.

[19] As explained in *supra* note 17.

[20] See letter from Claire P. McGrath, Senior Counsel, Legal & Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated January 6, 1992 (Amendment No. 1 to File No. SR–Amex–91–05). Amendment No. 1 formally incorporated the requirement that the indicia of market depth discussed below must, without exception, be satisfied before a specialist is permitted to stop stock in a minimum fractional change market.

[21] See Amex Information Circular Nos. 92–74 (April 24, 1992) and 93–333 (April 7, 1993).

[22] Recently, in approving a comparable proposal by the New York Stock Exchange, the Commission placed similar emphasis on the critical nature of the sufficient size standard. *See* Securities Act Release No. 32031 (March 22, 1993), 58 FR 16563 (March 29, 1993) (File No. SR-NYSE–93–18).

[23] See, *supra*, text accompanying notes 15–19.

[24] The Commission believes that an effective compliance program should include surveillance of the indicia of market depth discussed below, see *infra* text accompanying notes 25–28, for every stopped order.

[25] Every time a specialist stops a market order to buy, the size of that stopped order should be compared (1) to the size of the offer side of the quote and (2) to the quote size imbalance, *i.e.*, the difference between the size of the offer and the size of the bid.

Every time a specialist stops a market order to sell, the size of that stopped order should be compared (1) to the size of the bid side of the quote and (2) to the quote size imbalance, *i.e.*, the difference between the size of the bid and the size of the offer.

[26] As explained in *supra* note 25.

[27] Every time a specialist stops a market order to buy, the Amex should calculate the size of the bid as a percentage of the size of the offer.

Every time a specialist stops a market order to sell, the Amex should calculate the size of the offer as a percentage of the size of the bid.

[28] See, *supra*, text accompanying note 25.

larger parameters. The Commission also notes the Amex's on-going effort to keep its specialists properly informed about the pilot program's requirements. In this context, the Amex has distributed Information Circulars [29] and held continuing educational sessions on the pilot program and its requirements for stopping stock in minimum fractional change markets.

During the pilot extension, the Commission requests that the Amex continue to monitor closely specialist compliance with Rule 109's procedures. As before, the Amex should determine how often orders requiring Floor Official approval to be stopped do not receive such approval. In so doing, the Amex should distinguish between instances where the specialist did not ask for permission and those where it was denied (and, if so, on what grounds). If Amex surveillance reveals violations of this or any other requirement of the pilot (especially the requirement of a sufficient market imbalance, as discussed above),[30] the Amex should gather information about the frequency of such non-compliance and the market conditions prevailing at the time of each instance thereof. The Commission also requests that the Amex report on the action taken by the Exchange in response to each instance of specialist non-compliance with the pilot procedures.

The Commission requests that the Amex report its findings on these matters by June 20, 1993. In addition, if the Exchange determines to request an extension of the pilot program beyond July 20, 1993, the Commission requests that the Amex also submit a proposed rule change by June 20, 1993.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[31]

It is therefore ordered, pursuant to section 19(b)(2) [32] that the proposed rule change (SR–Amex–93–10) is hereby approved for a three-month period until July 20, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–9794 Filed 4–26–93; 8:45 am]

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[29] *See, supra,* note 21.

[30] *See, supra,* text accompanying notes 20–23.

[31] No comments were received in connection with the proposed rule change which implemented these procedures. See 1992 Approval Order, *supra,* note 4.

[32] 15 U.S.C. 78s(b)(2) (1988).

[33] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32177; File No. SR–NASD–93–8]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Clarifying NASD Authority To Suspend or Terminate Nasdaq National Market System Securities When the Issuer Has Filed for Bankruptcy or Announces Liquidation

April 20, 1993.

On February 28, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder.[2] The proposal amends Part III, Section 4(d) of Schedule D to the By-Laws ("Section 4(d)") [3] to clarify the NASD's authority to suspend or terminate Nasdaq National Market System ("Nasdaq NMS") securities when the issuer files for bankruptcy or announces liquidation.

Notice of the proposed rule change, together with its terms of substance, appeared in the **Federal Register** on March 16, 1993.[4] The Commission received no comments on the proposal. This order approves the rule change.

Schedule D applies different delisting criteria for Nasdaq Small-Cap and Nasdaq NMS companies filing for bankruptcy. Part II, Section 3(a) of Schedule D [5] provides that the Association "may" suspend or delist an otherwise qualified Nasdaq Small-Cap security when the issuer files for protection under the federal bankruptcy laws. Section 4(d) applies a similar requirement to Nasdaq NMS securities and provides that securities of a Nasdaq NMS issuer filing for bankruptcy or announcing liquidation "shall not remain designated" unless the NASD determines that investor protection and the public interest warrant continued designation.

In practice, however, the NASD applies the same standard for Nasdaq Small-Cap and NMS issuers filing for bankruptcy protection or announcing liquidation. Specifically, a Nasdaq Small-Cap or NMS company filing for bankruptcy or announcing liquidation must notify the NASD, which may institute a trading halt or suspend quotations in the security in Nasdaq, pending review of the company's financial condition. The company must then provide the NASD with current financial information, including a balance sheet and statement of operations, and the NASD then determines whether the company's securities satisfy the NASD's continued maintenance criteria or whether the company has a credible plan for returning to compliance with the NASD's continued maintenance criteria. Requests for exceptions to the delisting of a Nasdaq Small-Cap or NMS security are reviewed by the NASD on a case-by-case basis. If the NASD determines that the public interest and the protection of investors warrant continued designation, a "Q" symbol is attached to the trading symbol of the company's securities to disclose to the public that the issuer has filed for bankruptcy protection or plans to liquidate.

The NASD believes that the term "shall" in section 4(d) implies that the filing for bankruptcy or the announcement of liquidation by a Nasdaq NMS issuer will effect an automatic delisting of the issuer's securities without recourse to a case-by-case NASD review, as currently provided to issuers of both Nasdaq Small-Cap and NMS securities. The NASD, therefore, is amending section 4(d) to preplace the term "shall" with the term "may," to eliminate any such misinterpretation of current language.

The Commission believes that the rule change will clarify for investors that when a Nasdaq NMS issuer files for bankruptcy or announces its intent to liquidate, its securities are not automatically delisted, but instead, the NASD commences a review of the company to determine the action that best serves the public interest and the protection of investors.

For these reasons, and for the reasons above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] NASD Manual, (CCH) ¶ 1811.

[4] Securities Exchange Act Release No. 31973 (March 10, 1993), 58 FR 14232.

[5] NASD Manual, (CCH) ¶ 1805.

15A(b)(6) of the Act.[6] Section 15A(b)(6) requires that the NASD's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the instant rule change be, and hereby is, approved, effective within 45 days.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-9719 Filed 4-26-93; 8:45 am]

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[Release No. 34-32178; File No. SR-PSE-92-20]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. to Supplement the Provisions of Section 15(f) of the Securities Exchange Act of 1934 and the Insider Trading and Securities Fraud Enforcement Act of 1988

April 20, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 14, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is submitting to the Commission a rule change that supplements the provisions of section 15(f) of the Act and the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"). The text of the proposed rule change is available at the Compliance Department of the PSE and at the Commission.

[6] 15 U.S.C. 78o-3(b)(12).

[7] 17 CFR 200.30-3(a)(12).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

Proposed Rule 2.6(e) is intended to supplement section 15(f) of the Act and the ITSFEA, by requiring every member of the Exchange to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such member and any person associated with the member. In addition, Rule 2.6(e) mandates that all members that are required to file SEC Form X-17A-5 ("FOCUS Reports") with the Exchange on an annual basis must submit with their FOCUS Reports an attestation of compliance with the Rule. Finally, the proposed Rule establishes minimum standards for compliance with the record-keeping requirements of the Rule and the Act, and requires disclosure by members, and associated persons, to the Exchange's Surveillance Department of any possible misuse of material, non-public information.

The proposed Rule contains four Commentaries. Commentary .01 describes conduct that would constitute the misuse of material, non-public information. Specifically, such conduct would include, but is not limited to: (1) Trading in any securities, or in any related securities, options or other derivative securities of a corporation while in possession of material, non-public information concerning that corporation; (2) trading in an underlying security or related options or other derivative securities while in possession of material, non-public information concerning imminent transactions in the underlying security or related securities; and (3) disclosing to another person or entity information described in (1) or (2) for the purpose of facilitating the possible misuses of such material, non-public information.

The scope of the aforementioned definition is intended to be consistent with the intended goal of section 15(f) of the Act and ITSFEA: To prevent the misuse of material, non-public information. This definition should be broad enough to encompass frontrunning, trading on the basis of material corporate inside information, tipping and misappropriating material corporate inside information.

Commentary .02 would define the term "associated person" or "person associated with a member" as any partner, officer, director, or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a member, or any employee of a member. The purpose of this Commentary is to provide a definition that is consistent with the definition of "associated person" in section 3(a)(21) of the Act.

Commentary .03 would require members to establish, maintain and enforce certain policies and procedures pursuant to Rule 2.6(e). Specifically, members would be required to: (1) Advise all associated persons in writing of the prohibition against the misuse of material, non-public information; (2) maintain for at least three years, the first two years in an easily accessible place, signed attestations from the member, and all associated persons of the member, affirming their awareness of, and agreement to abide by, the above-mentioned prohibitions; (3) maintain for at least three years, the first two years in an easily accessible place, records of all brokerage accounts in which an associated person either has a direct or indirect interest or makes investment decisions; (4) periodically review all such brokerage accounts for the purpose of detecting the possible misuse of material non-public information; and (5) identify and document business dealings the member may have with publicly traded corporations that may result in the member receiving material non-public information.

The standards contained in this Commentary are intended to be minimum standards for compliance with the record-keeping requirement of the Act and the Rule. Adherence to these standards will not necessarily constitute compliance with the Act and the Rule for all members. The adequacy of any one member's policies and procedures will depend on the nature of that member's business.

Commentary .04 and the Bulletin (Exhibit B to the proposed rule change) describes a set of forms, denominated as the "Sample ITSFEA Compliance

Procedures" (Exhibit C to the proposed rule change), which may be used by certain "eligible members" to satisfy the record-keeping and filing requirements of the Act and the Rule. "Eligible members" are member organizations and sole PSE members that do not carry or introduce customer accounts and for whom the Exchange is the Designated Examining Authority.

Specifically, the Sample ITSFEA Compliance Procedures require: (1) All associated persons to disclose each securities account in which they have a direct or indirect financial interest, or make investment decisions; (2) all associated persons to disclose whether they are an officer, director or 10% shareholder in a company whose shares are publicly traded; (3) written affirmation by all associated persons that they understand and will abide by the prohibition against the misuse of material, non-public information; (4) written affirmation by a senior officer, partner or sole proprietor that such person ensures that all of the ITSFEA compliance procedures are being followed, including the regular review of all accounts and trading activities of associated persons. The Sample ITSFEA Forms are intended to constitute the minimum policies and procedures required by the Act and the Rule; their use does not ensure compliance with the record-keeping and filing requirements.

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular, in that it prevents fraudulent and manipulative acts and practices and promotes just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–92–20 and should be submitted by May 18, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–9715 Filed 4–26–93; 8:45 am]

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[Release No. 34–32175; International Series Release No. 534; File No. SR–PHLX–92–20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to New Foreign Currency Options Floor Procedure Advice (FF–17) Defining the Perimeters of the Trading Pit Areas

April 20, 1993.

On August 6, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend its rules by adding a new Foreign Currency Options Floor Procedure Advice ("OFPA") FF–17 entitled "Foreign Currency Options ("FCO") Trades to be Effected in the Pit."

The proposed rule change was published for comment in Securities Exchange Act Release No. 31143 (September 3, 1993), 57 FR 41535. No comments were received on the proposed rule change.

The proposal requires each bid and offer represented for execution on the FCO floor to be voiced loudly and audibly in the option's trading pit. For purposes of OFPA FF–17, the proposal defines "trading pit" as "the common area immediately in front of the respective option post and, in case of an active trading crowd, all common areas immediately adjacent thereto necessary to contain such crowd."

In addition, for any trading segment,[3] the proposal authorizes a floor official to extend the boundaries of a trading pit to include other common areas available on the floor for trading, except booth spaces and the aisles between the booth spaces. The OFPA includes the following fine schedule for violations of its provisions: (1) $100 for the first occurrence; (2) $500 for the second occurrence; and (3) a sanction discretionary with the Exchange's Business Conduct Committee ("BCC") for the third occurrence and any occurrence thereafter.

The PHLX explains that the proposal, which originated with the night trading session, is designed to: (1) Define the perimeters of the trading pit areas; (2) provide for compliance with the perimeters through the PHLX's minor disciplinary plan procedures; and (3) reconcile the controversy between traders situated in the common pit areas fronting the rows of broker booths who may be at risk of missing orders which emanate from the floor broker booths and floor brokers who want to remain on the telephone with a customer while an order is being represented. Although the proposal will restrict the execution of orders from broker booths, the PHLX notes that floor brokers may shout their orders to two-dollar brokers who can represent their orders in the crowd.

The Commission finds that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1992).

[3] The PHLX expanded its foreign currency options trading hours on September 20, 1990, in order to coincide with the afternoon business hours in Japan and the Far East. The Exchange's foreign currency options trading hours are 18 hours in duration, lasting from 7 p.m. to 11 p.m. (EDT) and 12:30 a.m. to 2:30 p.m. (EDT). See Securities Exchange Act Release No. 28470 (September 25, 1990), 55 FR 40253.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.[4] Specifically, the Commission finds that the OFPA is designed to facilitate transactions in securities, perfect the mechanism of a free and open market, and protect investors and the public interest by enhancing the fair, orderly and efficient operation of the PHLX's markets. By providing for specific trading pit areas and requiring that all FCO orders be voiced loudly and audibly in their respective trading pit areas, the Commission believes it will be easier for all market participants to hear all open interest in the crowd and equally participate and represent their orders. Accordingly, the Commission believes the proposal will help to ensure that all FCO orders are represented adequately and allowed to interact fully with one another, thereby, in turn, helping to ensure the best execution of customers' orders.

In addition, the Commission believes that the OFPA's definition of trading pit as "the common area immediately in front of the respective option post and, in case of an active trading crowd, all common areas immediately adjacent thereto necessary to contain such crowd," should reduce confusion on the trading floor, facilitate the orderly functioning of the PHLX's markets and help to ensure the efficient execution of transactions by identifying the trading pit for a given option so that bids and offers may be placed in a limited and clearly specified area. At the same time, the provision allowing a floor official to extend the boundaries of a trading pit should help the PHLX to accommodate the needs of market participants. For example, the provision will allow a floor official to extend the trading area during times when there are relatively few participants on the Exchange's floor, such as the night trading session. In addition, should a particular foreign currency option be in a "break-out" situation with extreme volume and volatility, the floor official would be able to expand the size of the pit to accommodate those market participants who decide to trade the option.

Moreover, the Commission also believes that it is appropriate for the Exchange to establish a fine schedule consistent with its Minor Infraction Rule Plan for minor infractions of its trading pit perimeter and order announcement rules.[5] Specifically, the Commission believes that the use of the fine schedule will enable Exchange officials to impose sanctions for minor infractions of the trading pit perimeter and order announcement rules in a timely manner. The Commission also believes that this streamlined disciplinary process will help the Exchange to ensure that members of the foreign currency options trading crowds abide by the Exchange's rules governing the establishment of trading pit areas and the announcement of orders.

Finally, the Commission finds that the OFPA's fine schedule and the inclusion of the violations in the PHLX's minor rule plan will provide a fair and effective means to enforce compliance with the rule consistent with the requirements of section 6(b)(6) and 6(b)(7) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PHLX–92–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–9716 Filed 4–26–93; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78F (1982).

[5] Even though the Exchange has proposed that violations of the trading pit perimeter and order announcement rules for foreign currency options be sanctioned according to the PHLX's Minor Infraction Rule Plan, violations of these rules do not necessarily have to be subject to the Minor Infraction Rule Plan. For instance, for egregious violations, the Commission would expect that these matters would be handled under the PHLX's full disciplinary procedures.

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–32174; File No. SR–PHLX–92–22]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension and Expansion of the Pilot Program for Position Limit Exemptions for Hedged Equity Options Positions

April 20, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 19, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On May 24, 1988, the Commission approved the PHLX's proposal to adopt Exchange Rule 1001, Commentary .07, on a two-year pilot basis.[1] Commentary .07 provides a limited exemption from equity option position limits for the four most commonly used hedge positions: (i) Long call and short stock; (ii) short call and long stock; (iii) long put and long stock; and (iv) short put and short stock. The PHLX proposes to extend the pilot program through November 17, 1993, and to expand Commentary .07 to include convertible securities. Specifically, Commentary .07, as amended, will exempt from position and exercise limits stock options hedged by 100 shares of stock or securities convertible into the stock. The text of the proposal is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (order approving File Nos. SR–Amex–87–13, SR–CBOE–87–27, and SR–PHLX–87–32) ("Pilot Approval Order"). See also Securities Exchange Act Release Nos. 29436 (July 12, 1991) 56 FR 33317 (order approving File No. SR–NYSE–91–19, relating to extension of pilot programs for position limit exemptions for hedged equity option and index option positions and expansion of the pilot program to allow the underlying hedged portfolio to include securities that are readily convertible into common stock); 27326 (October 2, 1989), 54 FR 42121 (order approving File No. SR–Amex–89–20, extending and expanding the exchange's index hedge exemption pilot program to include convertible instruments in the "equivalent" positions that may be eligible to serve as the basis for the underlying exemption); and 27322 (September 29, 1989), 54 FR 41889 (order approving File No. CBOE–89–08, extending and expanding exchange's index hedge exemption program to include in qualified stock portfolios securities readily convertible into stock and, for convertible bonds, those that are economically convertible into common stock).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Exchange Rule 1001, Commentary .07, which was approved by the Commission on a two-year pilot basis on May 24, 1988,[2] provides a limited exemption from equity option position limits for the four most commonly used hedge positions: (i) Long call and short stock; (ii) short call and long stock; (iii) long put and long stock; and (iv) short put and short stock. The PHLX proposes to amend Commentary .07 to extend the pilot program through November 17, 1993, to clarify that the hedge exemption applies to exercise limits as well as position limits, and to expand Commentary .07 to include convertible holdings (securities convertible into the stock) as the underlying basis for the exemption. To help ensure that the pilot's expiration is not overlooked, paragraph (b) of Commentary .07 will state that the equity hedge exemption pilot program has been authorized by the Commission through November 17, 1993.

Currently, Commentary .07's hedge exemption applies only to stock options where each option contract is hedged by 100 shares of stock. The PHLX proposes to add convertible securities to the securities eligible to serve as the underlying basis for the exemption.[3] The Exchange believes that such convertible securities are an appropriate hedge against equity options because they represent the same economic interest. For example, the price of the convertible security moves with the stock and such security represents the right to receive the same security as that underlying the option at a future date.

The Exchange believes that the proposed addition will provide greater depth and liquidity to the PHLX's equity options market and will afford investors the opportunity to effectively hedge their stock portfolios without increasing the possibility of manipulation in the options markets or in the underlying stock market. The PHLX states that it has not experienced any significant problems with the operation of the pilot and will continue to monitor the effects of the hedge exemption on the market to ensure that problems do not arise due to the increased position and exercise limits authorized by the exemption.

[2] See Pilot Approval Order, *supra* note 1.

[3] The PHLX notes that the Chicago Board Options Exchange ("CBOE") has submitted a similar proposal. See File No. SR-CBOE-91-43.

The PHLX believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirement of section 6(b)(5) thereunder.[5] Specifically, the Commission concludes, as it did when approving the commencement of the pilot, as well as similar programs by the other options exchanges,[6] that the PHLX's proposal to provide for increased position and exercise limits for equity options in circumstances where those excess positions are fully hedged with offsetting stock positions will provide greater depth and liquidity to the market and allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options markets or the underlying stock market.

In addition, with respect to the Exchange's proposal to expand the types of securities eligible to serve as the basis for the underlying hedge position to include convertible securities, the Commission believes such an expansion is consistent with the Act because it will allow investors to use equity options more efficiently and effectively to hedge positions in instruments that are economically equivalent to stocks.[7] Specifically, because the value of a convertible security likely will fluctuate in tandem with the value of the security that it is convertible into, the Commission believes investors with positions in convertible securities should be able to hedge their positions with equity options to the same extent that investors with long or short positions in the underlying security can. Moreover, as with the original pilot program, the Commission believes the expansion of the pilot program to include convertible securities likely will enhance the depth and liquidity in the Exchange's options markets. In addition, because the pilot program still requires the positions in the convertible securities and the corresponding options to be fully hedged, the Commission believes the expansion will not significantly increase concerns regarding intermarket manipulations or disruptions of either the options markets or the underlying stock market. Lastly, the Commission notes that the hedged position limit pilot programs of the other options exchanges have been expended to include convertible securities.[8] Accordingly, the Commission believes it is appropriate and consistent with the Act to expand the pilot program to include convertible securities.

The Commission also notes that before the pilot program can be approved on a permanent basis the PHLX must provide the Commission with a report on the operation of the pilot.[9] Specifically, the PHLX must provide the Commission with details on. (1) The frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the pilot program; (4) what types of convertible securities are being used to hedge positions and how frequently convertible securities have been used to hedge; (5) whether the Exchange has received any complaints on the operation of the pilot program,

[4] See letter from Theresa McCloskey, Assistant Vice President, Market Surveillance, PHLX, to Yvonne Fraticelli, Staff Attorney, Options, Branch, Division of Market Regulation, Commission, dated January 7, 1993.

[5] 15 U.S.C. 78f(6)(5) (1982).

[6] See note 1, *supra*.

[7] The Commission expects the Exchange to determine on a case-by-case basis whether an instrument that is being used as the basis for the underlying hedged position is readily and immediately convertible into the security underlying the corresponding option position. In this regard, the Commission specifically finds that an instrument which will become convertible into a security at a future date, but which is not presently convertible, is not a "convertible" security for purposes of the equity hedge exemption pilot program until the date it becomes convertible.

[8] See note 1, *supra*.

[9] The Commission also expects the PHLX to monitor the pilot as outlined below and to inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of the hedge exemption rule.

(6) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning, any of its members for any violation of any term or condition of the pilot program; (7) the market impact, if any, of the pilot program; and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the pilot program.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register so that the pilot program may continue. As noted above, the hedge exemption pilot programs of the other options exchanges have been expanded to include convertible securities. [10] In addition, the Commission notes that notice of the original pilot program appeared in the Federal Register and that the Commission received no comments. Because there have been no adverse comments concerning the pilot program during the initial comment period or since its implementation and because of the importance of maintaining the quality and efficiency of the pHLX's markets, the Commission believes good cause exists to approve the extension and expansion of the pilot program on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 18, 1993.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act [11] that the proposed rule change (SR–PHLX–92–22) is approved, and thereby that the equity hedge exemption pilot program is extended until November 17, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–9717 Filed 4–26–93; 8:45 am]

BILLING CODE 8010–01–M

[10] See note 1, *supra.*

[Release No. 34–32179; File No. SR–PHLX–91–34]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Option Floor Procedure Advice A–14—Equity and Index Option Opening Price Parameters

April 20, 1993.

On October 21, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add Options Floor Procedure Advice ("OFPA") A–14 relating to equity and index option opening price parameters.[3] The proposal mirrors existing Commentary .15 to PHLX Rule 1014 regarding the obligations of specialists upon opening an options series for trading. The OFPA also adds a fine schedule under the Exchange's Minor Infraction Rule Plan for violations of the parameters by specialists.

The proposed rule change was published for comment in Securities Exchange Act Release No. 30387 (February 19, 1992), 57 FR 6632. No comments were received on the proposed rule change. This order approves the proposal.

The Exchange proposes to add OFPA A–14 in connection with Exchange Rules 1014 and 1020. Proposed OFPA A–14 mirrors Commentary .15 to PHLX Rule 1014 which provides that an opening transaction in an options series may not occur at a price which falls outside of the previous trading session's closing quote in that options series by more than the difference between the preceding session's closing sale price for the underlying instrument and the present sessions's opening sale price for the underlying instrument.[4] Specialists would be required to observe opening price parameters for equity and index options where the underlying stock opens on firm quotes. In the event that a stock or index is quoted significantly away from the prior trading session's closing value, however, OFPA A–14 would permit a floor official to approve the opening of the option outside the stated parameters.

The purpose in creating OFPA A–14 to mirror Commentary .15 is to provide a fine schedule for violations of the opening price parameter guideline, and, thereby, permit violations of the guideline to be imposed pursuant to the Exchange's Minor Infraction Rule Plan.[5] In particular, the proposed fine schedule is as follows: (1) $50 fine for the first violation; (2) $100 fine for the second violation; (3) $200 fine for the third violation; and (4) sanctions determined by the Business Conduct Committee ("BCC") for further violations.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5), 6(b)(6) and 6(b)(7) under the Act and the rules and regulations thereunder. The Commission believes that sanctioning members for violations of the opening price parameter guidelines found in Commentary .15 to PHLX Rule 1014 pursuant to the Phlx's Minor Infraction Rule Plan promotes just and equitable principles of trade by maintaining

[11] 15 U.S.C. 78s(b)(1982).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

[3] The Exchange submitted an amendment to the filing on April 28, 1992. This amendment clarifies how the opening price parameters are established for equity options and index options. See letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated April 21, 1992.

[4] See Securities and Exchange Act Release No. 18480 (February 10, 1982), 47 FR 7355 (original order approving Commentary .15 to PHLX Rule 1014).

[5] Pursuant to paragraph (c)(1) of Rule 19d–1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic (quarterly), as opposed to immediate, basis.

consistency in the application of these important pricing guidelines. Moreover, the Commission believes that it is appropriate for the Exchange to establish a fine schedule consistent with its Minor Infraction Rule Plan for minor infractions of the opening price parameter guidelines.[6]

Specifically, the Commission believes that the use of the fine schedule will enable Exchange officials to impose sanctions for minor infractions of the guidelines in a timely manner. The Commission also believes that this streamlined disciplinary process will help the Exchange to ensure that PHLX specialists in equity and index options abide by the Exchange's rule governing opening price parameters for options series. In addition, the Commission further finds that the fine schedule provides for suitable sanctions for minor violations of the opening price parameter guidelines, and is consistent with section 6(b)(6) and 6(b)(7) of the Act, which requires exchanges to have appropriate sanctions and proceedings to discipline members for violations of exchange rules.

It Is Therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PHLX–91–34) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–9795 Filed 4–26 –93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19420; 811–5633]

J.W. Gant Fund, Inc.; Application

April 20, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANTS: J.W. Gant Fund, Inc. (the "Fund"), and William A. Fox.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicants seek an order declaring that the Fund has ceased to be an investment company under the Act.

FILING DATE: The application on Form N–8F was filed on March 5, 1992 and amended on October 26, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 14, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: the Fund, Harlequin Plaza South, 7600 East Orchard Road, suite 201, Englewood, CA 80111; William A. Fox, 5651 Northeast 16th Avenue, Fort Lauderdale, FL 33334.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Barry D. Miller, Senior Special Counsel, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end diversified management company incorporated under the laws of Maryland. On August 10, 1988, the Fund registered under the Act and filed a registration statement pursuant to section 8(b) of the Act. On that date, the Fund also filed a registration statement pursuant to the Securities Act of 1933, which registered an indefinite number of shares of common stock. The registration statement became effective on November 15, 1988.

2. On December 2, 1991, the Fund's board of directors approved a plan of liquidation and dissolution (the "Plan") and recommended that the Plan be submitted to the Fund's shareholders for their approval. The Fund filed copies of the preliminary proxy materials relating to the proposed dissolution with the Commission on December 19, 1991 and definitive proxy materials on January 21, 1992. On or after January 21, 1992, the Fund mailed the proxy material concerning the Plan to its shareholders. The Fund's shareholders approved the Plan at a special shareholders' meeting held on February 10, 1992.

3. In December 1991 and January 1992, the Fund sold its debt holdings held in its portfolio through its underwriter, J.W. Gant & Associates, on an agency basis. These assets were readily marketable securities and were sold at market prices. In February of 1992, the Fund sold its remaining equity asset, which was not readily marketable, through an unaffiliated broker-dealer. No commission costs were incurred in these transactions.

4. Pursuant to the Plan, the Fund's adviser, Louis Anthony Advisory Group, Inc., agreed to pay all expenses incurred in connection with the liquidation and dissolution of the Fund.

5. On March 3, 1992, the Fund mailed to its public shareholders of record on such date a liquidating distribution, in cash, equal to their *pro rata* portion of the remaining assets of the Funds. Each shareholder received $1.37 per share representing the remaining net asset value per share. On March 4, 1992, the Fund made a liquidating distribution with respect to the initial shares held by J.W. Gant Financial, Inc., the parent of the Fund's adviser and underwriter. Such liquidating distribution was reduced by the amount of unamortized organizational expenses remaining on February 10, 1992 of $16,179.

6. On March 27, 1992 the Fund filed Articles of Dissolution with the Maryland Department of Assessments and Taxation to effect the complete statutory dissolution of the Fund upon receipt of such articles.

7. As of the date of the application, the Fund had no assets, debts, liabilities or securityholders, and was not a party to any litigation or administrative proceeding.

8. The Fund is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

9. Mr. William A. Fox is the former president and a former director of the Fund, the former president, treasurer, and a director of the Fund's adviser, and under section 3–410 of the Maryland General Corporation Law, a former trustee of the assets of the Fund for purposes of liquidating such assets.

10. As a condition for the Commission issuing an order, pursuant to section 8(f) of the Act, declaring that the Fund has ceased to be an investment company, Mr. Fox will retain and preserve all of the records of the Fund that rules 31a–1 and 31a–2 under the Act require a registered investment company to maintain for a two year period

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[6] Even though the Exchange has proposed that violations of the opening price parameter guidelines be sanctioned according to the PHLX's Minor Infraction Rule Plan, violations of the guidelines do not necessarily have to be subject to the Minor Infraction Rule Plan. For instance, for egregious violations, the Commission would expect that these matters will be handled directly under the Phlx's full disciplinary proceedings.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1991).

beginning from the date the Commission issues such an order pursuant to section 8(f) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Secretary.

[FR Doc. 93–9718 Filed 4–26–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19424; 812–8334]

Shearson Daily Dividend Inc., et al.; Notice of Application

April 21, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Shearson Daily Dividend Inc. (which does business as American Express Daily Dividend Fund), Shearson Government and Agencies Inc. (which does business as American Express Government and Agencies Fund), Shearson Daily Tax-Free Dividend Inc. (which does business as American Express Municipal Money Market Fund), American Express New York Municipal Money Market Fund, American Express California Municipal Money Market Fund (collectively, the "Funds"), The Trust for TRAK Investments ("TRAK"), Shearson Lehman Brothers Inc. ("Shearson"), Smith, Barney Advisers, Inc. ("SBA"), and Mutual Management Corp. ("Mutual Management").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(a) of the Act and rule 15a–4 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order that would permit two separate actions. First, the order would permit the temporary implementation, without shareholder approval, of (a) new investment advisory agreements between the Funds and the non-money market series of TRAK and a wholly owned subsidiary of Smith Barney, Inc. called the Greenwich Street Advisors Division of Mutual Management; (b) a new investment advisory agreement between the money market series of TRAK and The Consulting Group, which will become a division of either Mutual Management or SBA ("Consulting"); and (c) with respect to the money market series of TRAK, a new sub-advisory agreement between Standish, Ayer & Wood, Inc. ("Standish") and Consulting. This relief would cover an interim period no longer than 120 days after the date Smith Barney, Harris Upham & Co. Incorporated ("Smith Barney") acquires certain businesses of Shearson. Second, the order would permit Thorsell, Parker Partners Inc. ("Thorsell") to serve as subinvestment adviser to the Small Capitalization Value Equity Investments sub-trust of TRAK (the "Value Equity Series of TRAK") until the earlier of (a) August 12, 1993 or (b) the date of shareholder approval or disapproval of its sub-investment advisory agreement (the "Thorsell Sub-Advisory Agreement").

FILING DATE: The application was filed on April 2, 1993. By supplemental letter dated April 20, 1993, counsel, on behalf of applicants, agreed to file an amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 12, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: The Funds, TRAK, and Shearson, Two World Trade Center, New York, New York 10048. SBA and Mutual Management, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds and TRAK are open-end management investment companies registered under the Act. The Funds and the money market series of TRAK (collectively, the "Money Market Funds") are money market funds that value their portfolio securities on the basis of amortized cost consistent with rule 2a–7 under the Act. Each Fund has entered into an investment advisory agreement with Shearson acting through Shearson Lehman Advisors, a unit of the Investment Management Group of the SLB Asset Management Division of Shearson, pursuant to which Shearson provides investment advisory and management services, subject to the general supervision of the Board of Directors or Board of Trustees ("Governing Board") of the Funds.

2. Shearson's Consulting Group is the investment adviser of the money market series of TRAK. The Consulting Group has entered into a sub-investment advisory agreement with Standish pursuant to which Standish provides sub-investment advisory services to the series, subject to the general supervision of its Governing Board and Shearson. For purposes of the application, Shearson acting as investment adviser or manager through its Shearson Lehman Advisors unit or its Consulting Group is referred to as the "Adviser."

3. The Value Equity Series of TRAK is one of twelve series offered by TRAK. Prior to January 13, 1993, Dreman Value Management, L.P. ("Dreman") served as the investment adviser to the Value Equity Series of TRAK. On January 13, 1993, with the prior approval of TRAK's Governing Board in accordance with rule 15a–4, the Value Equity Series entered into a new interim advisory agreement (the "Interim Agreement") with Thorsell pursuant to which Thorsell assumed responsibility for the management of the Series' assets as of such date for a period of 120 days. The Interim Agreement contains substantially the same terms and conditions, including fees, as the previous agreement with Dreman. Thorsell is a newly formed entity controlled by Richard Thorsell and Lewis Parker, both of whom formerly were employed by Dreman, where they were responsible for, among other things, the management of the assets of the Value Equity Series of TRAK.

4. In addition to serving (through an advisory group) as investment adviser or manager of the Funds and TRAK, Shearson is a broker-dealer registered under the Securities Exchange Act of 1934. Shearson serves as the principal underwriter for the Funds and TRAK. Shearson is an indirect wholly owned subsidiary of American Express Company. The Adviser is registered as an investment adviser under the

Investment Advisers Act of 1940, as amended (the "Advisers Act").

5. Mutual Management, a wholly owned subsidiary of Smith Barney Inc., is an investment adviser registered under the Advisers Act. Mutual Management currently acts as investment adviser to five registered investment companies. Smith Barney is a wholly owned subsidiary of Smith Barney Inc., which is in turn a wholly owned subsidiary of Primerica Corporation ("Primerica").

6. On March 12, 1993, Shearson entered into a purchase agreement with Primerica and Smith Barney providing for the sale to Smith Barney and its designated affiliates of substantially all of the assets of the Shearson Lehman Brothers Division and the SLB Asset Management Division of Shearson, including Shearson's advisory business with respect to the Funds, TRAK, and other investment company clients (the "Transaction").

7. The closing of the Transaction is subject to certain conditions, including the condition that new investment advisory contracts with Smith Barney or a wholly owned subsidiary of Smith Barney (the "New Advisers") shall have been approved by (a) the boards of the Money Market Funds and of registered investment companies (and any series thereof) other than the Money Market Funds for which Shearson or its affiliates serve as investment adviser (collectively, the "Non-Money Market Funds"), including in each case a majority of the independent board members; and (b) the shareholders of the Non-Money Market Funds who, as of February 28, 1993, represented at least 75% of all of the assets of the Non-Money Market Funds.

8. On April 7, 1993, the Governing Board of the Money Market Funds approved the new agreements for the Money Market Funds providing for advisory and sub-advisory services after the Transaction. The Money Market Funds will present the agreements for shareholder approval and ratification at shareholder meetings currently scheduled for June 1 or 23, 1993.

9. Applicants anticipate that the Transaction will be consummated on or about July 4, 1993, assuming that all of the conditions to consummation of the Transaction will have been fulfilled prior to that date.

10. The Transaction would result in the termination of advisory and/or sub-advisory agreements for the Funds, TRAK, and Non-Money Market Funds advised by the Adviser. Faced with a desire to consummate the Transaction expeditiously, it was agreed that the consummation of the Transaction would be contingent upon approval of the new advisory contracts by shareholders of the Non-Money Market Funds but not upon approval by the shareholders of the Money Market Funds. Shares of the Money Market Funds are held beneficially by more than 2,278,000 shareholders. Although the Money Market Funds are currently preparing proxy materials, and have scheduled special meetings of shareholders to be held prior to the Transaction, there may not be an adequate solicitation period reasonably to assure a quorum of shareholders present at those meetings. Applicants assert that it is generally more difficult to obtain proxies from shareholders of money market funds than from shareholders of other investment companies.

11. Because of the difficulties described above, applicants seek relief from section 15(a) in the event applicants are unable to obtain a quorum of shareholders of the Money Market Funds prior to the scheduled July 4, 1993 closing of the Transaction. This temporary relief would cover an interim period no longer than 120 days after the date of the Transaction (the "Interim Period").

12. Each Money Market Fund's new investment advisory agreement that will be implemented during the Interim Period will contain the same terms and conditions as its current investment advisory agreement, and the new sub-advisory agreement that will be implemented during the Interim Period with respect to the money market series of TRAK will contain the same terms and conditions as the current sub-advisory agreement, except in all cases, the names of the parties and the dates of commencement and termination of the agreements.

13. The Thorsell Sub-Advisory Agreement has been approved by the Governing Board of TRAK, including a majority of the independent board members. Under the terms of rule 15a-4 under the Act, Thorsell will be able to serve as sub-adviser to the Value Equity Series of TRAK until May 13, 1993 without shareholder approval of the Thorsell Sub-Advisory Agreement. A notice of meeting and draft proxy statement were prepared and filed with the Commission for review and comment in anticipation of mailing them to shareholders of the Value Equity Series of TRAK on or about March 24, 1993. While the process of completing the proxy statement was underway, the Transaction was announced. Applicants soon recognized that any approval of the Thorsell Sub-Advisory Agreement at the scheduled May 6, 1993 meeting of shareholders would be rendered moot at the closing of the Transaction because, since the Adviser was proposed to be a party to the Thorsell Sub-Advisory Agreement, the Agreement would terminate at the closing of the Transaction and a second shareholders meeting would be required to reconsider the Agreement. Therefore, applicants also seek relief to present the Thorsell Sub-Advisory Agreement to the shareholders of the Value Equity Series of TRAK along with proposals relating to the Transaction at a shareholder meeting scheduled for June 1, 1993.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c) exempting applicants from the provisions of section 15(a) and rule 15a–4 thereunder to the extent necessary (a) to permit the implementation during the Interim Period of the new advisory agreements and the new sub-advisory agreement without shareholder approval; (b) to permit the relevant New Adviser to receive from each Money Market Fund all fees earned under new advisory agreements implemented during the Interim Period if and to the extent approved and ratified by the shareholders of the Money Market Fund; (c) to permit Consulting to pay to Standish any and all fees earned by Standish under the sub-advisory agreement implemented during the Interim Period; and (d) to permit Thorsell to serve as sub-investment adviser to the Value Equity Series of Trak until the earlier of August 12, 1993 or the date on which shareholder approval or disapproval of the Thorsell Sub-Advisory Agreement is obtained.

2. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Section 15(a) further requires that such written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor.

3. Rule 15a–4 provides, among other things, that if an investment advisory contract with an investment company is terminated by assignment, a person may act as investment adviser for a period of up to 120 days after termination pursuant to a written contract that has not been approved by the investment company's shareholders, provided that the new contract is approved by the

board of directors of the investment company (including a majority of the non-interested directors), the compensation to be paid under the new contract does not exceed the compensation which would have been paid under the contract most recently approved by shareholders of the investment company, and neither the investment adviser nor any controlling person of the adviser directly or indirectly receive money or other benefit in connection with the assignment.

4. Upon completion of the Transaction, Smith Barney (or another direct or indirect wholly owned subsidiary of Smith Barney) is expected to own substantially all of the advisory business of the Adviser. The Transaction will result in an "assignment" within the meaning of section 2(a)(4) of the Act of the existing advisory agreements between the Adviser and the Money Market Funds, terminating each such investment advisory agreement, and the sub-advisory agreement between the Adviser and Standish, pursuant to its terms. Applicants cannot rely on rule 15a–4 because of the benefits to Shearson arising from the transaction.

5. Nonetheless, applicants assert that the granting of the requested exemption would be within the spirit of rule 15a–4. The release proposing rule 15a–4 indicates that the rule was designed to provide relief in cases where the assignment of an advisory contract occurs by virtue of an occurrence which may not be reasonably foreseeable, in order to avoid serious adverse consequences from the gap in an investment company's receipt of advisory services. Applicants submit that the situation at hand is similar to other types of assignments that are not reasonably foreseeable. In practical terms, the rapid culmination of the negotiations of the purchase agreement may not present, and the form of transaction deemed most appropriate by the parties to the purchase agreement may not permit, an opportunity to secure prior approval of new advisory and sub-advisory agreements by shareholders of the Money Market Funds, despite diligent attempts to do so.

6. Applicants assert that it is reasonable to permit the New Advisers to provide investment advisory services to the Money Market Funds without shareholder approval of the new advisory contracts for up to 120 days from the closing of the Transaction. This number of days will allow for reasonable adjournments of the shareholder meetings if necessary to obtain sufficient shareholder response to the solicitations in order to obtain the required approval as set forth in section 2(a)(42) of the Act.

7. Applicants submit that to deprive the New Advisers of fees for the Interim Period for no reason other than the fact that the Transaction may result in an assignment of the Money Market Funds' existing investment advisory agreements would be a harsh result and an unreasonable penalty to attach to the Transaction and would serve no useful purpose. This is particularly true where the parties have sought, to the extent reasonably practicable, to comply with section 15(a) of the Act by making a good faith attempt to obtain shareholder approval prior to the Transaction. Moreover, fees earned by the New Advisers and paid by a Money Market Fund or, in the case of the money market series of TRAK, by Consulting to Standish during the Interim Period will be maintained in an interest-bearing escrow account. Amounts in the account (including interest) will be paid to the relevant New Adviser or, in the case of the money market series of TRAK, to Standish, only upon approval by the shareholders of that Money Market Fund. In the absence of such approval, amounts in the escrow account will be paid to the respective Money Market Fund.[1]

8. The fees to be paid during the Interim Period would be at the same rate as the fees currently payable by the Money Market Funds, which fees have been approved by the Governing Board of the Money Market Funds (including the independent board members) in accordance with their obligations under the Act. Moreover, the investment advisory agreement of each of the Money Market Funds was approved by its public shareholders.

9. Applicants submit that a 90-day extension of the time period provided by rule 15a–4 is in the best interests of the Value Equity Series of TRAK and its shareholders because it will permit the Thorsell Sub-Advisory Agreement to be implemented at a single meeting with a singly proxy solicitation. Holding one meeting on June 1, 1993 instead of the two that would be required were the May 6 meeting to be followed in short order by a June meeting necessitated by the Transaction will be both less costly to the Value Equity Series of TRAK and less confusing to its shareholders. Applicants also assert that it would be beneficial to shareholders to consider the Thorsell Sub-Advisory Agreement at the same time as it considers a new investment advisory agreement with Consulting. Because events may develop that might preclude adherence to this time frame, applicants are seeking an extension until August 12, 1993.

10. For the reasons set forth above, applicants assert that the relief requested from the provisions of section 15(a) of the Act and rule 15a–4 thereunder is reasonable, necessary, and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. (a) The new advisory agreements to be implemented during the Interim Period will have the same terms and conditions as the existing advisory agreements; (b) the new sub-advisory agreement to be implemented during the Interim Period will have the same terms and conditions as the existing sub-advisory agreement; and (c) the Thorsell Sub-Advisory Agreement will have the same terms and condition as the Interim Agreement, except in each case for the names or identities of the parties, and the commencement and termination dates.

2. The Governing Board of each Money Market Fund will have approved each investment advisory or sub-investment advisory agreement with the relevant New Adviser in accordance with section 15(c) of the Act.

3. Fees earned by the New Advisers and paid by a Money Market Fund or, in the case of the money market series of TRAK, by Consulting to Standish during the Interim Period in accordance with the terms of a new advisory agreement or the new sub-advisory agreement will be maintained in an interest-bearing escrow account, and amounts in the account (including interest) will be paid (a) to the relevant New Adviser or, in the case of the money market series of TRAK, to Standish only upon approval by the shareholders of that Money Market Fund, or (b) in the absence of such approval, to the respective Money Market Fund.

4. The Money Market Funds will hold meetings of shareholders to vote on approval of the new investment

[1] The staff notes that applicants do not propose to escrow fees earned by Thorsell under the Thorsell Sub-Advisory Agreement. Because no money or other benefit was received by an investment adviser or a controlling person thereof in connection with the termination of the prior advisory agreement with Dreman, Thorsell was able to rely on rule 15a–4, which permits the payment of interim fees. In contrast, the fees earned by the New Advisers, or paid by Consulting to Standish, could not be paid under rule 15a–4 at any time.

advisory agreements ant the new sub-advisory agreement (and, in the case of TRAK, the Thorsell Sub-Advisory Agreement) on June 1 and 23, 1993, which meetings may be adjourned for a reasonable period for legitimate business purposes in accordance with applicable state law.

5. Shearson and Smite Barney will share evenly the costs of preparing and filing the application and the costs relating to the solicitation of stockholder approval of the Money Market Funds' shareholders necessitated by the Transaction.

6. The New Adviser will take all appropriate steps so that the scope and quality of advisory and other services provided to the Money Market Funds during the Interim Period will be at least equivalent, in the judgment of the respective Governing Boards, including a majority of the independent board members, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the advisory or sub-advisory agreements, the New Advisers will apprise and consult with the Governing Board of the affected Money Market Funds in order to assure that they, including a majority of the independent board members, as satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–9796 Filed 4–26–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1792]

Shipping Coordinating Committee, International Maritime Organization (IMO) Legal Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open public meeting at 10 a.m., on Tuesday, May 18, 1993, in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The primary purpose of this meeting is to report on the results of the 68th Session of the International Maritime Organization (IMO) Legal Committee, held March 15 through March 19, 1993, in London, and the Diplomatic Conference on Maritime Liens and Mortgages, held in Geneva, April 19 through May 7, 1993.

To facilitate the attendance of those participants who may be interested in only certain aspects of the public meeting, the first subject addressed will be the various issues before the IMO Legal Committee with particular focus on the draft Convention on Liability and Compensation for Damages Arising from the Maritime Carriage of Hazardous and Noxious Substances (the HNS Convention). The second subject, which will be considered at approximately 12:30 p.m., will be a discussion on the results of the April Diplomatic Conference on Maritime Liens and Mortgages.

By way of background, since 1987, the Legal Committee has been working to develop a draft HNS Convention which was originally intended to apply to catastrophes caused by substances other than oil. While today's draft HNS Convention would still cover catastrophes, it would also extend to smaller incidents caused by a broader range of substances and currently would include oil pollution damage to the extent not already covered by the international oil pollution liability regimes.

The draft HNS Convention would impose strict liability upon the shipowner for damages arising from hazardous substances up to a yet-to-be-determined limit of liability with a second-tier international fund available to provide compensation for catastrophic damages or when the shipowner, for one reason or another, could not pay. The second-tier international fund, modeled after the International Oil Pollution Compensation Fund, may be financed by levies imposed upon hazardous cargo shipments or by postincident collections.

The draft convention would provide compensation for environmental damage as well as personal injury and property damage. Compensation for damage caused by a broad range of substances including oils (those not covered under the oil regimes), bulk liquid cargo, bulk solid cargo, bulk gases, packaged cargo, and flammable residues are all within the scope of the draft convention as presently written.

Important questions remain to be decided which include: (1) Whether the two-tier system is workable and can be implemented with an acceptable balance between equity and practicality; (2) which substances would be included within the scope of the convention's coverage for purposes of both compensating damage as well as for contributing to the financing of the second-tier fund; (3) how the levy amounts imposed upon cargo would be determined; (4) how the levies would be collected; (5) whether postincident funding of the second-tier fund is appropriate in some cases; and (6) whether the second-tier fund should be separated into multiple accounts for different sectors of the industry.

The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested. While the views of the public and affected interests are encouraged on all relevant issues underlying the draft HNS Convention, comment is specifically requested regarding the following subjects: (1) The definition of "HNS" (those substances to which the draft HNS Convention would apply for purposes of shipowner liability as described in document LEG 67/3, Article 1(5)(d)); the definition of "contributing cargo" (those substances to which the draft HNS Convention would apply for purposes of financing the second-international fund as described in document LEG 67/3 Article 1(10)); the definition of "shipper" (the party responsible for levy payment in Article 1(4)); the definition of "carriage by sea" (defining when the convention would be applicable in Article 1(9)); whether postincident funding of the second-tier fund is appropriate in some cases; and whether the second-tier fund should be separated into multiple accounts for different sectors of the industry (see, for example, document LEG 68/4/4 proposing four separate accounts and postincident funding).

By way of background on the draft convention on Maritime Liens and Mortgages, the April Diplomatic Conference is the culmination of work commenced by an International Subcommittee of the Comite' Maritime Internationale (from 1972 through 1984) and a joint group of experts (JIGE) from IMO and the United Nations Conference on Trade and Development (UNCTAD) to revise the 1967 Convention on Maritime Liens and Mortgages (from 1986 through 1989).

The U.S. Shipping Coordinating Committee discussed the draft Maritime Liens and Mortgages Convention at its last two meetings (March 10, 1993 and November 19, 1992). The May meeting will focus on the results of the Diplomatic Conference.

Copies of the draft texts and other relevant documents have been distributed previously by way of regular mailings. Persons requesting to be added to the mailing list should contact Lieutenant Lee Handford at the telephone/fax numbers below.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information or to submit views concerning the SHC meeting,

contact either Captain David J. Kantor or Lieutenant Lee Handford, U.S. Coast Guard (G–LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4496. For information regarding the Maritime Liens and Mortgages Convention, contact Lieutenant Commander Mark J. Yost, U.S. Coast Guard (G–LGL), telephone (202) 267–0059, telefax (202) 267–4163.

Dated: April 15, 1993.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 93–9702 Filed 4–26–93; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Modification of Sanctions With Respect to the European Community Pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Office of the United States Trade Representative.

ACTION: Postponement of implementation of prohibition of awards of contracts by federal agencies for products and services from Member States of the European Community until further notice.

SUMMARY: On April 22, 1993, the United States Trade Representative announced that the effective date of the prohibition on awards of contracts by federal agencies for products and services of some or all member states of the European Community (EC), scheduled to go into effect on that date, was being postponed in light of the agreement reached in principle with the EC on April 21, 1993 that will eliminate EC discrimination in the heavy electrical sector. An announcement of sanctions modified to reflect that agreement will be made shortly.

FOR FURTHER INFORMATION CONTACT: Mark Linscott, Office of GATT Affairs (202–395–3063), or Laura B. Sherman, Office of the General Counsel (202–395–7203), Office of the United States Trade Representative, 600 Seventeenth Street, NW., Washington, DC 20506.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Counsel.

[FR Doc. 93–9944 Filed 4–26–93; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Seattle-Tacoma International Airport, Seattle, WA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Seattle-Tacoma International Airport (SEA) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the Seattle-Tacoma International Airport noise exposure maps is April 15, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM–611, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Seattle-Tacoma International Airport are in compliance with applicable requirements of part 150, effective April 15, 1993. Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (herein after referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by SEA. The specific maps under consideration are Exhibit 4A and 4B in the submission. The FAA has determined that these maps for Seattle-Tacoma International Airport are in compliance with applicable requirements. This determination is effective on April 15, 1993. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of the FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW, room 615, Washington, DC.

Federal Aviation Administration, Airports Division, ANM–600, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

Seattle-Tacoma International Airport, Seattle, Washington.

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Renton, Washington, April 15, 1993.

David A. Field,

Acting Manager, Airports Division, ANM–600, Northwest Mountain Region.

[FR Doc. 92–9773 Filed 4–26–93; 8:45 am]

BILLING CODE 4910–13–M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on May 12, 1993, at 9 a.m. Arrange for oral presentations by May 5, 1993.

ADDRESSES: The meeting will be held at the Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax number (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Executive Committee to be held on May 12, 1993, at the Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC. The agenda will include:

- A discussion of revisions to the proposed working group procedures.
- A discussion of revisions to the committee operating procedures.
- Status reports on issues.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by May 5, 1993, to present oral statements at the meeting. The public may present written statements at the meeting. The public may present written statements to the executive committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC, on April 20, 1993.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–9774 Filed 4–26–93; 8:45 am]

BILLING CODE 4910–03–M

Intent To Rule on Application Passenger Facility Charge (PFC); Fort Collins-Loveland Municipal Airport, Loveland, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Fort Collins-Loveland Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 27, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager, Denver Airport District Office, DEN–ADO, Federal Aviation Administration, 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Fort Collins—Loveland Municipal Airport, Loveland, Colorado, at the following address: 4824 Earhart Road, Loveland, Colorado 80538.

Air carriers and foreign air carriers must submit copies of written comments previously provided to the Fort Collins-Loveland Municipal Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn; suite 300; Denver, Colorado 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Fort Collin-Loveland Municipal Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 19, 1993, the FAA determined that the application to impose and use a PFC submitted by the City of Loveland and the City of Fort Collins was substantially complete within the requirements of § 158.25 of part 159. The FAA will approve or disapprove the application, in whole or in part, no later than July 22, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: October 1, 1993

Proposed charge expiration date: May 31, 1996

Total estimated PFC revenue: $207,857.00

Brief description of proposed project: Expand aircraft parking apron; modify taxiway guidance signs; terminal building expansion; construct ARFF building; groove runway 15/33; update airport master plan; rehabilitate aircraft parking apron.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application is person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Fort Collins-Loveland Municipal Airport.

Issued in Renton, Washington, on April 19, 1993.

Matthew J. Cavanaugh,

Assistant Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–9772 Filed 4–26–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Docket No. H–92–1]

Addendum to the Petition for Waiver for Test Program, National Railroad Passenger Corporation

In accordance with 49 CFR part 211, notice is hereby given that the National Railroad Passenger Corporation

(Amtrak) has requested an addendum to a previously granted temporary waiver of compliance with certain requirements of 49 CFR 231.12 in order to conduct a limited demonstration of a passenger trainset, the X2000. The previously granted waiver pertains to the operation of the X2000 without handbrakes, side and end handholds and uncoupling levers. The demonstration programs described in this notice would, if approved, involve a number of major cities in which Amtrak provides passenger service. Amtrak anticipates that the X2000 train sets will be on static display, but does not totally eliminate the possibility of some demonstration runs with the possibility of limited revenue service. The X2000 demonstration program would tentatively commence in June 1993 and terminate by August 31, 1993. The X2000 train set is electric powered, and will be moved to the various locations over non electrified railroads by a new General Electric Company built AMD–103 diesel-electric locomotive. The X2000 trainset will be equipped with a special coupler at the power car end to facilitate the coupling to a standard locomotive. The movements would be by mutual agreement between the various railroads and Amtrak with the foreknowledge of the Federal Railroad Administration (FRA).

The cities tentatively identified by Amtrak are as follows:

Harrisburg, Pennsylvania
Albany, New York
Chicago, Illinois
Dearborn, Michigan
Orlando, Florida
Portland, Oregon
Pittsburgh, Pennsylvania
Cleveland, Ohio
Milwaukee, Wisconsin
Birmingham, Alabama
Seattle, Washington
Los Angles, California.

The five corridors identified by Amtrak are as follows:

Los Angeles to San Diego or San Francisco, California
Seattle to Vancouver, Canada
New York City to Albany and/or Buffalo, New York
Chicago to Milwaukee or St. Louis, Missouri
Chicago to Dearborn

The X2000 demonstration train set will be composed of a power car (locomotive), four trailer coaches and a control driving trailer (in effect, a cab-control car for reverse running). This equipment is representative of the fleet of similar trainsets operated on a daily basis by Stevens Järnvägar (SJ), the Swedish State Railways. The distinguishing feature of this trainset in normal operation is that the coaches are tilted hydraulically on curves to compensate for centrifugal force. The presence of curved track, including acuteness of curvature, along with specific amounts of superelevaton, is sensed by instrumentation which actuates the carbody tilting mechanism.

The X2000 trainset operates in daily revenue service in Sweden at up to 9 inches of cant deficiency and has been successfully operated during tests in Europe at up to 12 inches of cant deficiency. In movement between various locations the X2000 will operate without the tilting system operative. Further, the train will be operated with a cant deficiency limited to 3 inches or less and at a maximum speed of 79 mph or less.

During the off-corridor demonstration period, Amtrak will notify all operating personnel, before their first encounter, that the X2000 trainset is not equipped with hand brakes, side or end handholds or uncoupling levers and to exercise caution. Although Amtrak will be hauling the entire train set around the country, the X2000 power car [locomotive] will be dead. It is being included because it is an integral part of the train set and is needed to condition the auxiliary power that will be supplied from the hauling locomotive.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., FRA Docket No. H–92–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590. Communications received before May 25, 1993 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on April 21, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–9807 Filed 4–26–93; 8:45 am]

BILLING CODE 4910–06–M

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 U.S.C. app. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP)—No. 3227

Applicant: Chicago and NorthWestern Transportation Company, Mr. D.E. Waller, Vice President—Engineering and Materials, One NorthWestern Center, Chicago, Illinois 60606.

The Chicago and NorthWestern Transportation Company seeks approval of the proposed modification of the traffic control system, on the single main track, between Manly, Iowa, milepost 224.9 and Albert Lea, Minnesota, milepost 253.03, on the Owatonna Subdivision; consisting of the relocation of 15 automatic block signals and the discontinuance and removal of controlled signals L82, L84, R82, and R84.

The reason given for the proposed changes is to maximize efficiency and safety of train operations by replacing aging pole line with modern solid state coded track circuitry, and the controlled signals are no longer warranted due to removal of the switches and control point.

BS–AP–No. 3228

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S, 15 North 32nd Street, Philadelphia, Pennsylvania 19104–2849.

The Consolidated Rail Corporation seeks approval of the proposed signal changes on the Bailey Avenue Branch, Sycamore Street Branch, and Belt Line Branch, at Buffalo, New York, on the Albany Division, consisting of the following:

1. The discontinuance and removal of the traffic control system on the two main tracks of the Bailey Avenue Branch between Bailey Avenue, milepost 0.0 and "CP–T" Interlocking,

milepost 0.7, and operate the tracks as yard tracks;

2. The discontinuance and removal of the traffic control system on the single main track of the Sycamore Street Branch between Bailey Avenue, milepost 0.0 and "CP Sycamore" Interlocking, milepost 1.2, and operate the tracks as yard tracks; and

3. The discontinuance and removal of automatic singles 21, 24, 29, and 59 on the two main tracks of the Belt Line Branch.

The reason given for the proposed changes is to retire facilities no longer required for present day operation.

BS–AP–No. 3229

Applicant: Montana Rail Link, Inc., Mr. Richard L. Keller, Chief Engineer, P.O. Box 8779, Missoula, Montana 59807.

The Montana Rail Link, Incorporated seeks approval of the proposed modification of the signal system, on the single main track, between milepost 186.3 and milepost 194.2, near Toston, Montana, on the Second Subdivision; consisting of the relocation of signals 1926 and 1906 to the opposite side of the track, the relocation of signals 1889 and 1888 from milepost 188.9 to milepost 188.5, and the discontinuance and removal of signals 1873 and 1974, in connection with the installation of coded track circuits.

The reason given for the proposed changes is to upgrade the signal system and improve train operations.

BS–AP–No. 3230

Applicant: Burlington Northern Railroad Company, Mr. W.G. Peterson, Director Control Systems Engineering, Engineering Department, 373 Inverness Drive South, Englewood, Colorado 80112.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between Brookfield, Missouri, milepost 109.1 and Maxwell, Missouri, milepost 173.9, on the Galesburg Division, Brookfield Subdivision; consisting of the discontinuance and removal of 26 automatic signals and the installation of 44 automatic signals.

The reason given for the proposed changes is to respace and relocate signals at the time of a pole line elimination project.

BS–AP–No. 3231

Applicant: Wisconsin Central Limited, Mr. Glenn J. Kerbs, Vice President Engineering, P.O. Box 5062, Rosemont, Illinois 60017–5062.

The Wisconsin Central Limited (WC) seeks approval of the following proposed modifications of the traffic control system near Fond Du Lac, Wisconsin, on the Chicago Subdivision and Neenah, Wisconsin, on the Neenah Subdivision, associated with the installation of three new control points and track rearrangement:

1. The discontinuance and removal of existing control point "Fond Du Lac East", milepost CM157.38, on the Chicago Subdivision, consisting of the removal of three controlled signals and conversion of the power-operated switch to hand operation;

2. The discontinuance and removal of existing control point "Fond Du Lac West", milepost CM159.54, on the Chicago Subdivision, consisting of the removal of four controlled signals and conversion of the power-operated switch to hand operation;

3. The discontinuance and removal of existing control point "Neenah East", milepost CM184.86, on the Neenah Subdivision, consisting of the removal of three controlled signals and conversion of the power-operated switch to hand operation; and

4. The discontinuance and removal of two automatic block signals near milepost CM180.9 and two automatic block signals near milepost CM183.2, on the Neenah Subdivision.

The reason given for the proposed changes is to route the main line around the Fond Du Lac Yard and increase the length of the siding to accommodate increased rail traffic.

BS–AP–No. 3232

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Director Control Systems Engineering, Engineering Department, 373 Inverness Drive South, Englewood, Colorado 80112.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between Huben, Missouri, milepost 192.5 and Teed, Missouri, milepost 233.5, on the Springfield Division, Cuba Subdivision; consisting of the discontinuance and removal of 23 automatic signals and 6 controlled signals, and the installation of 24 automatic signals and 5 controlled signals.

The reason given for the proposed changes is to respace and relocate signals at the time of a pole line elimination project.

BS–AP–No. 3233

Applicants: Montana Western Railway Company, Mike Greene, General Manager, 700½ Railroad Street, Butte, Montana 59701.

Union Pacific Railroad Company, Mr. P. M. Abaray, Chief Engineer—Signals, 1416 Dodge Street, room 920, Omaha, Nebraska 68179.

Rarus Railway Company, Mr. William T. McCarthy, President, P. O. Box 1070, Anaconda, Montana 59711.

The Montana Western Railway Company (MWRR), Union Pacific Railroad Company (UP), and Rarus Railway Company (RAWR) jointly seek approval of the proposed discontinuance and removal of the interlocking signal system, near milepost 7.0, at Silver Bow, Montana, where a single main track of the MWRR cross at grade a single main track of the RAWR and UP; consisting of the removal of four controlled signal and two approach signals, and the installation of stop signs on the RAWR and UP trackage on each side of the grade crossing.

The reason given for the proposed changes is due to operational changes the system is no longer required for safe train movements over the crossing.

BS–AP–No. 3234

Applicant: Duluth Missabe and Iron Range Railway Company, Mr. W. H. Harrison, Chief Engineer, Engineering Department, 329 Second Street, Proctor, Minnesota 55810–1091.

The Duluth Missabe and Iron Range Railway Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track between Carson, Minnesota, milepost 12.3 and Sax, Minnesota, milepost 51.0 and the discontinuance and removal of the traffic control system, on the single main track, between Sax, Minnesota, milepost 51.0 and Forbes, Minnesota, milepost 58.6, on the Missabe Division, a combined distance of approximately 46.3 miles, and operate via Computerized Track Warrant Control.

The reasons given for the proposed changes are the safety of Computerized Track Warrant Control, the trackage in the application area is relatively flat, train traffic in the area has been declining, the low train density over the trackage, and to eliminate maintenance costs.

BS–AP–No. 3235

Applicant: Montana Rail Link, Inc., Mr. Richard L. Keller, Chief Engineer, P. O. Box 8779, Missoula, Montana 59807.

The Montana Rail Link, Inc. seeks approval of the proposed modification of the signal system, on the single main track, between Austin, Montana, milepost 12.9 and Elliston, Montana,

milepost 25.5, on the Third Subdivision; consisting of the discontinuance and removal of automatic block signals 132, 139, 145, 146, 169, 170, 196, and 230, and the discontinuance and removal of controlled signals 55L, 55R, 53L, 53R, and 45L in conjunction with the installation of coded track circuits.

The reason given for the proposed changes is to upgrade the signal system and improve train operations.

BS–AP–No. 3236

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director Control Systems Engineering, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the following proposed signal modifications, on the single main track, between Lyndale Jct., Minnesota, milepost 14.0 and Darwin, Minnesota, milepost 69.9, on the Minnesota Division, Wayzata Subdivision:

1. The discontinuance and removal of 35 automatic block signals;
2. The installation of 30 automatic block signals; and
3. The discontinuance and removal of "Cokato" control point, milepost 59.6, including the discontinuance and removal of three controlled signals and conversion of the power-operated switch to electrically locked hand operation.

The reasons given for the proposed changes are due to a pole line elimination project associated with the installation of electronic coded track circuits, and previously made track changes at Cokato make the control point unnecessary.

BS–AP–No. 3237

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S, 15 North 32nd Street, Philadelphia, Pennsylvania 19104–2849.

The Consolidated Rail Corporation seeks approval of the proposed modification of the traffic control system, on Track No. 1, milepost 197.7, near Union City, Ohio, on the Indianapolis Line, Indianapolis Division, consisting of the discontinuance and removal of automatic signal 1972.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS–AP–No. 3238

Applicant: Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief Engineer—C&S, 15 North 32nd Street, Philadelphia, Pennsylvania 19104–2849.

The Consolidated Rail Corporation seek approval of the proposed modification of the traffic control system, on the two and three main tracks of the Chicago Line, between "CP 5" Interlocking, milepost 5.4, near Buffalo, New York and "CP 285" Interlocking, milepost 285.4, near Vickers, Ohio, on the Albany, Pittsburgh, and Darborn Divisions, associated with the installation of electronic coded track circuits. The changes include the following:

1. The discontinuance and removal of interlockings "CP 32," milepost 32.7, "CP 117," milepost 117.0, and "CP 145," milepost 145.2; consisting of the removal of all controlled signals and the conversion of all remaining switches to hand operation, equipped with an electric lock;
2. The discontinuance and removal of 63 existing automatic block signals; and
3. The installation of 45 new automatic block signals.

The reason given for the proposed changes is replacement of pole line retire associated with the installation of electronic track circuits allowing for respacing of signals for improved train operations and follow block capability.

Rules Standards & Instructions Application (RS&I–AP) No. 1087

Applicant: Union Pacific Railroad Company, and Missouri pacific Railroad Company, Mr. A. L. Shoener, Executive Vice president—Operations, 1416 Dodge Street, room 1206, Omaha, Nebraska 68179.

The Union Pacific Railroad Company (UP) and Missouri Pacific Railroad Company jointly seek relief from the requirement of the Rules, Standard and Instructions, 49 CFR part 236 in its entirety for the UP coded cab signal system on locomotives and in its track regulated pursuant to 49 CFR part 236 and related rules, in those locations where UP has a federally regulated wayside automatic signal system in place.

Applicant's justification for relief: Where both the wayside signal system and the coded cab signal-safety control system (CCS–CS) are in place there is a high level of redundancy. The wayside signal system is highly regulated and tested. Most of the UP system has only a wayside signal system in place. UP's efforts to enhance its operations with the CCS–CS have been impaired by FRA's denial of waivers and field interpretations and have resulted in a burdensome and costly system disadvantaging the UP as compared to other railroads without the CCS–CS.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on April 21, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–9806 Filed 4–26–93; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. 93–28; Notice 1]

Ford Motor Co.; Receipt of Petition for Determination of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan, has determined that some of its vehicles fail to comply with the labeling requirements of 49 CFR 571.105, Federal Motor Vehicle Safety Standard (FMVSS) No. 105, "Hydraulic Brake Systems," and has filed an appropriate report pursuant to 49 CFR part 573. Ford has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) On the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

During the period of May 9, 1989, through March 18, 1993, Ford manufactured approximately 16,800 F53 Basic Chassis incomplete vehicles which, when completed by manufacturers other than Ford, may not

meet the brake fluid warning label requirements of Standard No. 105. The brake fluid warning label required by Standard No. 105 is present, but may not be "located so as to be visible by direct view" as required. In the incomplete vehicle manual provided with the subject vehicles, Ford indicated that the vehicle, when completed, would conform to Standard No. 105 provided no alterations or modifications were made to the brake system reservoir labeling.

In Standard No. 105, Paragraph S5.4.3 *Reservoir labeling* states that "[e]ach vehicle shall have a brake fluid warning statement that reads as follows, in letters at least one-eighth of an inch high: 'WARNING, Clean filler cap before removing. Use only—fluid from a sealed container.' (Inserting the recommended type of brake fluid as specified in 49 CFR 571.116, e.g. 'DOT 3').' The lettering shall be * * * (b) [l]ocated so as to be visible by direct view, either on or within four inches of the brake fluid reservoir filler plug or cap."

On the subject vehicles, the lettering is embossed on the top surface of the master cylinder mounted reservoir and also on the reservoir cap. When installed in the chassis, the reservoir is located approximately four inches below the vehicle floor in the area just forward of the driver's seat. The master cylinder/reservoir assembly is serviceable through the left front wheel-well area, but neither the statement on the cap, nor the statement on the top surface of the reservoir is visible, in entirety, by direct view. However, the information provided on both the reservoir and the cap is correct, and the correct information also is provided in the owner's manual which accompanies each chassis and in Ford's service manuals.

Ford supports its petition for inconsequential noncompliance with the following:

It is important to note that the master cylinder reservoir on the Ford chassis is sufficiently transparent to allow the brake fluid level to be checked without removal of the cap. Consequently, the only time the cap should need to be removed is when it is necessary to add brake fluid, which should not occur in normal service because (1), as required by FMVSS No. 105, the reservoir capacity is sufficient to operate the brakes from a new lining, fully retracted position, to a fully worn, fully applied position, and (2), the fluid is not consumed in use. Rather, it should be necessary to add brake fluid only when the system is being bled to evacuate air during service to replace worn brake system components, or if a leak should occur, which requires repair to the system and bleeding to evacuate air. These kinds of brake system service are of the type likely to be performed only by trained and experienced personnel familiar with proper brake system servicing procedures, and [with] the need to use the correct type of brake fluid and avoid contamination.

Further increasing the likelihood that servicing the brake system in these vehicles will only be performed by knowledgeable personnel is the construction of the vehicle and location of the master cylinder and reservoir. The master cylinder and brake fluid reservoir must be serviced via the left front wheel-well either by turning the front wheels all the way to the left to create access, or by raising the vehicle on a hoist.

Ford believes that the likelihood that only trained personnel will be servicing the brake system, along with the less frequent need to remove the brake reservoir cap in these chassis because of the transparent reservoir, reduces considerably the likelihood that contaminants or incorrect brake fluid will be introduced into the brake system. With respect to the potential for brake fluid contamination, we find merit and submit the argument included in the [General Motors] petition [Docket No. 92–56] regarding the anomalous nature of this part of the warning statement concerning contamination, which in the practical sense is unnecessary if the area around the cap is clean, and may not be visible or may be illegible if the cap area is dirty.

This anomaly notwithstanding, Ford believes, based on the above information, that the ability to directly view the part of the warning statement addressing contamination in these chassis is somewhat less critical than in some other vehicles. With respect to usage of the proper type of brake fluid, adding fluid is not possible without removing the cap, and once the cap is removed, the statement on the cap is in fact "visible by direct view" by whomever removes the cap. We therefore believe that the likelihood of using incorrect brake fluid in these vehicles, particularly considering they are most likely to be serviced by knowledgeable personnel, is minimal, and noncompliance related to the part of the warning statement addressing the use of the proper brake fluid is especially inconsequential to motor vehicle safety.

In summary, in spite of the fact that the brake fluid reservoir warning statement on the affected Ford chassis may not be "visible by direct view," in entirety, as required by FMVSS No. 105, Ford does not believe there is a risk that contaminants would be introduced into the brake fluid reservoir, nor that incorrect fluid would be added. In addition, we are aware of no complaints, accidents, or injuries related to the brake fluid reservoir statement not being "visible by direct view."

Interested persons are invited to submit written data, views, and arguments on the petition of Ford, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 27, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: April 22, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–9805 Filed 4–26–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number: 16–24]

Distributions of Foreign Claims Funds to Awardees; Authority Delegation

Dated: April 13, 1993.

1. Delegation.

By virtue of the authority delegated to the Fiscal Assistant Secretary by Treasury Order (TO) 101–05, I hereby delegate to the Commissioner, Financial Management Service, the authority to determine the pro rata distributions of awards under the War Claims Act of 1948, as amended, and the International Claims Settlement Act of 1949, as amended, that are certified to the Secretary of the Treasury by the Foreign Claims Settlement Commission.

2. Cancellation

Treasury Directive 16–24, "Distributions of War Claims Funds to Awardees," dated September 22, 1986, is superseded.

3. **Authority.**

a. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 50 U.S.C. App. 2017*l*.

c. 22 U.S.C. 1626 et seq.

d. 31 CFR part 250, part 251, and part 253.

4. **Office of Primary Interest**

Office of the Fiscal Assistant Secretary.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 93–9478 Filed 4–26–93; 8:45 am]

BILLING CODE 4810–25–P]

DEPARTMENT OF VETERANS AFFAIRS

Commercial Activities, Performance; Cost Comparison Schedules (OMB A–76 Implementation)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In order to apprise the public of cost comparison studies which the Department of Veterans Affairs will conduct for the purposes of 38 U.S.C. 8110, the Department of Veterans Affairs serves notice to the public that the schedule of cost comparisons within the Veterans Health Administration (VHA) published on pages 43626–43628 of the **Federal Register** of October 28, 1985, has been changed. A number of cost comparison studies scheduled to begin earlier have been rescheduled to begin in 1993, due to extensive construction, replacement initiatives, and other management requirements. The following comprehensive list of the Department of Veterans Affairs cost comparison studies scheduled includes rescheduled start dates for some of the previously published VHA cost comparisons and approved schedules to re-study activities.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Brodie C. Covington, Office of Policy and Planning, Management Analysis and Reports Service (008B3), Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2487. Questions relating to specific cost comparisons or local "service-contracting" should be referred to the Director of the VA facility concerned.

COST COMPARISON SCHEDULES

Field facility/activity	FTE	Schedule date
VA MEDICAL CENTERS (VAMC)		
Laundry and Dry Cleaning Services:		
St. Louis, MO (GOCO).	19.0	Jan 1993.
Tuskegee, AL (GOCO–COCO).	19.0	Mar 1993.
Portland, OR (GOCO).	12.0	Mar 1993.
Phoenix, AZ (GOCO).	14.0	Mar 1993.
Denver, CO (GOCO)	14.0	Sept 1993.
Alexandria, LA (COCO).	12.0	May 1993.
Lyons, NJ (COCO) ..	23.0	Jun 1993.
Albany, NY (GOCO)	15.0	Jul 1993.
St. Louis, MO (GOCO).	19.0	Aug 1993.
Minneapolis, MN (GOCO).	25.0	Sept 1993.
Kerrville, TX (COCO).	09.0	Aug 1993.
Palo Alto, CA (GOCO).	30.0	Jun 1993.
Madison, WI (GOCO).	10.0	Jun 1993.
Oklahoma City, OK (GOCO).	10.0	May 1993.
Pittsburgh, PA (GOCO).	32.0	Jul 1993.
Milwaukee, WI (GOCO).	14.0	Aug 1993.
Marion, IN (GOCO) .	34.0	Sept 1993.
Houston, TX (GOCO).	17.0	Jun 1993.
Dallas,TX (GOCO) ..	20.0	Jul 1993.
Brockton, MA (GOCO).	36.0	Aug 1993.
American Lake, WA (GOCO).	23.0	Sept 1993.
Sioux, SD (GOCO) .	08.0	Sept 1993.

COST COMPARISON SCHEDULES—Continued

Field facility/activity	FTE	Schedule date
Fire Protection Services:		
Coatesville, PA	15.0	Mar 1993.
Hot Springs, SD	15.0	Aug 1993.
American Lake, WA	15.0	Aug 1993.
Canadaigua, NY	15.0	Sept 1993.
Chauffeur Service:		
East Orange, NJ	10.0	Jun 1993.
Pittsburgh (UD), PA	11.0	Aug 1993.
W. Los Angeles, CA	39.0	Aug 1993.
Dayton, OH	15.0	Jul 1993.
Little Rock, AR	12.0	Mar 1993.
Battle Creek, MI	14.0	Jun 1993.
Augusta, GA	08.0	May 1993.
Grounds Maintenance Service:		
Coatesville, PA	12.0	Jun 1993.
Biloxi, MS	09.0	May 1993.
West Los Angeles, CA.	25.0	Aug 1993.
Houston, TX	10.0	May 1993.
Martinsburg, WV	15.0	Jun 1993.
Perry Point, MD	18.0	Aug 1993.
Design/Drafting/Printing:		
Boston, MA	11.0	Aug 1993.
Brockton, MA	05.0	Sept 1993.
Switchboard Services:		
Bronx, NY	09.0	Nov 1993.
Brooklyn, NY	08.0	Jul 1993.
Hines, IL	10.0	Jul 1993.
Minneapolis, MN	08.0	Feb 1993.
West Los Angeles, CA.	11.0	Jul 1993.
Richmond, VA	10.0	Sept 1993.
Transcription Service:		
Pittsburgh (UD), PA	13.0	Jul 1993.
Salisbury, NC	09.0	Aug 1993.
Portland, OR	11.0	Sept 1993.
Dallas, TX	14.0	Jun 1993.
Ann Arbor, MI	08.0	Jul 1993.
Mail/Messenger:		
West Los Angeles, CA.	13.0	Sept 1993.
Hines, IL	08.0	Jul 1993.
Long Beach, CA	05.0	Aug 1993.

Dated: April 16, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–9739 Filed 4–26–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 79
Tuesday, April 27, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, May 6, 1993.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the Whitin Middle School, Granite Street, Uxbridge, MA, for the following reasons:

1. Introduction of new Corridor video
2. Report of Executive Committee on Budget and Administration
3. Report on status of boundary expansion effort
4. Report of Legislative Leadership Committee
5. Public Comment period

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 730, Uxbridge, MA 01569. Telephone: (508) 278–9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 730, Uxbridge, MA 01569.

James R. Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 93–9938 Filed 4–23–93; 12:51 pm]

BILLING CODE 4310–70–M

Corrections

Federal Register
Vol. 58, No. 79
Tuesday, April 27, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL TRADE COMMISSION

16 CFR Part 400

Advertising and Labeling as to Size of Sleeping Bags

Correction

Proposed rule document 93-9092 beginning on page 21095 in the issue of Monday, April 19, 1993 was inadvertently published in the Rules section. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-42-92]

RIN 1545-AQ77

Certain Cash or Deferred Arrangements Under Employee Plans

Correction

In proposed rule document 92-31188 beginning on page 43 in the issue of Monday, January 4, 1993, make the following corrections:

§ 1.401(k)-1 [Corrected]

On page 44, in the 2d column, in § 1.401(k)-1, in paragraph (g)(1)(iii), in the 1st line, "(a)" should read "(A)"; and in the 15th line, insert "collective" after "single".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-941-86; INTL-656-87; INTL-704-87]

RIN 1545-AI33; RIN 1545-AC06; RIN 1545-AL35

Treatment of Shareholders of Certain Passive Foreign Investment Companies

Correction

In proposed rule document 92-6705 beginning on page 11024 in the issue of Wednesday, April 1, 1992, make the following corrections:

1. On page 11025:

a. In the first column, in the last complete paragraph, in the fifth line, "1.1291-10(2)(vii)" should read "1.1291-10(d)(2)(vii)".

b. In the second column, under **Background**, in the fifth line, "These" was misspelled.

c. In the same column, in the last complete paragraph, in the fifth line from the end, "subject" should have been capitalized.

d. In the third column, in the third line, "special" was misspelled and in the eighth line, "PFTC" should read "PFIC".

2. On page 11026, in the third column, in the second complete paragraph, in the eighth line from the end, "the" was misspelled the first time it appears, and in the last line insert "a" before "pedigreed".

3. On page 11027:

a. In the first column, in the sixth line, "prior PFIC" was misspelled.

b. In the same column, in the third complete paragraph, in the ninth line, "section" was misspelled.

c. In the second column, in the first line, "exceed" was misspelled.

d. In the same column, in the second complete paragraph, in the third line, "if" should read "in".

e. In the same column, in the third complete paragraph, in the second line, "generally" was misspelled and in the seventh line, "earnings" was misspelled.

f. In the same column, in the last line, "income sections" should read "income under section".

4. On page 11028:

a. In the first column, in the first complete paragraph, in the fourth line, "shareholder's" was misspelled.

b. In the same column, in the seventh line from the bottom, "§ 1.1291-2(f)(6)" should read "§§ 1.1291-2(f)(6)".

c. In the 2d column, under Indirect Dispositions, in the 6th line, "virtue" was misspelled and in the 12th line, "latter" was misspelled.

d. In the third column, above the last paragraph, "Transfers With" should read "Transfers Within".

5. On page 11029, in the first column, in the third full paragraph, in the third line, after "The" delete "tax" the first time it appears.

6. On the same page, in the same column, in the last full paragraph, in the eighth line from the end, "distribution" was misspelled.

7. On the same page, in the third column, in the last full paragraph, in the fifth line from the end, "transferee" was misspelled.

8. On page 11030:

a. In the first column, in the first full paragraph, in the fifth line, "gets" was misspelled and in the seventh line, "distribution" was misspelled.

b. In the same column, in the second full paragraph, in the fourth line, after "1291" insert "fund".

c. In the second column, in the first paragraph, in the fourth line from the end, "gain" was misspelled.

d. In the third column, in the second full paragraph, in the fifth line, "make" should read "made".

9. On page 11031, in the second column, in the eighth line, "mark-to-market" was misspelled.

§ 1.367(e)-1T [Corrected]

10. On the same page, in § 1.367(e)-1T(d)(4), in the last line, "§ 1.1291-(c)(1)." should read "§ 1.1291-1(c)(1)."

§ 1.367(e)-2T [Corrected]

11. On the same page, in § 1.367(e)-2T(c)(3)(iv), in the third line, after "to" insert "a".

§ 1.1291-1 [Corrected]

12. On page 11034, in the second column, in § 1.1291-1(b)(6), in the fourth line, "representation" was misspelled.

13. On page 11035, in the second column, in § 1.1291-1(h)(3), in the *Example*, beginning in the fifth line from the end, "§ 1.1291-1(H)(3)" should read "§ 1.1291-1(h)(3)".

14. On the same page, in the third column, in § 1.1291-1(h)(4)(i)(B), in the last line, "predecessor" was misspelled

15. On page 11036, in the first column, in § 1.1291-1(i), in the tenth line, "corporation" was misspelled.

§ 1.1291-2 [Corrected]

16. On page 11037:

a. In the first column, in § 1.1291-2(b)(3)(i), in the second line, "and" should read "any".

b. In the same column, in § 1.1291-2(b)(3)(i), in the *Example*, in the seventh line from the end, "§ 1.1291-2(b)(3)(1)" should read "§ 1.1291-2(b)(3)(i)".

c. In the same column, in § 1.1291-2(c)(1), in the sixth line from the end "section" was misspelled and in the second line from the end "distribution" was misspelled.

d. In the same column, in § 1.1291-2(c)(2), in the first line, "*distribution*" was misspelled.

e. In the second column, in § 1.1291-2(c)(2)(iii), in the sixth line, "during" was misspelled.

17. On page 11038, in the third column, in § 1.1291-2(d)(5)(i)(A), in the second line, "fund" was misspelled.

18. On page 11040:

a. In the first column, in § 1.1291-2(e)(4)*Example 2*(ii), in the first line, "shareholder" should read "PFIC".

b. In the same column, in § 1.1291-2(e)(4)*Example 2*(iii), in the sixth line, "$150,00" should read "$150,000", and in the second line after the table, insert "year" after "prePFIC".

c. In the same column, in § 1.1291-2(e)(4)*Example 3*(iii), in the second line, "Block #1" was misspelled.

d. In the third column, in § 1.1291-2(f)(1)*Example*(iii), in the fifth line, "$801" should read "$80".

19. On page 11041, in the first column, in § 1.1291-2(f)(6), in the sixth line, "paragraph" was misspelled.

§ 1.1291-3 [Corrected]

20. On page 11041:

a. In the second column, in § 1.1291-3(b)(1), in the eighth line, "transfer" was misspelled.

b. In the same column, in § 1.1291-3(c), in the last line, "disposition" was misspelled.

c. In the third column, in § 1.1291-3(d)(1), in the tenth line, "paragraph" was misspelled.

d. In the same column, in § 1.1291-3(d)(6), in the fourth line from the end, "secure" was misspelled.

21. On page 11042:

a. In the first column, in § 1.1291-3(d)(7), in *Example 1*, in the fifth line from the end, "pledged" was misspelled.

b. In the same column, in § 1.1291-3(d)(7), in *Example 2*, in the second line, "*Example*" should read "*Example 1*", and in the eighth line, "disposition" was misspelled.

c. In the same column, in § 1.1291-3(e)(2)(i), in the last line, "in" should read "under".

d. In the same column, in § 1.1291-3(e)(2)(iii), in the seventh line, "ownership" was misspelled.

e. In the second column, in § 1.1291-3(e)(3)*Example 1*, in the second line from the end, "§ 1.1291-3(e)(iii)" should read "§ 1.1291-3(e)(2)(iii)".

f. In the same column, in § 1.1291-3(e)(3)*Example 3*, in the second line from the end, before "pursuant" insert "and therefore is an indirect disposition of the FYZ stock," and "§ 1.1291-3(e)(2(iii)" should read "§ 1.1291-3(e)(2)(iii)".

g. In the third column, in § 1.1291-3(e)(4)(iii), in the fifth line, "the" was misspelled, and in the second line from the end, "paragraph" was misspelled.

22. On page 11043, in the second column, in § 1.1291-3(j), in the eighth line, "section" was misspelled.

§ 1.1291-4 [Corrected]

23. On the same page, in the third column, in § 1.1291-4(d)(2), in the seventh line, "section 453(c)" should read "section 453A (c)".

24. On page 11044, in the first column, in § 1.1291-4(e)*Example 2*(ii), beginning in the tenth line, "§ 1.291-3(e)(5)" should read "1.1291-3(e)(5)".

§ 1.1291-5 [Corrected]

25. On page 11046, in the first column, in § 1.1291-5(c)(vi), in the second line, "tentative" was misspelled.

26. On the same page, in the same column, in § 1.1291-5(c)(vii), in the second line, "foreign" was misspelled.

27. On page 11047, in the second column, in § 1.1291-5(3)(viii), in the fifth line from the end, after "$30.62" insert "(1987 general limiation FTC limitation) and $23.73".

28. On the same page, in the same column, in § 1.1291-5(d), in the third line from the end, after "apply to" insert "a".

§ 1.1291-6 [Corrected]

29. On page 11048, in the 2d column, in § 1.1291-6(b)(4)(iv), in the 11th line, "dividend" was misspelled.

30. On page 11049:

a. In the first column, in § 1.1291-6(c)(2)(ii), in the fourth line, "section 358(b)" should read "section 368(b)".

b. In the second column, in § 1.1291-6(c)(2)(vi)(A), in the third line, "pursuant" was misspelled.

c. In the same column, in § 1.1291-6(c)(3)(i), in the third line, "disposition" was misspelled.

d. In the same column, in § 1.1291-6(c)(3)(ii), in the second line, "*partnership*" and "recognized" were misspelled.

31. On page 11050, in the first column, in § 1.1291-6(e), in the first line, "*nonqualifying*" was misspelled.

32. On the same page, in the second column, in § 1.1291-6(f)*Example 3*, in the third line from the end, "or" should read "of".

§ 1.1291-8 [Corrected]

33. On page 11052, in the third column, in § 1.1291-8(f), in the seventh line, "federal" should not have been capitalized.

34. On the same page, in the same column, in § 1.1291-8(g)(1)(i), in the sixth line, "or" should read "of".

§ 1.1291-9 [Corrected]

35. On page 11053, in the first column, in § 1.1291-9(a)(2)(i), in the third line, after "profits" delete "and".

§ 1.1295-1 [Corrected]

36. On page 11055, in the second column, in § 1.1295-1(b)(2)(i), in the fourth line, after "QEF." delete the comma.

BILLING CODE 1505-01-D

federal register

Tuesday
April 27, 1993

Part II

Environmental Protection Agency

40 CFR Parts 260, et al.
Wood Surface Protection; Identification and Listing of Hazardous Waste; Testing and Monitoring Activities; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 270 and 302

[FRL–4596–6]

RIN 2050–AD60

Wood Surface Protection; Identification and Listing of Hazardous Waste; Testing and Monitoring Activities; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by proposing to list as hazardous certain wastes from the use of chlorophenolic formulations in the wood surface protection industry. The Agency is proposing to list these wastes if the user's in-process formulation contains a concentration greater than 100 ppb pentachlorophenate. This action proposes various testing, analysis, recordkeeping requirements and management standards for wood surface protection plants. Related to the testing requirement, the Agency proposes to amend SW–846 ("Test Methods for Evaluating Solid Waste, Physical/Chemical Methods") to include Method 4010 (Immunoassay Test for the Presence of Pentachlorophenate). This action also proposes to modify the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) list of hazardous substances to reflect the newly proposed listing. This action proposes to add six hazardous constituents to appendix VIII of 40 CFR part 261 and to amend appendix VII of 40 CFR part 261 by adding F033 and the hazardous constituents found in the wastes on which the listing determination is based. Finally, this action also requests comment on the option not to list as hazardous wastes from the surface protection processes which would fall within the scope of this proposed listing. The "no-list" option is being considered by the Agency because future generation of these wastes is expected to rapidly diminish and because the results from risk analysis show that risk from the dominant exposure pathways is relatively modest assuming the widespread use of chlorophenolics does not resume. The intended effect of this proposed listing will be to insure that wastes generated from surface protection processes covered under this listing will be properly managed.

DATES: EPA will accept public comments on this proposed rule until June 28, 1993. Comments postmarked after this date will be marked "late" and may not be considered. Requests for extensions will not be granted due to judicial deadlines for the promulgation of a final rule. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by May 11, 1993.

ADDRESSES: The official record of this rule-making is identified by Docket Number F–93–F33P–FFFFF and is located at the following address: EPA RCRA Docket Clerk, room 2427 (OS–332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page. Copies of materials relevant to the CERCLA portions of this rulemaking also are located in room 2427 at the above address.

To request a public hearing on this proposal file a request with Mr. David Bussard (OW–330), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424–9346 (toll-free) or (703) 920–9810, in the Washington, DC metropolitan area. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323, locally. For technical information on the proposed listing, contact Mr. David J. Carver at (202) 260–6775, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

For technical information on the CERCLA aspects of this rule, contact: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202–G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 603–8732.

SUPPLEMENTARY INFORMATION: To assist the public in its review of critical documents, the Agency has provided copies of all relevant background documents to the following affected National trade groups: American Forest & Paper Association, and the National Furniture Manufacturers Association. These documents are also available for public review in the docket for this rulemaking. The contents of this preamble are listed in the following outline:

I. Legal Authority

These regulations are being promulgated under the authority of sections 2002(a) and 3001(b) and (e)(1) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6921(b) and (e)(1), and 6922 (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a).

II. Background

A. History of the Regulation

Section 3001(e) of RCRA as amended by the Hazardous and Solid Waste Amendments (HSWA) requires EPA to determine whether to list as hazardous wastes containing chlorinated dioxins and chlorinated dibenzofurans. As part of this mandate, the Agency in 1988 initiated an investigation of dioxin-containing wastes from wood surface protection and wood preserving processes.

On December 30, 1988, EPA proposed four hazardous waste listings pertaining to wastes from wood preserving and surface protection, as well as a set of standards for the management of these wastes (53 FR 53282). The Agency finalized three generic hazardous waste listings for wastes from wood preserving processes and promulgated standards in 40 CFR parts 264/265, Subpart W for the management of these wastes on drip pads on December 6, 1990 (55 FR 50450). (The Agency subsequently modified those listings on December 24, 1992 (57 FR 61492).) In the December 6, 1990 final rule, the Agency deferred listing wastes from the surface protection industry because of a need for additional data on these wastes to determine whether they should be listed as hazardous wastes.

In accordance with a proposed consent decree signed by the EPA and the Environmental Defense Fund (EDF), EPA has agreed to promulgate a final listing determination for chlorophenolic wastes generated by the wood surface protection industry by the end of December, 1993.

B. Summary of Additional Information Collection

Since 1990, the Agency has acquired a substantial amount of new information on the surface protection industry and its waste generation. This new information was obtained, in part, from questionnaire responses which the Agency received from 134 plants under the authority of RCRA section 3007. The information obtained includes a history of past use of the chlorophenolic surface protectants and information on the duration of their use, as well as production information, process information, and waste generation and management information.

In addition to the information collected through the questionnaires, the Agency visited and interviewed personnel at various plant sites throughout the Nation. The majority of the plants selected for on-site interviews used, at the time of the visit, chlorophenolic formulations to protect the surface of lumber. All process types and varying production sizes were observed. These visits assisted the Agency in selecting appropriate initial sampling locations, as well as in obtaining information about process layouts, terrain, and proximity to groundwater wells. In addition, the Agency studied waste management and pollution prevention practices. Subsequent site visits included familiarization sampling which was used to estimate present waste content prior to record sampling which followed during subsequent site visits. The site selection process was not a random selection process. The Agency conducted on-site studies at 19 different operating plants. From information collected at these on-site visits, combined with extensive research and industry trade group assistance, the Agency determined that it could obtain better, more realistic information on the wastes generated by the sawmill industry if it chose specific sites, instead of using a random selection process. The Agency used various parameters to select the five chosen sites for record analysis. A more detailed discussion as to site selection can be found in the background document for this rulemaking. However, the Agency believed that the following variables affected waste generation to the largest degree: (1) Process type, (2) production quantity, (3) current management practices, (3) current or past user status (along with time period since last used a chlorophenolic), (4) degree for potential groundwater contamination as expressed by a drastic score analysis, and (5) whether or not a plant cleaned out equipment prior to switching over to a substitute product. Video and still photography captured much of the on-site work. Information was also collected from plant personnel. The Agency also collected information from EPA Regional Offices, State and local agencies, and other federal agencies including the U.S. Forest Service, the Department of Commerce, the Internal Revenue Service, and the U.S. Customs Service. All information related to this proposal for which a Confidential Business Information (CBI) claim has not been made is available for public review in the docket for this rulemaking. For more information about the Agency's CBI protection, please refer to 40 CFR part 2, subpart B. The Agency requests comment on the information gathered to support this proposal, including information gathered from sawmill sites across the country.

Based on the additional data collected, the Agency examined potential human health pathways, ecological effects, and performed new risk modeling to simulate the flow of waste drippage to ground water and to nearby streams. Both waste and environmental media samples were taken to obtain true soil concentrations for the purpose of running the risk models. Also, additional damage incidents were identified to provide additional data for this listing determination. The details of the Agency's risk assessment and health effects analysis are discussed in section VI.(C) of the preamble.

III. Description of the Industry and Surface Protection Processes

A. Defining Surface Protection

The wood surface protection industry consists primarily of sawmills that cut rough lumber and timber. United States manufacturers produced a total of 43.13 billion board feet of lumber in 1989. Of the total production, the top 10 lumber producers manufactured 13.71 billion board feet, about 28 percent of the total U.S. output. Small sawmill operations account for the remaining volume (72%) of the lumber produced in the U.S.

The types of wood that are cut are divided into two main classes, softwoods and hardwoods. Softwoods are those obtained from such coniferous trees as pines, spruces, hemlocks, and firs; hardwoods come from deciduous trees, and include such trees as oaks, ashes, maples, basswood, poplars, gums, as well as many tropical trees. Softwoods are used more extensively in building construction and hardwoods

are used for furniture, interior finish, and for products where special wood structure is desired.

The surface protection industry protects wood against sapstaining that may occur during temporary lumber storage. Sapstaining of freshly cut lumber will occur in humid conditions, typically when the water content inside the wood is greater than 19% water. Sapstain does not attack the structural components of the wood, however, the affected surface becomes colored with dark blue or black stains. This discoloration is often objectionable to the buyer and may decrease the value of the wood. Following one day of storage, the stain can usually be planed away; however, stains that remain on lumber for a longer period usually cannot be planed away without excessive wood loss. To avoid staining, many plants coat lumber with chemicals to prevent the occurrence of stain. This practice is accomplished on-site at sawmills throughout the country, during various periods of the year, depending on the regional climate. The Agency believes that there are approximately 3200 sawmills operating in the U.S. today. Out of that number, approximately 980 mills perform some surface protection activities.

The Agency believes that other industries, including furniture manufacturing and lumber export, are or have been engaged in surface protection operations. The Agency requests information on the extent or absence of this practice (both past and current) within these and other industries. It is important to note that because the Agency is proposing a non-specific source hazardous waste listing (F waste code), all industries performing surface protection operations are potentially subject to this proposed regulation, not just sawmills. Based on any information received during the comment period and from further EPA investigations before promulgation of the final rule, EPA will modify the risk and cost estimates as appropriate to account for other potentially affected facilities.

The surface protection of wood involves the application of sapstain control agents by spraying or dipping. Historically, chlorophenolic formulations used for anti-stain purposes consisted of sodium pentachlorophenate, which is an aqueous solution produced by dissolving pentachlorophenol in sodium hydroxide (NaOH). The active ingredient in the formulation, depending upon the pH of the system, may exist as pentachlorophenol or as sodium pentachlorophenate.

The trade names of the chlorophenolic formulations used in wood surface protection include Permatox 101, Permatox 181, and Permatox 10S, all of which were made by Chapman Chemicals and are no longer being produced. By the time today's proposal is promulgated as a final rule, the Agency does not expect there will be any users of full-strength chlorophenolic formulations within the surface protection industry. ("Full-strength" formulations are those having a typically recommended chlorophenolic content by the manufacturer of approximately 0.4 percent pentachlorophenate.) Many plants, however, use, and will continue to use for some time, formulations with lower concentrations of pentachlorophenate.

As a result of increased environmental concerns and more stringent regulation involving pentachlorophenol and related chemicals, alternative formulations have been developed to replace sodium pentachlorophenate. The Agency requests information on substitute chemicals sold in the U.S. that can be used in place of the chlorophenolic formulations with which this proposed listing is concerned. Information on alternate use will be incorporated into a manual detailing pollution prevention methods currently being developed by the Agency to benefit the lumber industry.

B. Process Description

Sawmill cutting operations are typically the same at all plants. Raw logs are cut into cants that are trimmed into rough lumber. In some cases, cants are cut to specific lengths or further finished depending on the final destination of the lumber product. Not all sawmills conduct surface protection operations. Surface protection is typically conducted at mills that process hardwoods; however, soft woods cut for export may also be surface protected.

An estimation of process "cutting" production rates is important in estimating surface protection waste generation rates. For this purpose, the Agency grouped mills into three categories, by production rate: Small mill production (less than 5 million board feet (mbf) per year), medium mill production (between 5 and 25 mbf/year), and large mill production (more than 25 mbf/year). The Agency studied these groups to determine if particular management standards or practices are related to mill size. The Agency conducted on-site interviews and sampling at mills in all three production categories. After the wood is cut, it is stacked and prepared for surface protection. The large mills in the western U.S. export much of their product and treat their lumber with surface protectants all year, while smaller plants or large plants that do not typically export, only treat their lumber with surface protectants during humid months depending on the region of the country in which they operate. Often, wood that is prepared for export is treated with surface protectants because ship transit often subjects the wood to high humidity. Usually, only high grade wood is treated with surface protectants.

Once the wood has been cut at a sawmill, it is typically surface protected unless it is low quality, or will be preserved later at a different facility (i.e., by the customer). Although surface protection is usually accomplished at the sawmill, the Agency recognizes, as noted above, that other types of facilities (particularly furniture manufacturers) may perform this process. The Agency assumes that the types of processes used at sawmills (described below) are the same as those used by furniture manufacturers or other types and that the quantities of waste generated are also similar. This assumption is based on the Agency's in-depth knowledge of wood surface protection. The processes described in this section are, to the Agency's knowledge, the only types of processes available for wood surface protection, and, therefore, are the only processes likely to be used by any industry which surface protects wood.

There are three major processes used by sawmills for applying anti-stain formulation to wood: the dip process, the spray process, and the green chain process. The Agency was unable to obtain information on the treatment of wood by furniture manufacturers or exporting firms and requests information on this.

Typically, a sawmill will use only one process to surface protect; however, the Agency realizes that some plants use a combination of processes to treat lumber at different locations throughout a mill. Dipping is a batch process; green chain and spray operations are continuous processes. The process type influences the amount of control a plant has on waste which it generates.

Dip operations offer the best opportunity to control drippage since an owner or operator has the capability of keeping the wood over the tank until it stops dripping. In actuality, however, dipping operations can lead to more drippage when mills do not allow the treated loads to stop dripping before the next load is dipped. Lumber is dipped in horizontal bundles, as a result, surface protectant is often trapped

within the bundles (referred to as "entrained" liquid). When forklifts remove the lumber, large quantities of protectant can drip from the wood if the lumber is tipped.

Unlike the dipping operation, the spray operation is a continuous operation. Individual pieces of lumber are fed end-to-end by chain, roller, or conveyor belt system through a spray box, which is often equipped with flexible brushes or curtains at both ends to isolate the formulation spray and minimize drippage.

Green-chain systems represent another type of continuous operation. The green-chain is so-named because chains drag fresh cut (or "green") lumber through a tank of protectant formulation and back out again for sorting and grading. After the wood is cut, it is transferred to the green chain. A dip vat containing anti-stain formulation is typically located at the head of the green chain and the wood falls into this vat from the cutting operations. Some systems utilize wheels or rollers just above the formulation surface to force the wood pieces completely into the solution. As the wood is drawn from the vat and along the green chain, excess formulation is released from the wood pieces. Green-chain operations are typically the least controllable operation with respect to drippage.

IV. Summary of the Proposed Regulation

A. Overview of Proposed Hazardous Waste Listing

The Agency is proposing to add one group of wastes from the wood surface protection industry to the list of hazardous wastes from non-specific sources (40 CFR 261.31). This listing, if made final, would carry the F033 waste code and includes the following specific wastestreams:

> F033: Process residuals, wastewaters that come in contact with protectant, discarded spent formulation, and protectant drippage from wood surface protection processes at plants that use surface protection chemicals having an in-process formulation concentration of pentachlorophenate [expressed as pentachlorophenol during analysis] exceeding 0.1 ppm. (T)

As noted in the language of the listing description, the Agency proposes to list as hazardous only those wastes from wood surface protection processes using protectant formulations that have a pentachlorophenate concentration greater than 0.1 ppm. Under this concentration trigger, the F033 listing may cover owners or operators who have switched to an alternate, non-chlorophenolic formulation (so-called "transitional users") and who did not clean out their equipment prior to switch-over. The Agency considers the wastes generated by such transitional users to be included within the scope of this proposed listing if their formulations exceed the proposed concentration. It is possible, however, that wastes generated by a transitional user may not meet the listing description if product switch-over either occurred long enough ago so that all the chlorophenolics have been consumed in the process or if the tank was cleaned out thoroughly prior to switch-over.

To minimize future risks to human health and the environment from the release of wastes, EPA has set a maximum level of pentachlorophenate in a formulation of 0.1 ppm (100 ppb) as the level above which the proposed listing applies. An owner/operator using formulations containing pentachlorophenate at or below 0.1 ppm does not generate wastes that meet the proposed F033 listing. As described later, the Agency's risk assessment suggests that the use of surface protection formulations containing chlorophenolics at concentrations greater than 0.1 ppm may pose risks to human health and the environment.

Formulations with penta-chlorophenate concentrations at or below the 0.1 ppm threshold established in the proposed listing description would result in levels of pentachlorophenate that reach ground water that are below health-based levels of concern. The 0.1 level was calculated using a Maximum Contaminant Level (MCL) of 0.001 ppm and a risk analysis using the Agency's Multi-med model. Multi-med simulates the risk to groundwater from specific sources, and for this proposal, it incorporated variables which are specific to sawmill conditions. The Agency's analysis approximated the dilution of pentachlorophenate from the time the waste contacts the ground to when it reaches a ground water well. The Agency's selection of the 0.1 ppm formulation concentration level generates risk levels to human health from groundwater contamination ranging from a high end individual risk range of 5×10^{-7} to 7×10^{-6} to a central tendency individual risk of 2×10^{-8}. The Agency considers these risks to lie within the acceptable risk range. The Agency did not arrive at the 0.1 ppm level by applying a dilution attenuation factor (DAF) of 100 (as the Agency has done in other circumstances) to the MCL. Indeed, the Agency is not taking a position, in this proposal, about the use of DAFs in calculating acceptable risk levels for any constituents. A detailed discussion of the Agency's modeling assumptions and actual parameters used to generate risk approximations can be found in the docket for this proposed rule.

This calculated level of 0.1 ppm for the pentachlorophenate formulation content is also consistent with levels used in the Agency's RCRA hazardous waste delisting program (see 40 CFR 260.22). In making delisting determinations, the Agency compares leachable levels of the constituents of concern associated with a particular waste with health based levels for those constituents. The model used (the Composite Model for Landfills, or CML) in making delisting determinations generates Dilution Attenuation Factors (DAFs) in a range from 10 to 100. Where a particular waste's volume is not known, a conservative DAF of 10 is used. The CML-generated DAF is then used to determine constituent levels for delisting. A typical level for which wastes may be delisted for leachable pentachlorophenol constituents is between 1×10^{-2} to 0.1 ppm. A typical level for pentachlorophenate constituents would be the same, because the leachable pentachlorophenate would be expressed in analysis as pentachlorophenol. Thus, the pentachlorophenate concentration level of 0.1 for in-process formulations in the proposed listing is consistent with the delisting level.

The Agency notes that industry has been voluntarily switching to alternate non-chlorophenolic substitutes. By listing wastes generated from formulations whose pentachlorophenate concentration is above 0.1 ppm, the Agency hopes to contribute to these voluntary measures and to create an impetus for switching away from the use of chlorophenolic compounds. In order to achieve a pentachlorophenate level at or beneath 0.1 ppm, a plant that at one point used a chlorophenolic formulation must typically clean its equipment. The Agency has determined that sandblasting the formulation tank is one effective method for cleaning equipment to reduce penta-chloro-phenate levels. The Agency has also found that formulation tank sandblasting followed by coating the tank with epoxy coating will reduce both pentachlorophenate levels and dioxin levels. This is because dioxin tends to bind to the walls of equipment and the coating provides a physical barrier to cross-contamination. Because of the added environmental benefits of reducing levels of dioxin in the formulation (and this reducing possible dioxin contamination in process area

soils due to drippage), the Agency recommends, but is not requiring, that formulation tanks be cleaned by sandblasting followed by epoxy coating. Further information on the Agency's findings, including a discussion equipment cleaning field testing conducted during the development of this proposal can be found in the docket associated with this rulemaking.

The Agency is also proposing to require that those surface protection plants that do not generate an F033 hazardous waste because their in-process formulation is equal to or less than 0.1 ppm pentachlorophenate to test their formulations using a method found in SW–846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods). Several appropriate methods can be found in SW–846, including methods 8040 and 8270. This notice also proposes to add Method 4010 (Immunoassay Test for Determining the Presence of Pentachlorophenate) to SW–846. The testing analysis must be performed by a laboratory qualified to perform the analysis. The Agency also proposes to require that either a licensed professional engineer or a responsible company official sign a certification stating the sampling location, the laboratory used with address, the date the analysis was performed, the type of analysis used and the analysis results.

The Agency notes that the proposed testing requirement does not affect the requirement of 40 CFR 262.11 that every generator of a solid waste determine whether that waste is a hazardous waste. Maintaining a signed certification, as described above, will, however, establish a presumption that the plant has complied with 40 CFR 262.11.

Although EPA has not, in the past, imposed an affirmative testing requirement in connection with the listing of other hazardous wastes, the Agency feels that the testing requirement proposed today is both reasonable and appropriate. Unlike other listed hazardous wastes, F033, as proposed, includes in its regulatory listing description a specific numerical concentration component. Without testing and analysis requirements it would be difficult for an Agency inspector to determine whether the surface protectant formulation at a given plant is at or beneath the proposed threshold level: The level of pentachlorophenate in formulations level cannot be determined by observation alone. It is important to note that concentration testing is not required for *wastes;* rather, the concentration of pentachlorophenate in the in-process formulation defines, in part, the scope of the proposed listing, thus making testing appropriate. The Agency requests comment on the appropriateness of imposing this testing requirement.

The importance of the proposed concentration trigger in the proposed listing description cannot be overemphasized. Only processes using formulations with a concentration of pentachlorophenate exceeding the standard in the proposed listing would generate F033 wastes and, thus, be subject to the requirements proposed today. It is important to note that all wood surface protection plant owner and/or operators that have used chlorophenolics in the past who wish to transition from the use of chlorophenolic to non-chlorophenolic formulations in order to avoid handling their wastes as F033 hazardous wastes will be required to test their in-process formulations. Plants whose formulations test at or below 0.1 ppm pentachlorophenate would not generate F033 wastes. Under today's proposal, however, these plants must maintain records of this analysis and comply with other one-time provisions of proposed subpart T (§ 264.561(a) and § 264.562).

If a plant elects to not handle its wastes as F033 hazardous waste, and believes that its in-process formulation is at or beneath the proposed pentachlorophenate concentration level, the plant owner/operator must sample and analyze the in-process product formulation used to protect the surface of lumber. Such sampling must be conducted immediately following operation (and consistent with safe plant operations), and must be conducted by the owner/operator utilizing the guidance found in chapter 9 (sampling plan) and chapter 10 (sampling methods) of EPA's Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW–846). Analysis of the formulation will require the utilization of a qualified analytical laboratory. Sampling must be performed immediately after operation to ensure a true characterization of the formulation, since it is the formulation, agitated by use during operation, that drips from treated wood as waste. The results of this analysis must be maintained on-site as long as the plant is in operation. EPA is proposing that laboratories must use test methods found in SW–846. Methods 8040 and 8270, which appear in SW–846 are appropriate for this analysis. The Agency believes that method 4010, which is presently in draft form and not a part of SW–846, is also appropriate for the determination of pentachlorophenate content. EPA is proposing to add method 4010 to SW–846.

Method 4010 is an immunoassay test for the presence of pentachlorophenate. It does not provide an exact concentration, but determines whether a sample is above or below a set limit (like the 0.1 ppm level proposed today). The detection limit for this test is 0.005 ppm. Method 4010 is presently in draft status and this action proposes its incorporation in SW–846.

Other methods for the determination of pentachlorophenate as pentachlorophenol are SW–846 Methods 8270 and 8040. Method 8270 (entitled Semi-Volatile Organic Compounds by Gas Chromatography/ Mass Spectrometry (GC/MS)) uses a mass spectrometer to perform analytical measurements. Another SW–846 method, EPA Method 8040 (entitled Phenols by Gas Chromatography), utilizes a flame ionization technique or an electron capture procedure to obtain pentachlorophenate concentrations. EPA requests data on other test methods that may be equally effective in detecting pentachlorophenate.

B. Proposed Hazardous Waste Management Standards

The EPA has found that the wastes proposed for listing today contain toxic constituents, some of which are carcinogenic. These wastes, when mismanaged, pose a substantial threat to human health and the environment. Based on its study of the industry, the Agency considers waste mismanagement to include drippage, spillage, or other releases onto soil as well as disposal of tank sludge into sawdust piles to be carried off as boiler fuel. The Agency considers the burning of sawdust contaminated by sludges heavily laden with pentachlorophenate and dioxin to be an example of mismanagement of this waste when the plants which burn the sawdust usually do not follow 40 CFR part 266, subpart H under the Boiler and Industrial Furnace ("BIF") Rule or 40 CFR parts 264/265, subpart O which covers incinerator operation requirements. If, however, a plant was classified as a boiler or an industrial furnace and is in compliance with applicable regulations, then the burning of these sludges would not be an example of mismanagement. In addition, the Agency has compiled information showing that certain constituents found in these wastes are persistent and mobile in the environment surrounding surface protection plants. Wastes from this industry are also water-soluble and can be carried by precipitation run-off over and down through soil. These

constituents are capable of reaching sensitive environmental systems in harmful concentrations. Information that supports these claims is described in detail in section VI(C) of this preamble and additional supporting information can be found in the docket for this rulemaking.

In support of the F033 listing proposed today, EPA is proposing to amend appendices VII and VIII of part 261, Basis for Listing Hazardous Waste and Hazardous Constituents, respectively. These appendices are amended to add the hazardous constituents that form the basis for listing proposed hazardous waste No. F033 (appendix VII), as well as other hazardous constituents contained in the proposed F033 waste streams (appendix VIII).

The Agency is proposing to require wood surface protectors whose wastes fall within the scope of this listing to comply with certain specific management standards proposed today as subpart T of parts 264 and 265. In addition, surface protectors must operate and maintain their plants in accordance with all otherwise applicable RCRA requirements to minimize the extent to which the wastes contaminate the environment. The Agency believes that existing methods for managing hazardous waste under EPA's regulations are available to many surface protection plants and can adequately protect human health and the environment from the risks posed by the waste streams which the Agency is proposing to list as hazardous. Examples of such regulatory programs are the hazardous waste tank regulations in 40 CFR parts 264/265, subpart J and the standards for drip pads in 40 CFR parts 264/265, subpart W. The Agency is proposing to require plants that generate F033 wastes to manage their F033 wastes in units that satisfy either subpart J or subpart W requirements.

Under today's proposed hazardous waste listing, the Agency would consider surface protection plants who have formulations with pentachlorophenate concentrations greater than 0.1 ppm to be potential generators of F033 hazardous waste under the RCRA program. There is no RCRA requirement that generators, solely due to their status as generators, obtain permits for operation under subpart W or J. However, generators are required, at times, to obtain permits if they store generated wastes on-site for time periods which exceed their RCRA storage allowances based on the amount of waste generated. For example, if a plant generated greater than 100 but less than 1000 kg of waste in any one calendar month and complied with certain conditions, it would be allowed to store hazardous wastes on-site for up to 180 days without obtaining a RCRA permit. See 40 CFR 262.34(d), (f). If a plant generates more than 1000 kg of hazardous waste in any one calendar month (considered a large quantity generator), then the plant would be allowed to store hazardous wastes on-site for up to 90 days without a permit. See 40 CFR 262.34(a).

Because both wood preserving and surface protection processes treat lumber with chlorophenolic formulations, a short description of the differences between the two industries and their waste generation is necessary. The Agency considers a "wood preserving process" to be any process intended to preserve wood from structural attack. A wood surface protection process is a process merely intended to prevent surface discoloration. The distinction, therefore, is not based on the type of process used, i.e., pressure treatment or non-pressure dip treatment, but on the intent of the treatment itself. Therefore, "dipping" operations are not excluded from wood preserving if the intent of the operation is to preserve wood. As the Agency stated in its initial proposed wood preserving hazardous waste listing, that wood preservatives are used to delay deterioration and decay of wood caused by organisms such as insects, fungi, and marine borers. Surface discoloration (sapstaining) during short term storage can be adequately controlled by a superficial application of preservative, but for long lasting effectiveness, penetration of preservative to a uniform depth is required. This deep penetration is usually accomplished by forcing preservative into the wood under pressure, so that "pressure treated" is often used as a synonym for "preserved". (53 FR 53282, December 30, 1988).

Typically, sodium penta-chlorophenate is used for sapstain control on lumber following cutting. Sapstain control is considered surface protection, not wood preserving. However, if a plant is treating wood with sodium pentachlorophenate with the intent of preserving the wood, it would be considered a wood preserving operation, and the wastes generated would be chlorophenolic wastes from a wood preserving plant (noted as a facility in the wood preserving regulations) designated as F032. The Agency believes that it would be very unlikely that a wood preserving facility would use sodium pentachlorophenate to preserve wood, since the preserving solution is aqueous and would wash off the treated wood and render the treatment ineffective, since it is the intent of wood preserving to obtain a long term protection of the wood.

As noted recently in the Final Modifications to Wood Preserving Regulations (57 FR 61492, December 24, 1992), incidental drippage at active wood preserving plants is not considered illegal disposal of a hazardous waste if it is removed from the storage yard and managed appropriately within 24 hours (or 72 hours) of occurrence, depending on whether the plant was in operation when the drippage occurred. Wood preserving incidental drippage occurs due to "kickback" of preservative following treatment of wood under pressure. This is not the case with surface protection. There is no "kickback" occurring in this industry because protectant is applied to the surface without pressure. However, protectant drippage does occur from newly treated wood at surface protection plants. Additional drippage may occur from surface-protected wood in storage, due either to liquid entrained in the wood bundles or precipitation coming in contact with the wood.

Plants using surface protection formulations with concentrations of pentachlorophenate greater than 0.1 ppm are subject to the proposed subpart T requirements. All drippage from treated wood, including any drippage that may occur as a result of any liquid entrainment within a packed bundle, must cease before it is transferred to the storage yard. For purposes of containing the drippage in the process area, an owner/operator must employ either a tank system, such as a sump, or a drip pad beneath the process area. If a plant has a sump system for removal of drippage in the process area, that system is subject to the tank standards in 40 CFR parts 264/265, subpart J. Likewise, if an owner/operator installs a drip pad for collection of process drippage, the drip pad standards in Subpart W are applicable.

For those plants which generate F033 wastes, the Agency is proposing to require owner/operators of those surface protection plants to develop and implement a contingency plan for immediate response to protectant drippage in storage yards. The Agency does not expect plants within the scope of the proposed listing to experience drippage in the storage yard because the proposed subpart T requires that drippage cease prior to removing wood from the process area. However, the Agency recognizes the possibility that some incidental drippage may, nonetheless, occur after wood is

removed to the storage yard. This contingency plan requirement would not apply to drippage in the process area, where other subpart T requirements would apply.

The requirement is proposed to be the same as the contingency plan requirement promulgated for wood preserving facilities in the December 24, 1992 final rule. In that rule, the Agency clarified what it meant by the term "immediate response" (57 FR 61494). With respect to the word "immediate," EPA intends that owner/operators respond to storage yard drippage that occurs while a plant is in operation within one consecutive working day. A facility is considered to be in operation any day on which it is treating wood. For plants that are not in operation during a storage yard drippage event, the Agency expects the plant to clean up the drippage within 72 hours of occurrence. It is important to note that the timing of response to drippage is based on when the drippage actually occurs, rather than when the drippage is detected in the storage yard. The approach proposed today, like the approach promulgated for wood preserving plants, places the responsibility for checking storage yards for drippage on the plant owner/operator. Regular checks of storage yards, particularly following the initial storage of newly treated wood, will allow owner/operators to respond to drippage in accordance with today's proposal.

With respect to the word "response," EPA intends this term to include cleanup and removal of protectant drippage from the storage yard. For purposes of today's proposal, cleanup of visible drippage from the treated lumber in the storage yard will satisfy the requirements for immediate response. The proposed requirements for the contingency plan are also the same as those finalized in the wood preserving rule. Owner/operators must prepare and maintain a written plan that describes how the plant will respond to storage yard drippage. At a minimum, the plan must describe how the owner/operator will accomplish the following:

(i) Clean up the drippage;
(ii) Document the cleanup of drippage;
(iii) Retain this documentation for three years; and
(iv) Manage the contaminated media in a manner consistent with Federal regulations.

With regard to the requirement to document the cleanup of drippage, the Agency will consider an annual certification, signed by either a registered professional engineer or a responsible company official of proper authority on company letterhead, that the owner/operator has cleaned up drippage in accordance with these rules, to be adequate documentation.

The Agency is proposing to require plants that store wood on-site in areas unprotected from precipitation to cover the treated wood bundles to minimize the quantities of surface protectant that run off the wood into the environment. The chlorophenolic formulations used by the wood surface protection industry are water-soluble, and storage yards are easily contaminated with protectant from precipitation run-off. This cover requirement, and the contingency plan requirement, are being proposed to minimize further contamination of the environment.

C. Historical Soil Contamination

The standards proposed today should substantially decrease any future environmental contamination that would otherwise result from continued generation of these waste streams. There is, however, a considerable amount of soil (process area and storage yard) and water (ground and surface) that already has been contaminated as a result of past surface protection practices.

EPA generally protects human health and the environment against the risks associated with contaminated soil via the "contained-in" policy. The "contained-in" policy states that media containing a listed hazardous waste are themselves considered listed hazardous wastes when they are actively managed (*e.g.*, excavated). See *Chemical Waste Management, Inc.* v *E.P.A.*, 869 F.2d 1526, 1539–40 (D.C. Cir. 1989). The media, henceforth, are regulated as hazardous wastes until such time as the media no longer "contain" the originally listed hazardous waste.

The Agency is in the process of examining issues related to contaminated media and reviewing existing policy on these issues. EPA recently proposed to exempt media contaminated with petroleum wastes. See 57 FR 61542 (Dec. 24, 1992) (materials not regulated under the Underground Storage Tank Program) and 58 FR 8562 (Feb. 12, 1993) (materials regulated under the Underground Storage Tank program). EPA also is involved in an on-going dialogue with interested parties as part of the rulemaking process specifically related to the Hazardous Waste Identification Rule (HWIR), proposed on May 20, 1992 (57 FR 21450) and subsequently withdrawn on October 30, 1992 (57 FR 49280). Since its withdrawal, a national and multi-sectoral outreach program has been initiated.

Because of the historical soil contamination associated with the surface protection industry, the F033 listing proposed today raises issues concerning the regulation and management of contaminated soils. The proposed listing potentially affects actions taken at several thousand sites that are past users of pentachlorophenate. While this proposed listing, coupled with application of the "contained-in" policy to these sites, assures government jurisdiction if such soils are actively managed, it does not, on its own, compel corrective action. It may, in fact, serve to impede or slow site clean-ups as well as other minor activities that, on their own, pose no significant environmental risks, if those activities result in the generation of contaminated soils that must be handled as hazardous wastes. In light of these issues, EPA is requesting data and comment on the "contained-in" policy as it pertains to the wood surface protection industry. Such data and comment might consider:

(1) The appropriateness of subjecting these soils to all requirements of the Subtitle C program when actively managed;

(2) The level of contamination in process area and storage yard soils as well as groundwater; and

(3) The risks posed by these soils.

The Agency acknowledges that a substantial number of plants that previously used chlorophenolic formulations have contaminated their equipment with dioxin, an impurity found in the formulation. Sampling data show that dioxin is, indeed, found in the protectant formulations and wastes from plants that have switched over to non-chlorophenolic formulations, indicating that there has been cross-contamination by previous chlorophenolic use. The original proposal of December 30, 1988 (53 FR 53282) proposed that all cross-contaminated wastes would be included within the scope of the listing unless an equipment-cleaning procedure was used to decontaminate the equipment and prevent the further cross-contamination of product and waste. Today's proposal differs substantially from the 1988 proposal with respect to cross-contaminated wastes. The Agency has determined that a plant must have greater than 0.1 ppm pentachlorophenate (expressed as pentachlorophenol during analysis) in their formulation to generate an F033 waste. There may be plants whose formulations are cross-contaminated due to previous, and now abandoned,

use of chlorophenolics, but whose formulations have concentrations of pentachlorophenate less than or equal to 0.1 ppm. Information collected subsequent to the 1988 proposal supports the Agency's findings that wastes from such plants pose what the Agency considers to be an acceptable lifetime excess cancer risk from pentachlorophenate contamination in ground water of 3×10^{-6}, as derived from the carcinogenic slope factor (CSF). A detailed discussion of the Agency's risk assessment is contained in section VI(C) of this preamble, as well as in the docket associated with this rulemaking.

V. Options Considered by the Agency

The Agency carefully considered all the analysis described in Section VII of this preamble in developing today's proposal. The Agency acknowledges that factors in this analysis argue both for listing wood surface protection wastes as well as for not listing these wastes as hazardous. The Agency has decided to list these wastes as hazardous (for reasons described below), but EPA specifically requests comments on the option to not list these wastes as hazardous.

A. Not Listing Wood Surface Protection Wastes as Hazardous

As indicated above, there is some information which suggests that the Agency should not list wood surface protection wastes as hazardous. First, the use of full-strength chlorophenolics has rapidly declined, and is not expected to increase. As indicated in section III, the Agency knows of only two sawmills currently using chlorophenolic formulations to surface protect lumber. Chapman Chemicals (the sole recent producer of chlorophenolic formulations) ceased production of its chlorophenolic formulations in January 1992 and soon after voluntarily filed for product registration cancellation. A notice describing this action was published for public review in the Federal Register notice (see 57 FR 23401 (June 3, 1992)). Following a comment period for this action, a final cancellation order was sent to Chapman Chemicals with an effective date of September 14, 1992. This cancellation notice cancelled the following products produced by Chapman Chemicals: Permatox 181, 10S, and 101, and Mitrol G–ST. Any manufacturer would have to obtain a new registration before these chemicals could be re-introduced and be made available for use in wood surface protection.

Second, the risk associated with surface protection wastes is estimated to be, for some exposure pathways, at or below the range of what the Agency considers acceptable. This is the first hazardous waste listing proposal which uses the Agency's risk characterization guidance (U.S. Environmental Protection Agency. Guidance for Risk Assessment. Risk Assessment Council, November 1991). The purpose of the risk assessment, which is described in detail in section VI of this preamble, was to determine to what extent these wastes pose a threat to human health and the environment. For this proposal, the Agency performed a multifaceted study of how these wastes have been and are currently distributed to the environment. The two principal areas of risk associated with surface protection wastes are:

(1) Drinking water contamination associated with groundwater sources contaminated by the current and past use of chlorophenolics; and

(2) Ingestion of fish and shellfish tissues and ingestion of soils contaminated over a long period of time by PCDDs and PCDFs ("dioxins").

To make a listing determination, the Agency applies a "weight-of-evidence" approach, examining risk associated with all potential human health and environmental exposure pathways. By listing wastes from the use of surface protection formulations that contain 0.1 ppm PCP or above, the Agency would effect a change in the risk associated with the cross-contamination of non-chlorophenolic formulations with PCP and dioxins. The risk reduction achieved by cleaning tanks and equipment to a level below 0.1 ppm, i.e., the incremental risk, is relatively modest. The Agency's risk analysis indicates that the incremental risks attributed to this regulation are as follows:

	High end individual risk estimate	Central tendency individual risk estimate	Population risk estimate [1]
Groundwater Consumption	1×10^{-5} to 2×10^{-4}	5×10^{-7}	0.005
Fish/Shellfish Consumption	1×10^{-8} to 4×10^{-7}	8×10^{-10}	0.2
Soil Ingestion	2×10^{-6} to 2×10^{-5}	7×10^{-7}	0.0004

[1] Best estimate for 70 year lifetime.

A listing is expected to have little or no effect on the risk associated with contaminated soils and ground water that has already occurred due to usage of chlorophenolics in the past. Only remediation of existing contamination would address this risk. Site remediation is not required by the mere listing of the wastes. Site remediation is also not expected to occur to any significant degree as a consequence of the management of contaminated media incidental to general facility operations.

The damage cases described later indicate damages from past usage of chlorophenolics. Damages of this magnitude may not occur in the future unless use of full strength chlorophenolics resumes.

Finally, the Agency is aware that the proposed listing could, in fact, accelerate environmental contamination by encouraging plants to dispose of any chlorophenolic-bearing formulations on-site prior to the effective date of a Final Rule, in an attempt to avoid generating F033 hazardous waste. By not listing wood surface protection wastes as hazardous, this accelerated contamination would not likely occur. However, the Agency notes that if contaminated soils are actively managed following the effective date of a Final Rule, such wastes may be subject to the Agency's contained-in policy. The "contained-in" policy states that media containing a listed hazardous waste are themselves considered listed hazardous wastes when they are actively managed (*e.g.*, excavated). See *Chemical Waste Management, Inc.* v *E.P.A.*, 869 F.2d 1526, 1539–40 (D.C. Cir. 1989). The media, henceforth, are regulated as hazardous wastes until such time as the media no longer "contain" the originally listed hazardous waste.

If a manufacturer of pentachlorophenate wanted to resume its production, it would be required to meet all of the requirements under FIFRA for registering a new chemical.

This requires prior completion of health and environmental effects data sets that EPA uses to determine if the chemical poses an unreasonable risk. EPA requests comment on whether FIFRA requirements would meet RCRA concerns.

B. Rationale for Proposing To List Wood Surface Protection Wastes as Hazardous

The Agency elected to propose the listing of these wastes as hazardous for several reasons. First, the Agency's analysis suggests that, even when chlorophenolic formulations are no longer used by a plant (as is currently the case with a majority of surface protectors), contamination of soils and ground water will continue to occur. This is because "transitional users" typically have not cleaned their equipment and elevated levels of pentachlorophenates still remain in their formulation. Drippage onto the ground following treatment of lumber is a normal occurrence in the surface protection process. The chlorophenolic formulations used by sawmills are aqueous solutions that contain both carcinogenic and systemic constituents, including dioxin.

The risks from these wastes may be comparable to those from other listed wastes. As a comparison, the population risk from the groundwater ingestion pathway for the recently promulgated wood preserving wastes listing was lower than risks from wood surface protection wastes (zero excess case over 300 years). However, the Agency listed wood preserving wastes because of the high levels of constituents of concern and significant number of damage cases including 54 NPL sites. Although the central tendency and high-end risks determined for these surface protection wastes seem to be near the low end of concern, the constituents of concern in the waste are in high enough concentrations that these wastes would have been listed under the previously used methodology employed for listing determinations.

Second, EPA is very concerned about potential risks that may occur if chlorophenolic formulations are put back into use. As indicated above, the cancellation of this formulation's FIFRA registration was voluntary. Following the voluntary action, EPA cancelled the registration. Registration of pesticides are governed by section 3 of FIFRA. The Agency's regulations governing the registration process can be found at 40 CFR part 152, subpart C. If the cancelled chlorophenolic formulations are re-instated for use in wood surface protection operations, the risks associated with the use of pentachlorophenate and dioxin can be expected to increase significantly. The Agency believes that listing these wastes as hazardous will provide additional barrier to the use of these formulations beyond the FIFRA registration process. As noted above, EPA requests comment on whether FIFRA would meet RCRA concerns.

In addition, the Agency has information concerning 21 damage cases that document the presence of, and threats to human health and the environment posed by the past use of pentachlorophenate (PCP) and tetrachlorophenate (TCP) at surface protection plants in ground water, surface water, and soil. Significant concentrations of PCP, often orders of magnitude above the water Health-Based Level (HBL), were detected in the ground water of many sawmills. The sampling and analysis data which contribute to these damage incidents were collected during on-going surface protection operations at a time when chlorophenolic formulations were actively used, and EPA believes they are indicative of damages that could occur in the event that production and widespread use of chlorophenolics resume in the future.

Furthermore, as discussed above, the "no-list" option, if adopted in the final rule, would necessarily rely on the FIFRA cancellation of the chlorophenolic formulations in order to minimize unacceptable adverse impacts on human health and the environment. The Agency may take into consideration the impact of other statutory and regulatory requirements when making hazardous waste listing determinations under RCRA (as it has done here, with respect to the impact of the FIFRA cancellation on the anticipated future volume of wastes generated). However, the regulations governing the listing of hazardous wastes at 40 CFR § 260.10 specify a wide range of factors, not all of which will necessarily be adequately addressed by other statutory or regulatory schemes, such as those administered under FIFRA. Therefore, the Agency is reluctant to rely solely on other statutes to accomplish the goals of EPA's hazardous waste listing program.

Finally, today's listing is unique in that it sets a level of pentachlorophenate of 0.1 ppm in formulations as the level above which the listing would apply. This allows plants to clean their equipment such that their formulation is beneath the 0.1 ppm regulatory level, thus reducing the number of plants that would be affected by this rule. The Agency acknowledges, as discussed above, that there is concern about potential one-time waste disposal prior to the effective date of the final rule. However, EPA believes there may be disincentives to such one-time disposal. The economic value of chlorophenolic formulations may discourage disposal. In addition, potential liability under either the Agency's RCRA contained-in policy (discussed in section IV(c) of this preamble) and/or the Comprehensive Environmental Response Compensation and Liability Act (CERLCA, or Superfund) may deter unsafe on-site waste disposal.

For the above reasons, the Agency is proposing to list wood surface protection wastes as hazardous, but is seeking comment on the option to "not list" these wastes in the final rulemaking. The Agency specifically requests comment and supporting information on the risks posed by these wastes.

VI. Description of Wastes Generated

A. Types of Wastes Included in This Proposal

This section describes the waste streams that are generated by the use of surface protection formulations containing chlorophenolics. Two types of primary waste streams are typically generated: process residuals and drippage. Secondary waste streams include spent formulation and wastewaters.

Process residuals are tank sludges that accumulate in the dip tank and/or mix tank as the lumber passes through for treatment. Some plants use spray systems that generate a sludge when recovered formulation is filtered. Periodically, the accumulated sludge must be removed and is typically placed on sawdust or wood chip piles on-site. The ultimate destination of the sludge is dependent on the management of the sawdust piles. Plants have reported burning the sawdust on-site or shipping it off-site for use as boiler feed for energy recovery. Depending on the particle size, some of these wood chips may be shipped to a pulp or paper mill.

Some plants generate little or no tank sludge as a result of certain process variations. Dip tank operations sometimes utilize an internal circulation system to enhance mixing and promote penetration into the packed bundles. The agitation does not allow any particulates to settle, and when the bundles are removed, some of the suspended solids are also removed. Green chain operations sometimes use a system of rollers that are partially submerged into the dip tank. These rollers force the pieces of lumber under the surface of the formulation to ensure thorough coverage of the exposed

surfaces. Forcing the lumber deeper into the tank physically drags the lumber through any sludge that has settled in the tank and this sludge leaves the tank with the treated lumber. This system may agitate the formulation within the tank and achieve the same result as an internal circulation system. These practices are described in more detail in the waste management section of this preamble.

Another wastestream is excess formulation drippage from freshly treated lumber. Excess drippage can fall on the ground when the wood is transported from the dip tank or green chain to stacking and packaging. The Agency has observed that spray operations tend to result in less excess formulation on the wood than either the dipping or green-chain operations. Some plants utilize simple recovery systems to minimize the loss of formulation. Pack dip operations hold the wood over the dip tank at an angle to collect excess formulation prior to transfer to storage. Green chain and spray operations may utilize a collection pan under the conveyor to collect formulation as the freshly treated lumber runs along the green chain. The treated wood is then stored on-site or immediately shipped off-site to the buyer.

Other wastes generated by surface protection processes and included in today's proposed listing are wastewaters and discarded spent formulation. Wastewaters are typically not generated by this industry since it is not desirable to wet freshly treated lumber. Untreated logs awaiting cutting are sometimes kept wet to reduce the risk of fire and mold formation. These wastewaters would not be included within the scope of this proposed listing unless they contacted formulation. The Agency has found that larger plants which operate indoors perform "good housekeeping" measures, including the washdown of floors and equipment. The wastewaters generated from these activities, if they contact formulation within the scope of the proposed listing, would be a listed hazardous waste. Discarded spent formulation includes any discarded formulation that a plant disposes of as a result of a change in product formulation.

B. Quantities of Waste Generated

The Agency believes that there are three distinct user groups within the surface protection industry generating this proposed F033 waste: sawmills, furniture manufacturers, and exporters of wood. The Agency has been unable to acquire information on the extent of use within the furniture manufacturing and export industries and requests such data. The Agency has obtained, as earlier mentioned, a substantial amount of new information on the saw mill industry. The quantity of wastes generated by this industry is described in the following paragraphs.

Based on current industry directories, the Agency estimates that there are approximately 3200 operating sawmills in the United States. The Agency further estimates that approximately 980 (one-third) of these mills perform surface protection operations. Of these 980 mills, the EPA estimates that about 50% of the lumber cut at these plants is actually surface-protected. These percentage estimates may be high for smaller mills and low for the larger mills, but the Agency believes, on weighted average, that they are sufficiently accurate for purposes of estimating waste generation quantities and for performing risk modeling.

Based on the above, quantities of waste generated on a national level can be estimated. Formulation drippage and precipitation run-off from storage yards are the two types of waste generated at surface protection plants that the Agency believes can result in substantial human exposure. These are the highest volume waste streams generated by the industry and are included within the scope of the proposed listing.

The Agency has estimated from on-site field sampling and interviews regarding typical solution concentrations, that the amount of process area drippage that can occur at mills throughout the U.S. is between 1000 and 4000 gallons per one million board feet of lumber treated. Given the number of sawmill plants in operation throughout the country, the number of process types and set-ups, and the type of management practices, the Agency assumes that approximately 2000 gallons of drippage infiltrate soil per one million board feet of lumber surface-protected.

The other type of waste that presents significant human exposure risk is storage yard run-off. Depending on market conditions, lumber may remain in the yard following surface protection for longer than a month. During this period, precipitation may carry formulation into nearby bodies of water or further contaminate soils throughout the yard. The Agency is aware that larger mills often package their wood or otherwise keep their wood protected from weather for better resale. The Agency notes that, given the variability in plant size, location, climate, and management practices, there is a high uncertainty in estimating the amount of storage yard run-off from this industry. A study performed in British Columbia, Canada provides information about run-off from an on-site two-day rain event. A copy of this study is in the docket for today's rulemaking. The formula used to derive the actual concentration of chlorophenolic in run-off for use in making risk assessments is discussed later in the preamble.

Sludges removed from process tanks or filters are generated infrequently and never in large quantities by this industry. Indeed, many small plants have never removed sludge because it has not caused a problem and the system is continuously replenished. Other plants, because of their process, generate sludge, but all of it leaves the plant with the treated wood product.

C. Waste Management Practices

The Agency has found that wastes generated by this industry are managed by any of the following methods: (1) Burned on-site as fuel, (2) shipped off-site for use as boiler fuel, (3) land disposed on-site, (4) land disposed off-site, or (5) dripped or placed onto soil. The majority of mills allow formulation to drip directly onto the ground and dispose of sludge in sawdust piles. The Agency has seen very little evidence of management of these wastes that would be in compliance with RCRA requirements, were this proposed listing finalized. However, EPA notes that there are some plants that dispose of these wastes in what would constitute a proper manner for hazardous wastes. The details of the Agency's findings regarding waste management practices can be found in the docket for this rulemaking.

D. Pollution Prevention and Recycling Practices

The Agency is currently preparing a separate guidance manual recommending voluntary pollution prevention and waste minimization techniques for the lumber industry. The manual will be completed prior to expected promulgation of a final F033 hazardous waste listing rule in December 1993. Some recommended strategies for pollution prevention in the surface protection industry are described in this section. Further information will be included in the manual.

The ultimate goal of pollution prevention is to reduce present and future threats to human health and the environment. Pollution prevention (also referred to as source reduction) is the use of materials, processes, or practices that reduce or eliminate the quantity and/or toxicity of wastes at the source

of generation. Pollution prevention is the first step in a hierarchy of options for reducing the generation of waste. The first recommended pollution prevention option is to replace chemical treatment with another type of treatment to achieve surface protection. One alternate is to dry the wood to reduce water content (high water content leads to sapstain). The Agency is aware that this option may not be economically viable for a smaller mill. If such a system cannot be feasibly employed, it would be preferable for a user of chlorophenolic-containing formulations to switch to an alternate formulation that does not generate a hazardous waste.

Because the proposed F033 listing includes a concentration standard for treatment formulations, a plant could avoid generating a hazardous waste by ensuring that its formulation is at or beneath this concentration standard (0.1 ppm pentachlorophenate). The Agency performed field testing on a dip tank formulation following the cleaning of the tank (the plant was switching from a chlorophenolic formulation to a non-chlorophenolic formulation) by sandblasting and found that sandblasting effectively reduces chlorophenolic contamination to acceptable levels. This is the only method that has been field tested by the Agency. The Agency requests comment and data on the effectiveness of other cleaning procedures, e.g. steam cleaning, etc. Another pollution prevention option is the use of high velocity spray systems that generate fewer process residuals and less drippage. Again, however, a small production volume may not favor this option since spray systems require a larger flow of wood through the system to be economically or technically feasible.

Other pollution prevention strategies for use within the surface protection industry: (1) Local and general ventilation within the cutting process area to reduce dust which would accumulate on wood; (2) blowing wood with air to further reduce sawdust on wood prior to surface protection; and (3) the use of drainage collection devices (gutters) on roof tops to keep rainwater away from process wastes. For wastes that cannot be reduced at the source, generators may consider recycling as the next best option. Pollution prevention practices are very critical in plant operations that produce a hazardous waste since they can reduce the amount of hazardous waste generated. Recycling activities, when safely operated and maintained, are next best because they take what would have been termed hazardous waste generated from the process and reuse it to reduce actual hazardous waste generation that is destined for disposal.

VII. Analysis Supporting This Proposal

In support of this proposed rulemaking, the Agency has:

(1) Performed sampling and analysis of various surface protection sites which include actual waste and soil sampling;

(2) Studied the management of these wastes;

(3) Obtained examples of previous incidents of environmental contamination (known as damage cases), and

(4) Performed a rigorous risk assessment which uses actual sampling and site data to model the effects of past and present contamination and to estimate the risks that the contaminants pose to human health and the environment as a result of chlorophenolic use.

A. Recorded Incidents of Environmental Contamination

The extent of pentachlorophenate contamination in plant process area soils is well documented. The damage cases do not provide data on sediment contamination in nearby streams, but they do support the mobility property of a "chlorophenolic" (such as pentachlorophenate) to ground and surface waters. Ten of the 21 damage cases showed on-site ground-water contamination with PCP above the HBL of 0.001 ppm. Eleven of the 21 plants showed surface water contamination with PCP at levels above the HBL.

B. Waste Characterization and Constituents of Concern

Because the sampling sites were not randomly selected, one cannot draw accurate conclusions about all sawmills from this small sampling population. However, the waste characterization data obtained from the sample population is appropriate and useful in making a determination on the waste itself, although it may be of limited use in characterizing the entire industry. All three waste streams encompassed by the proposed listing contain the following proposed Appendix VIII constituents of concern: Pentachlorophenol, tetrachlorophenol, total equivalence of 2,3,7,8 substituted dibenzo-p-dioxins (PCDDs) and total equivalence of 2,3,7,8-substituted dibenzofurans (PCDFs). Analysis of samples collected at five plants show that process area residuals are not hazardous wastes under the Toxicity Characteristic Leachate Procedure (TCLP, 40 CFR 261.24). Analysis of samples taken at these five plants show that contaminated storage yards (which represent the largest area of a mill) contain low levels of dioxin (at or below 1 ppb) and non-detectable levels of pentachlorophenate. Such dioxin concentrations are below concentrations that would generally trigger a Superfund clean-up (1 ppb). By comparison, process area soils have been found to contain high levels of dioxin and very low to non-detectable levels of pentachlorophenate.

SAMPLE ANALYSIS

Waste stream dioxin	Current user of PCP		Max. Penta (ppm)	Past user of PCP		Median TEF (ppb)
	Penta Conc. (ppm)	TEF dioxin (ppb)		Median penta (ppm)	Max TEF dioxin (ppb)	
Sludge	1722	88	247	28	15.36	3.95
Formulation	290	0.01	8.3	2.6	2.14	0.0085
Process soil	0.17	0.94	1.4	1.0	4.09	2.13
Storage yard	0.09	0.07	Non-Detect	Non-Detect	0.96	0.05
Sediment/drain	No Analysis	No Analysis	0.97	0.03	0.034	0.017

To compare these figures with the corresponding health based levels (HBLs') for each of the constituents in soil and formulation, one can use a HBL (pentachlorophenate in soil)= 9 ppm and a HBL(pentachlorophenate in water)= 0.001 ppm. For the dioxin constituent, on should use HBL (dioxin in soil)= .007 ppb and a HBL (dioxin in water) = 0.000030 ppb.

C. Health and Ecological Effects

1. Toxicity of Constituents

A variety of toxic effects with implications for human health and the environment have been associated with the chemical constituents found in chlorophenolic surface protection formulations. These constituents include pentachlorophenol, 2,3,4,6-tetrachlorophenol, and other chlorophenols, as well as numerous polychlorinated dibenzodioxins and polychlorinated dibenzofurans. Pentachlorophenol is classified as a probable human carcinogen based on sufficient evidence in laboratory animals. In addition, pentachlorophenol exhibits non-cancer pathological effects on the liver and kidneys. 2,3,4,6–Tetrachlorophenol is a systemic toxicant which also has adverse effects on the liver and kidneys at low doses. As a group, polychlorinated dibenzodioxins and dibenzofurans exhibit a wide range of toxic effects at exceptionally low doses. The most studied congener, 2,3,7,8-tetrachlorodibenzo-p-dioxin, is classified as a probable human carcinogen, a teratogen, and an immunotoxin.

a. Human health criteria and effects. EPA uses health-based levels, or HBLs, as a means for evaluating levels of concern of toxic constituents in various media. In establishing HBLs, EPA evaluates a wide variety of health effects data and existing standards and criteria. EPA uses any Maximum Contaminant Level (MCL) promulgated under the Safe Drinking Water Act as an HBL for contaminants in water. For other media, or if there is no MCL, EPA uses an oral reference dose (RfD), an inhalation reference concentration (RfC), and/or a carcinogenic slope factor (CSF) to derive the HBL, in conjunction with various exposure assumptions and, for carcinogens, a risk level of concern. The risk level of concern may vary, but for the purpose of deriving the health-based levels in the following discussion, the risk is taken as 10^{-6} (i.e., one in a million). A given constituent may have an RfD, an RfC, and/or a CSF, depending on the variety and nature of the toxic effects exhibited. The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population, including sensitive subgroups, that is likely to be without appreciable risk of deleterious effects during a lifetime. The CSF is an estimate of the upper bound confidence limit of the lifetime risk of developing cancer, per unit dose, which results from the application of a low-dose extrapolation procedure. When available, EPA uses RfDs, RfCs, and CSFs that have been verified by the Agency's Reference Dose/Reference Concentration (RfD/RfC) Work Group or CRAVE (Carcinogen Risk Assessment Verification Endeavor) Work Group. If no verified values exist, other estimates of RfDs, RfCs, and CSFs are examined to determine if they are appropriate for use in establishing HBLs. HBLs are intended to be protective of human health under a wide variety of exposure conditions. Health-based levels in water and soil, and the criteria used to establish them, are shown in Table 1 for the constituents of concern in chlorophenolic surface protection formulations.

TABLE 1.—HEALTH BASED LEVELS AND CRITERIA FOR CONSTITUENTS OF CONCERN

Constituent	Health based levels		Criteria		
	Water (mg/L)	Soil (mg/kg)	MCL (mg/L)	RfD (mg/kg/d)	CSF (mg/kg/d)$^{-1}$
Pentachlorophenol	0.001	9.0	0.001	0.03	0.12
2,3,4,6-Tetrachlorophenol	1.0	2000	.....	0.03	.....
2,3,7,8-TCDD	0.00000003	0.000007	0.00000003	0.000000001	160000

Pentachlorophenol has an HBL in water of 0.001 mg/L, based on the MCL. For a person who drinks 2 liters of water containing pentachlorophenate at the HBL each day for 70 years, this corresponds to a risk of 3×10^{-6}, as derived from the CSF. The HBL at a risk level of 10^{-6} in soil is 9 mg/kg, based on the CSF and a soil ingestion rate of 200 mg/day in children (from one year of age to age six).[1] Pentachlorophenol has been classified as a B_2 carcinogen (i.e., a probable human carcinogen) on the basis of statistically significant increases in the incidence of multiple biologically significant tumor types in mice, including hepatocellular carcinomas, malignant pheochromocytomas, and hemangiosarcomas. Pathology of the liver and kidneys, other than carcinomas and sarcomas, has been reported in rats.

2,3,4,6-Tetrachlorophenol has an HBL in water of 1 mg/L based on the RfD and a drinking water ingestion rate of 2 L/day. The HBL in soil is 2000 mg/kg, based on the RfD and a soil ingestion rate in children of 200 mg/day. In laboratory studies, rats exhibited significant increases in liver and kidney weight and centrilobular hypertrophy. 2,3,4,6-Tetrachlorophenol has not been evaluated for carcinogenicity.

2,3,7,8-Tetrachlorodibenzo-p-dioxin has an HBL in water of 30 pg/L (or 30 parts per quadrillion), based on the MCL. For a person who drinks 2 liters of water containing PCDDs and PCDFs at the HBL (in terms of 2,3,7,8-TCDD toxicity equivalent) each day for 70 years, this corresponds to a risk of 1×10^{-4}, as derived from the CSF.[2] The MCL is also consistent with the oral RfD for 2,3,7,8–TCDD, again assuming an intake rate 2 L/day.[3] The HBL at a risk level of 10^{-6} in soil is 7 ng/kg (or 7 parts per trillion), based on the CSF and a soil ingestion rate of 200 mg/day in children (from one year of age to age six). 2,3,7,8-TCDD has been demonstrated to be a potent carcinogen in animals and has been classified as a

[1] This presumes that exposure associated with incidental soil ingestion for individuals over six years old is low relative to childhood exposure.

[2] EPA is currently conducting a scientific reassessment of the risks of exposures to 2,3,7,8,-tetrachlorodibenzo-p-dioxin and related compounds. A major objective of the reassessment is the development of a biologically based dose-response model to reflect significant advances that have been made in understanding the mechanisms of dioxin toxicity. Health assessment and exposure assessment documents are being updated and revised. This will be followed by a public review process, which will also involve EPA's Science Advisory Board (57 FR 37158). Completion of this review process is anticipated to occur in mid-1993.

[3] Although the oral RfD for 2,3,7,8-TCDD has been withdrawn by the Agency's Office of Research and Development pending completion of the reassessment of the health effects of dioxins and related compounds, until such time as a revised RfD for non-cancer effects is established, the Agency believes that the withdrawn RfD continues to be a useful toxicological benchmark.

B_2 carcinogen.[4] Hepatocellular carcinomas and carcinomas of the thyroid, tongue, hard palate, and lung have been observed in rats. Hepatocellular carcinomas have also been observed in mice. In addition, 2,3,7,8-TCDD has been shown to exhibit a wide variety of other effects. Teratogenesis has been observed, including such frank effects as cleft palate and hydronephrotic kidneys in mice and internal organ hemorrhage in rats. Severe reproductive effects (e.g., spontaneous abortion) have been found in monkeys. Suppression of immune system function has been reported in monkeys, mice, and other species.

Other polychlorinated dibenzodioxin (PCDD) and polychlorinated dibenzofuran (PCDF) congeners differ in the number and position of chlorine atoms they contain. Of the limited number of congeners that have been adequately tested, only a mixture of 1,2,3,6,7,8- and 1,2,3,7,8,9-hexachlorodibenzo-p-dioxin has been shown to be carcinogenic in laboratory animals. This mixture of 2,3,7,8-substituted HxCDD congeners is classified as a B_2 carcinogen based on a chronic exposure study in which statistically significant increases were observed in the incidence of hepatocellular carcinomas in mice and rats. Other symptoms of "dioxin toxicity," such as general weight loss and toxic hepatitis, were also observed.

However, a much larger body of data is available from both short-term in vivo and a variety of in vitro studies covering a wide variety of end points (e.g., developmental toxicity, cell transformation, and enzyme induction) which can be used to supplement the comparative lack of long-term in vivo results. This information reveals a strong structure-activity relationship. Specifically, congeners in which the lateral 2, 3, 7, and 8 positions on the dibenzodioxin and dibenzofuran molecules are occupied by chlorine atoms are much more biologically active than the non-2,3,7,8-substituted congeners. Furthermore, the relative potency of the various congeners is generally consistent from one end point to another. Because these compounds generally occur in the environment as a complex mixture, it is appropriate to consider them as a group and to draw conclusions about their toxicity as a group of compounds with related effects. These observations serve as the basis for the "toxicity equivalency factor" concept in which the concentration of a given PCDD or PCDF congener can be translated into an equivalent concentration of 2,3,7,8–TCDD. A subgroup of the North Atlantic Treaty Organization Committee on the Challenges of Modern Society (NATO/CCMS) has approved in principle the adoption of the TEFs for the 2,3,7,8-substituted congeners listed in Table 2.

TABLE 2.—TOXICITY EQUIVALENCY FACTORS (TEFS) FOR PCDD AND PCDF CONGENERS

Dibenzodioxin	TEF	Dibenzofuran	TEF
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1	2,3,7,8-Tetrachlorodibenzofuran	0.1
1,2,3,7,8-Pentachlorodibenzo-p-dioxin	0.5	1,2,3,7,8-Pentachlorodibenzofuran	0.05
2,3,4,7,8-Pentachlorodibenzo-p-dioxin	0.5	2,3,4,7,8-Pentachlorodibenzofuran	0.5
2,3,7,8-Hexachlorodibenzo-p-dioxins	0.1	2,3,7,8-Hexachlorodibenzofurans	0.1
2,3,7,8-Heptachlorodibenzo-p-dioxins	0.01	2,3,7,8-Heptachlorodibenzofurans	0.01
Octachlorodibenzo-p-dioxin	0.001	Octachlorodibenzofuran	0.001

Source: U.S. Environmental Protection Agency. 1989 Update to the Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs). Washington, D.C.: Risk Assessment Forum, March, 1989.

Other constituents found in chlorophenolic surface protection formulations include 2,4,5-trichlorophenol and 2,4,6-trichlorophenol. 2,4,5-Trichlorophenol, which has an RfD of 0.1 mg/kg/day, has been observed to cause mild diuresis and slight degenerative changes in the liver and kidneys in a subchronic oral study in rats. 2,4,6-Trichlorophenol, which has been classified as a B_2 carcinogen, has a CSF of 0.011 $(mg/kg/day)^{-1}$. 2,4,6-Trichlorophenol has been shown to cause an increase in lymphomas and leukemias in rats and hepatocellular carcinomas in mice. However, both these compounds are found at relatively low concentrations in surface protection formulations, when present at all.

b. Constituents proposed for addition to appendix VIII. A number of the constituents of concern that are present in wastes generated from wood surface protection processes with chlorophenols do not appear on the list of hazardous constituents at 40 CFR part 261, appendix VIII. The Agency is proposing to add six hazardous constituents to appendix VIII: Sodium pentachlorophenate, potassium pentachlorophenate, the sodium salt of 2,3,4,6-tetrachlorophenol, the potassium salt of 2,3,4,6-tetrachlorophenol, octachlorodibenzo-p-dioxin (OCDD) and octachlorodibenzofuran (OCDF).

Sodium and potassium pentachlorophenate are the sodium and potassium salts of pentachlorophenol. As a result of gastric secretions following ingestion, the sodium and potassium salts of pentachlorophenol and 2,3,4,6-tetrachlorophenol are readily converted to the corresponding phenols by acidification. Therefore, the sodium and potassium salts are expected to elicit the same health effects as the corresponding phenols. For this reason, EPA proposes to add these four compounds to the list of hazardous constituents in appendix VIII.

The other two compounds proposed for addition to appendix VIII, OCDD and OCDF, are members of the large family of polychlorinated dioxins and furans (PCDDs and PCDFs). Certain of these compounds, most notably, 2,3,7,8-TCDD, have been shown to be extraordinarily toxic, as discussed elsewhere in today's notice. EPA's Risk Assessment Forum has evaluated toxicity data for many chlorinated dibenzo-p-dioxins and dibenzofurans in order to establish interim procedures for estimating risks associated with exposures to mixtures of these

[4] However, recently published epidemiological studies of occupationally exposed individuals report statistically significant increases in mortality from both lung cancer and from all other cancers combined. EPA is currently evaluating these studies as part of its scientific reassessment of 2,3,7,8-TCDD and related compounds.

compounds.[5] These data indicate that 2,3,7,8-substituted congeners of chlorinated dibenzo-p-dioxin and dibenzofurans have toxic effects similar to 2,3,7,8-tetrachlorodibenzo-p-dioxin. Data available from in vivo and in vitro studies reveal a strong structure-activity relationship, in which the 2,3,7,8-substituted congeners are much more biologically active than other congeners. Both OCDD and OCDF are 2,3,7,8-substituted congeners. The data also show that the relative responses of different PCDDs and PCDFs are generally consistent across a variety of toxicity end points.

In regard to OCDD specifically, test animals exhibited initial signs of "dioxin toxicity" in a subchronic study of mice exposed to OCDD at low levels.[6] These data suggest that when exposed for long periods, animals absorb and accumulate sufficient amounts of OCDD to manifest dioxin-like effects. Furthermore, rat hepatoma data from in vitro studies demonstrate a form of enzyme induction for OCDD that is characteristic of dioxins. Structure-activity relationships suggest that similar effects would be expected for OCDF (although no confirmatory experimental data are available). Therefore, EPA has concluded that there is sufficient evidence to show that octachlorodibenzo-p-dioxin (OCDD) and octachlorodibenzofuran (OCDF) are hazardous constituents which should be added to appendix VIII of 40 CFR part 261. The Agency specifically solicits comment on the addition of OCDD and OCDF as hazardous constituents to appendix VIII.

c. Potential human exposure pathways. Human exposure to the hazardous constituents found in wastes generated by the use of chlorophenols for surface protection can occur by a wide variety of pathways. These pathways are identified by the nature of the release of the contaminants into the environment, the subsequent fate and transport within the environment (which depends on the physical, chemical, and biological properties of the hazardous constituents), and the routes of human exposure to contaminated media. The primary media of concern are soils, ground water, surface water, and air. However, biological media (such as fish and shellfish, beef and dairy products, and food crops) may also act as significant reservoirs of contamination from which dietary exposures can occur. The major routes of human exposure are ingestion, inhalation, and dermal absorption. Fate and transport processes include sorption onto soils, infiltration to ground water, runoff to surface water, soil erosion to rivers and streams, suspension of soil and dust particles in air, volatilization, translocation and deposition to plants, and bioaccumulation in aquatic and terrestrial organisms. Processes which can lead to changes in the chemical identity of the constituents include photolysis, hydrolysis, microbial degradation, and biological metabolism within the food chain.

A major source of contamination at sawmills is drippage of excess formulation from treated wood. This can occur directly onto bare soils or onto a pad (on which the equipment is supported) from which infiltration or runoff occurs. Another significant source is precipitation wash-off from treated lumber in storage yards, which can run off to surface waters, infiltrate into ground water, or be retained in the soil column.

Of the many possible human exposure pathways, the Agency has focused its assessment on three principle pathways for which data are available. These pathways are: direct ingestion of contaminated soil; infiltration to ground water and ingestion as drinking water; and soil erosion followed by bioaccumulation in fish and shellfish and subsequent dietary ingestion. The Agency's assessment of risk to human health via these three pathways is discussed elsewhere in today's notice.

d. Ecological effects. At one time pentachlorophenol was one of the most widely used biocides in the United States, having been registered for use as an insecticide, fungicide, molluscicide, herbicide, algicide, and general disinfectant. Therefore, it is not surprising that pentachlorophenol has also been found to cause a variety of ecological effects. Even at relatively low concentrations, pentachlorophenol has been shown to be extremely toxic to aquatic life. Among species of fish, salmonoids appear to be the most sensitive, commonly having LC_{50} values below 100 µg/L.[7] However, some non-salmonoid species of fish also display LC_{50} values in this range. Although pentachlorophenol does not appear to bioaccumulate in aquatic organisms, there is some evidence that certain of its metabolites may bioaccumulate. EPA has established ambient water quality criteria for pentachlorophenol for the protection of freshwater aquatic organisms, as a function of pH. At a surface water pH of 6.8, the criterion is 5 µg/L, measured as a four-day average. At lower pH's, the ambient water quality criteria are somewhat lower. However, these criteria may not be protective of the most sensitive species, e.g., juvenile salmonoids, for which lower criteria may be appropriate.[8]

Because process wastewaters, excluding material storage yard runoff (see 40 CFR 429.11(c)), are prohibited from being discharged directly by the effluent guideline regulations for the sawmill portion of the timber products industry (40 CFR part 429), contamination of surface waters with pentachlorophenol from sawmills is expected to occur only from stormwater run-off. Considerable dilution occurs in water courses during rain events, thereby minimizing the possibility that concentrations of pentachlorophenol could be high enough to be harmful to aquatic life. Therefore, EPA does not believe that surface protection operations pose a significant risk to aquatic ecosystems, if transfer of chlorophenolics to the soil and groundwater is prevented, in the absence of unlawful discharge of chlorophenolic surface protection formulations.

Pentachlorophenol is also toxic to terrestrial animals and plants. It has been used as a nonspecific herbicide, defoliant, and crop desiccant and therefore exhibits toxic effects in many species of plants. Pentachlorophenol has been reported to be poisonous to a variety of domestic animals, including cats, horses, pigs, and poultry. Wildlife have also been killed by the use of pentachlorophenol as a pesticide.

Less information is available on the toxicity of 2,3,4,6-tetrachlorophenol in the environment. Although it has not been tested in salmonoid species of fish, it is acutely toxic to bluegill, having an LC_{50} slightly above 100 µg/L. 2,3,4,6-Tetrachlorophenol has also been shown to be acutely toxic to certain species of zooplankton at sub-part per million levels.

2,3,7,8-Tetrachlorodibenzo-p-dioxin is extremely toxic to mammals, birds, and fish. Exposure to 2,3,7,8-TCDD has been associated with acute and delayed

[5] U.S. Environmental Protection Agency. 1989 Update to the Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs). Washington, DC: Risk Assessment Forum, March, 1989. EPA/625/3–89/016.

[6] Couture, L.A., M.R. Elwell, and L.S. Birnbaum. Dioxin-like effects observed in male rats following exposure to octachlorodibenzo-p-dioxin (OCDD) during a 13 week study. Toxicology and Applied Pharmacology, Vol. 93, pp 31–46, 1988.

[7] LC_{50} is the concentration in water at which 50 percent mortality is observed in the species test.

[8] U.S. Environmental Protection Agency. Ambient Water Quality Criteria for Pentachlorophenol—1986. Washington, DC: Office of Water Regulations and Standards, September, 1986. EPA–440/5–86–009.

mortality and with carcinogenic, teratogenic, reproductive, histopathologic, and immunotoxic effects in a variety of animal species.[9] Although data on ecological effects are generally available only for 2,3,7,8-TCDD, the effects of other dioxin and furan congeners are probably determined by a structure-activity relationship similar to the one elucidated for effects on human health.

Acute oral toxicity studies involving 2,3,7,8-TCDD indicate that LD_{50} values for certain wildlife species are as low as, or lower than, those of some laboratory animals.[10] For example, the LD_{50} value for bobwhite quail is 15 µg/kg, whereas for domestic chickens, LD_{50} values lie in the range of 25 to 50 µg/kg. At lower doses, below 10 µg/kg, domestic chickens exhibit signs of chick edema disease and liver pathology. 2,3,7,8-TCDD is also associated with poor reproduction in herring gulls. Eggshell thinning appears to be the most common reproductive effect in avian species. Acute effects in aquatic organisms show an unusual pattern of delayed response, whereby acute effects show a similarity to chronic effects. Among aquatic organisms, fish appear to be the most sensitive to 2,3,7,8-TCDD. For example, the LC_{50} value for rainbow trout has been estimated to be below 40 pg/L. The most commonly reported nonlethal effect in fish is growth retardation of yolk sac fry.

2,3,7,8-TCDD has been shown to bioaccumulate in the food chain. Therefore, among aquatic species, the highest concentrations and most pronounced effects are expected in the largest predators. In terrestrial species, 2,3,7,8-TCDD has been shown to be bioaccumulated in the earthworm by a factor of three relative to the concentration in soil. Therefore, high exposures are expected in terrestrial species whose diet includes a large proportion of earthworms (e.g., robins, woodcocks, and shrews). As part of an ecological assessment of the risks associated with the land disposal of pulp and paper sludge (56 FR 21802), EPA concluded that levels of 2,3,7,8-TCDD in soil as low as 3 parts per trillion could cause adverse effects to terrestrial wildlife (not including adjustments for uncertainties in the underlying toxicity data). Because levels of 2,3,7,8-TCDD toxicity equivalents in sawmill soils are well above these levels, some adverse effects on terrestrial wildlife may occur. However, the relatively small areas of contaminated soils at sawmills could mitigate these effects. Furthermore, significant effects on wildlife populations would appear to be unlikely. The same assessment found minimal risk to aquatic organisms from run-off of 2,3,7,8-TCDD contaminated soils.

2. Resource Damage Incidents

EPA has assembled a substantial body of information on environmental contamination at sawmill facilities associated with the use of chlorophenols for the surface protection of wood. EPA obtained much of its information from the Oregon Department of Environmental Quality, the California Department of Toxic Substances Control, and California's Regional Water Quality Control Boards. To supplement the information from Oregon and California, EPA conducted a search of the open literature and searched its own CERCLIS data base. CERCLIS is EPA's central repository of information on Superfund site assessments, emergency removals, and site remediation activities.[11]

a. Contaminated media. Altogether, EPA has obtained information on levels of media contamination for 21 sawmill facilities. The preponderance of the data are for pentachlorophenol and 2,3,4,6-tetrachlorophenol in ground water, soils, and surface water.[12] A small amount of data are also available for PCDDs and PCDFs in soils, expressed as 2,3,7,8-TCDD toxicity equivalents (TEQ). The data on soils represent soil in the immediate vicinity of the process area where wood was being treated with chlorophenols or had formerly been treated. The surface water data generally represent water in drainage ditches, catchment basins, or other conveyances on-site. These data, presented as the range of the maximum measured concentrations from among the various sites, are summarized in Table 3.[13]

TABLE 3.—RESOURCE DAMAGE INCIDENT MEDIA CONCENTRATIONS

Media	Ground water			Process soil			Surface water		
Constituent	Low (mg/L)	High (mg/L)	N	Low (mg/kg)	High (mg/kg)	N	Low (mg/L)	High (mg/L)	N
Pentachlorophenol	<0.001	45	14	<9	50,000	17	0.002	0.76	11
2,3,4,6-Tetrachlorophenol	<1	<1	7	<2000	14,000	13	<1	1.1	8
2,3,7,8-TCDD TEQ	N/A	N/A	0	0.004	0.15	3	N/A	N/A	0

N=number of facilities with data available.
N/A=data not available.
Only values that are above health based levels are given.

As shown in Table 3, pentachlorophenol has been found above health based levels in ground water, surface water, and soils. Of the 14 facilities with ground water data, 10 facilities show levels above the MCL of 0.001 mg/L. All 11 facilities with on-site surface water data have levels above the MCL. In addition, measurements of pentachlorophenol at one facility show levels of 50 mg/L in water being discharged from an underground seep into surface waters. This discharge is believed to have originated in the process area. Although not shown in Table 3, of five facilities for which surface water data are available off-site, in streams and rivers, four show

[9] Eisler, R. Dioxin Hazards of Fish, Wildlife, and Invertebrates: A Synoptic Review. U.S. Fish and Wildlife Services, 1986. Biological Report 85.

[10] LD_{50} is the dose (on a unit body weight basis) at which 50 percent mortality is observed in the species tested.

[11] EPA also searched a data base of State bans and advisories on the consumption of fish and shellfish which is maintained by EPA's Office of Water as a special forum of the Nonpoint Source Information Exchange Computer Bulletin Board System (NPS BBS). Although 120 bans and advisories for dioxins were identified, none could be attributed specifically to discharges from sawmills.

[12] Sodium and potassium pentachlorophenate and the sodium and potassium salts of 2,3,4,6-tetrachlorophenol are measured and reported as the corresponding phenols.

[13] EPA's own sampling and analysis data, which are discussed elsewhere in today's notice, are not included in Table 3.

pentachlorophenol levels above the MCL; these data range from 0.03 mg/L to 0.1 mg/L. In soils, of 17 facilities with soil data, 16 facilities show pentachlorophenol levels above the health based level of 9 mg/kg. Also not shown in the table are data on subsurface soils, i.e., soils below about six inches from the surface. Of eight facilities with data available, seven show levels in subsurface soils above the health based level; these data range from 90 mg/kg to 4200 mg/kg. More than 15 years after usage of chlorophenols ended at one facility, pentachlorophenol levels still exceed the health based level to depths as great as six feet.

The damage incident data show that, in none of the seven cases for which ground-water data are available, do the levels for 2,3,4,6-tetrachlorophenol exceed the MCL of 1 mg/L. In only one case out of eight do levels in surface water on-site exceed the MCL, and only by a small amount. Although not shown in Table 3, of four cases with surface water data off-site, in streams and rivers, none show levels above the MCL. However, measurements of 2,3,4,6-tetrachlorophenol taken at one facility show levels of 340 mg/L in water being discharged from an underground seep into surface waters, a discharge which is believed to have originated in the process area. In soils, of 13 cases for which data are available, only three show 2,3,4,6-tetrachlorophenol levels above the health based level of 2000 mg/kg. Although not shown in Table 3, of five cases for which subsurface soil data are available, only one is above the health based level. Noteworthy about this case is that the sample, for which a value of 4800 mg/kg is reported, was taken six years after usage of chlorophenols ended at the site.

Data on PCDDs and PCDFs from the resource damage incidents are limited to soils in the process area. Of the three cases for which data are available, all exceed the health based level of 0.000007 mg/kg (7 parts per trillion) by three orders of magnitude or more. In addition, as part of its own sampling and analysis activities, EPA has acquired data on PCDDs and PCDFs in subsurface process soils at two sites and in stream and drainage ditch sediments at four sites. These data are not included in Table 3 but are discussed elsewhere in today's notice. The data on subsurface process soils, which range from 0.00001 mg/kg (10 parts per trillion) to 0.00027 mg/kg (270 parts per trillion), indicate that health based levels can be exceeded to depths of three feet or more. The sediment data, which range from 0.000009 mg/kg (9 parts per trillion) to 0.000034 mg/kg (34 parts per trillion), also exceed the health based level for soil.

b. Discussion. The levels of pentachlorophenol, 2,3,4,6-tetrachlorophenol, PCDDs, and PCDFs in contaminated media at sawmill facilities frequently reach levels of concern, based on the information obtained from resource damage incident reports.[14] Pentachlorophenol has commonly been found at levels of concern across all media (with the exception of air). Compared to pentachlorophenol, 2,3,4,6-tetrachlorophenol tends to be found at similar levels across the same media. However, given that the corresponding health based levels are substantially higher, 2,3,4,6-tetrachlorophenol is generally of lesser concern.[15] Although the sodium and potassium salts of these compounds are highly mobile in water, the data show that following the cessation of usage of chlorophenols for surface protection, significant levels can be retained in soils for time periods of ten years or more. However, the degree of retention in soil appears to be highly site-specific. In addition, pentachlorophenol and 2,3,4,6-tetrachlorophenol are known to biodegrade. The rate at which biodegradation actually occurs in soils can be expected to be highly variable, depending on local environmental conditions. In contrast, PCDDs and PCDFs bind strongly to soils and are quite resistant to biodegradation, indicating that these compounds can be expected to persist at levels of concern for long periods of time. Nevertheless, these compounds appear to exhibit some mobility in the environment, as evidenced by measurements of elevated levels in soils at depths to three feet or more and by both on-site and off-site measurements of elevated levels in sediments.

EPA has limited direct evidence of damage to ecosystems that can be attributed specifically to the usage of chlorophenols for surface protection. One Swedish study documents an extensive fish kill associated with the discharge to an adjacent stream of a chlorophenol solution from a sawmill surface protection operation. Two weeks following this incident, fish collected six kilometers downstream exhibited liver tissue concentrations of 5 parts per million total chlorophenols. Fish collected 15 kilometers downstream exhibited increasing concentrations in liver tissue, reaching a level of 2 parts per million two months after the discharge. This study, which illustrates that chlorophenols are readily distributed in aquatic ecosystems, suggests that chlorophenols can be accumulated in higher organisms through the food chain.

3. Assessment of Risk from Usage of Chlorophenolic Formulations

The resource damage incidents discussed in the previous section demonstrate that soil, ground-water, and surface water resources at sawmill facilities have been damaged due to on-site contamination by hazardous constituents from chlorophenolic surface protection formulations. However, in the context of non-occupational exposures, these damages pose a threat to public health only if the contamination migrates off-site or if on-site exposure occurs as a consequence of a change in land use. To address these scenarios, EPA performed a risk assessment to quantify the potential risks to human health. This assessment focuses on risk associated with exposure to contaminated ground water and soils and risk associated with dietary exposures from fish and shellfish ingestion due to their uptake of contaminated surface water sediments.

a. *Source characterization.* EPA estimates that approximately 3200 sawmills are currently operating in the United States and that approximately one-third of these surface-protect. EPA believes that of the sawmills that surface protect, nearly all have used chlorophenols at some time. An unknown number of additional sawmills that do not currently surface-protect may have done so in the past using chlorophenols.

Although a number of wastes are generated by surface protection operations, the most important in terms of potential human exposure are drippage of excess formulation in the process area and precipitation wash-off in the storage yard. These are by far the highest volume wastes generated at sawmill facilities. The volume of waste is a major factor in determining the potential risk to human health. Process drippage and precipitation wash-off are frequently disposed of directly onto unprotected soils. Process area and storage yard soils that become contaminated as a result of drippage and wash-off then become additional sources of potential human exposures.

1. *Process drippage.* Process drippage is generated whenever excess formulation drips from the wood once it has been treated. Although the drippage

[14] This conclusion is corroborated in part by EPA's own sampling and analysis data, as discussed elsewhere in today's notice.

[15] In this regard, however, the Agency notes that 2,3,4,6-tetrachlorophenol has not been evaluated for carcinogenicity.

may be collected and returned to the process, typically there is little or no effective collection system. In dip tank operations, the amount of drippage generated depends on the length of time the lumber is allowed to drain over the tank before it is transferred from the process area. Process drippage may drip directly onto soils in the vicinity of the tank or onto a concrete pad from which runoff occurs. The runoff may subsequently infiltrate into the subsurface environment or be conveyed to surface waters.

Based on drippage measurements made during a field experiment, EPA estimates that the amount of drippage generated is between 1000 and 4000 gallons for every one million board feet of treated lumber. This compares to an estimate of approximately 10,000 gallons of formulation used per million board feet of lumber treated.[16] Measurements of the amount absorbed by the wood vary widely. However, EPA believes that absorption accounts for no more than about 1500 gallons per million board feet. Based on these figures, the drippage and absorption combined do not appear to account for the amount of formulation actually used. Although measurement error may account for much of the disparity, some portion may be attributable to leaks and spills. In spite of the uncertainty, the Agency is assuming for the purpose of characterizing risk that 2400 gallons infiltrate into soils for every one million board feet of lumber that are treated. The Agency believes that this value is well within the range of uncertainty of the data. EPA requests comment on the validity and reliability of this assumption.

Estimates of the strength of the formulation solution range from 0.2 percent to 2 percent, as total chlorophenols. However, chlorophenolic formulations differ substantially in the proportion of pentachlorophenate and 2,3,4,6-tetrachlorophenate salts from one product to another. Some formulations are composed primarily of sodium or potassium salts of pentachlorophenate while others contain a high proportion of salts of 2,3,4,6-tetrachlorophenate. Drippage consists of undiluted excess formulation; therefore, the strength and composition of the drippage is the same as that of the formulation. For the purpose of characterizing risk associated with the usage of chlorophenols for surface protection, the Agency is assuming that the concentration of chlorophenols in the drippage is 0.4 percent, or 4000 parts per million.[17] For the purpose of characterizing the incremental risk associated with the cross-contamination of non-chlorophenolic formulations, the Agency is assuming based on its record sampling that the residual concentration of chlorophenols in the drippage is approximately 3 parts per million. This estimate is based on sampling and analysis data on levels in the formulation of users of non-chlorophenolics who previously used chlorophenols.

2. *Storage yard wash-off.* Wash-off is generated whenever precipitation contacts treated wood. Although this can occur anywhere that treated wood is handled outdoors, most wash-off is generated at sawmills in uncovered storage yards. While generated only intermittently, these wastes are high in volume. The volume generated depends on the size of the storage yard and the amount of rainfall. However, the concentrations of waste constituents in wash-off are relatively low compared to the concentrations in process drippage. Although storage yards may be paved with asphalt, more typically they are situated on unprotected compacted soil or are overlaid with gravel. In most situations, some portion of the wash-off is expected to infiltrate into the ground, the amount depending on the particular site and the specific conditions at the time. The Agency is assuming for the purpose of characterizing risk that 25 percent of the wash-off infiltrates into the ground.

Studies conducted in British Columbia by Environment Canada show that leaching from treated lumber begins after as little as one millimeter of continuous precipitation and occurs even after extended periods of drying.[18] The Environment Canada study collected data on the concentrations of chlorophenols in storage yard runoff as a function of rainfall intensity. EPA evaluated these data, which include several rain events of one to two days duration each. For the purpose of characterizing risk associated with chlorophenolic usage, the Agency took the average runoff concentrations that were reported for the individual rain events and weighted them by the corresponding cumulative rainfall totals to estimate an overall average runoff concentration. This concentration, which is approximately 7 mg/L, represents the average concentration in the wash-off over several cycles of precipitation and subsequent drying. For the purpose of characterizing the incremental risk associated with cross-contamination of non-chlorophenolic formulations, the Agency reduced this concentration by the same factor that the concentration in drippage was reduced, as described above. The Agency requests comment on whether this approach is appropriate and requests additional data to assist in refining this estimate.

3. *Process area and storage yard soils.* For the purpose of characterizing risk related to soil contamination, EPA collected soil samples from the process area and storage yard at five sawmill facilities, one of which was a current user of chlorophenolics. Each sample was collected by a six inch auger inserted to a depth of six inches. In order to collect representative samples of the areas of soil contamination, a team consisting of a hydrogeologist and chemical engineer made a careful assessment of the sampling locations. The samples were analyzed for PCDDs and PCDFs.[19] The sampling and analysis results demonstrate the presence of PCDDs and PCDFs in both the process area and storage yard. The concentrations of the storage yard samples collected by EPA, which range from 0.014 µg/kg (parts per billion) to 0.96 µg/kg (parts per billion) have a mean value of 0.22 µg/kg (parts per billion), expressed as 2,3,7,8-TCDD toxicity equivalents (TEQ). Two process area soil samples collected by EPA have concentrations of 0.94 µg/kg (parts per billion) and 4.1 µg/kg (parts per billion), expressed as 2,3,7,8-TCDD toxicity equivalents (TEQ), giving a mean value of 2.5 µg/kg (parts per billion).[20]

The levels measured in the process area samples represent the accumulation of PCDDs and PCDFs in soil from drippage over an extended, though unknown, period of time. The Agency lacks adequate historical data

[16] Total usage is based on a manufacturer's estimate.

[17] The concentration of chlorophenols is based on a manufacturer's estimate of what is typically used in the industry.

[18] Environment Canada. Assessment of Storm Water Related Chlorophenol Releases from Wood Protection Facilities in British Columbia. Pacific and Yukon Region, August, 1987. Regional Program Report 87–15.

[19] EPA also analyzed the soil samples for chlorophenols. However, neither pentachlorophenol nor 2,3,4,6-tetrachlorophenol were detected in the soil samples. These results differ with the results from the resource damage incident reports, as discussed elsewhere in today's notice, which show pentachlorophenol and 2,3,4,6-tetrachlorophenol in process soils in the part per million range (and above). Such site to site differences are not unexpected and are probably related to variations in soil types and the soil's ability to bind chlorophenols from aqueous solutions of their salts or other site-specific factors.

[20] EPA notes that the limited data on concentrations of PCDDs and PCDFs in process area soils from the resource damage incident reports, as discussed elsewhere in today's notice, are generally higher than the concentrations discussed here.

on the levels of PCDDs and PCDFs in chlorophenolic surface protection formulations to relate to the observed soil concentrations. Therefore, with the data available, it is not possible to accurately quantify the process area soil contamination that would result from any given level of PCDDs and PCDFs in the formulation. The situation is made even more difficult with respect to storage yard soils because the mechanism by which the contamination occurs is not known. Any one or a combination of the following mechanisms could be involved: (1) Residual drippage in the storage yard (though this has not actually been observed by the Agency); (2) precipitation wash-off from treated lumber (though no actual measurements of PCDDs and PCDFs in wash-off are available); (3) phototransformation of soil pentachlorophenol to octachlorodibenzo-p-dioxin (OCDD) in situ and subsequent photolytic dechlorination to other PCDDs, which has been observed in the laboratory; or (4) phototransformation of phenoxyphenols (i.e., "predioxins," which are co-contaminants of chlorophenolic formulations) to various PCDDs and PCDFs, which appears to require the presence of a strong hydrogen donor. For the purpose of analyzing soil-related exposure pathways, the Agency believes that due to the complexity and uncertainty involved, direct measurement of PCDDs and PCDFs in soils is the best approach for characterizing the source of the contamination.

For characterizing risk associated with existing levels of soil contamination from historical usage of chlorophenolic formulations, the levels measured in soils may be used directly. However, cross-contamination of non-chlorophenolic formulations will continue to contribute to soil contamination with PCDDs and PCDFs. In order to characterize the baseline risks associated with cross-contamination by PCDDs and PCDFs of current non-chlorophenolic formulations, the Agency attempted to estimate the level of soil concentration which would occur from usage of cross-contaminated non-chlorophenolic formulations. A comparison of available data on the levels of these compounds in chlorophenolic and cross-contaminated non-chlorophenolic formulations suggests that concentrations of PCDDs and PCDFs may have dropped by about a factor of four. In the absence of any other information, the Agency believes it is reasonable to expect correspondingly lower levels of PCDDs and PCDFs in soils attributable to such cross-contamination than the levels indicated by direct measurement. Therefore, the measured soil concentrations were reduced by a factor of four to estimate the soil concentrations which would result solely from cross-contamination. EPA requests comment on whether this approach is appropriate to use to estimate the baseline soil concentration for non-chlorophenolic users.

b. *Exposure pathway analyses*—1. *Ground-water ingestion.* This exposure pathway is based on the premise that contaminated ground water in shallow, unconfined aquifers may be used as a drinking water supply. A mathematical model is used to describe ground water flow and pollutant transport in unsaturated soils (i.e., the vadose zone) and unconfined ground water aquifers (i.e., the saturated zone). This model, known as the MULTIMED model, is based on many of the same analytical and numerical solution techniques that have been used by the Agency for other rulemakings, including the Toxicity Characteristic revisions (March 29, 1990; 55 FR 11798).[21] A significant difference in the analysis conducted for this proposal is the simulation of ground water transport in the transient mode; no "infinite source" or steady-state assumption is made in performing the transport calculations. However, important simplifying assumptions of the model remain. These include the assumption that the properties of the saturated, porous medium are isotropic and homogeneous. Fractured media, aquicludes, and multiple aquifers are not simulated. Ground water flow is assumed to be steady and uniform. The sorbed and aqueous phases are assumed to be in equilibrium; sorption is further assumed to follow a linear isotherm.

Initially, EPA used the MULTIMED model to perform screening analyses to identify the constituents that are likely to migrate through ground water at appreciable rates, the model input parameters to which the modeling results are most sensitive, and the sources of ground water contamination that are most important. The screening analyses show that, as expected, PCDDs and PCDFs do not migrate significantly in ground water. The screening analyses also show that drippage in the process area is considerably more important than wash-off in the storage yard as a source of ground water contamination. Parameters to which the modeling results are sensitive include: (1) The initial source concentration; (2) the source infiltration rate; (3) the recharge rate; (4) the various sorption parameters, including the soil:water partition coefficient and the fraction of organic carbon in the vadose zone and the aquifer; (5) the hydraulic conductivity of the aquifer and the vadose zone; and (6) the distance from the source area to the nearest drinking water well. The hydraulic conductivity and the organic carbon fraction are related to the type of geologic materials of which the aquifer and the unsaturated zone are comprised. A variety of other parameters also influence the modeling results. Values of the important parameters used for the ground water analysis are found in Table 4 below.

TABLE 4.—PARAMETERS VALUES FOR GROUND WATER INGESTION PATHWAY

Parameter	Central tendency value	High end value
Source Concentration:		
Chlorophenolic Usage (ppm)	4000	4000
Baseline (ppm)	2.8	2.8
Residual (ppm)	0.1	0.1
Facility Size (MMBF)	20	100
Distribution Coefficient (Kd):		
Pentachlorophenol (mL/g)	1068	412
2,3,4,6-Tetrachlorophenol (mL/g)	966	87
Precipitation (inches/year)	48	40
Recharge Rate (meters/year)	0.24	0.20
Infiltration Rate (meters/year)	0.32	1.14
Vadose Zone:		
Total Thickness (meters)	3.0	1.5
Soil Type (-)	loam	sand
Hydraulic Conductivity (cm/hr)	1.04	29.7
Organic Carbon (percent)	.....	.....
Layer 1	1.1	0.6
Layer 2	0.2	0.1
Aquifer:		
Thickness (meters)	30	15
Hydraulic Conductivity (m/yr)	5000	10000
Organic Carbon Fraction (-)	0.002	0.001
pH	6.2	7.9
Hydraulic Gradient (-)	0.002	0.004
Distance to Well (feet)	500	100
Ingestion Rate (L/day)	1.4	1.4
Exposure Duration (years)	9	9

A discussion of the various ground water modeling assumptions and the values of the input parameters is found

[21] The reader is referred to the docket for today's proposal for a detailed description of the MULTIMED model and its application for this proposal.

in the risk assessment background document for today's proposal.

2. *Direct soil ingestion.* This exposure pathway is based on the premise that young children may be exposed to hazardous constituents that are present in contaminated soils while playing outdoors, as a result of normal hand to mouth behavior. Such exposure could occur if the site where the contaminated soils are located is converted to residential housing, in the absence of soil remediation.[22] The Agency assumes that adult exposures associated with incidental soil ingestion are generally low when compared to childhood exposures.

Limited sampling and analysis data collected by EPA have identified soils in the process area and storage yard of sawmills that are contaminated with PCDDs and PCDFs. These compounds are highly persistent and can be expected to remain in the soil for many years to come. EPA used actual measurements of these compounds in soil in conjunction with various exposure assumptions to estimate potential childhood exposures to PCDDs and PCDFs if sawmill sites were converted to residential use without prior soil remediation. These assumptions are detailed in Table 6 below and in the risk assessment background document for today's proposal.

TABLE 5.—PARAMETERS VALUES FOR DIRECT SOIL INGESTION PATHWAYS

Parameter	Central tendency value	High end value
Soil Concentration (μg/kg) .	0.218	0.96
Soil Ingestion Rate (g/day)	0.1	0.2
Exposure Duration (days) ..	800	1825
Absorption Fraction (-)	0.3	1.0

As discussed previously, for the baseline risk the Agency reduced the measured values by a factor of four in making estimates of soil concentrations resulting from cross-contamination. With regard to chlorophenols, however, the Agency's own data indicate an absence of significant soil contamination. For this reason, EPA has not attempted to characterize quantitatively, the potential risks associated with childhood exposures to chlorophenols via direct soil ingestion.[23]

3. *Fish and shellfish ingestion.* Most sawmills are located adjacent to or in close proximity to rivers and streams. This fact, combined with the results of actual sediment measurements, indicate a high probability that PCDDs and PCDFs have migrated into surface water sediments, presumably by soil erosion. Once river and stream sediments are contaminated, biological uptake may occur by freshwater organisms. This is of particular concern to human health in the case of freshwater fish which are consumed as part of the diet. Uptake of the more highly chlorinated PCDDs and PCDFs, such as those found in soils at sawmills, has been documented in laboratory studies of young fish exposed to contaminated riverine sediments.[24] Furthermore, estuarine fish and shellfish may also be subject to uptake of PCDDs and PCDFs when contaminated sediments are naturally discharged into bays and estuaries.

EPA used a methodology for fish and shellfish ingestion which is similar to one used in the proposed rule for land application of chlorine-bleached pulp and paper mill sludge (56 FR 21802). This approach uses the USDA's Universal Soil Loss Equation to estimate the ratio of the rate of erosion of soils from a contaminated site to the rate of erosion in the watershed as a whole. The ratio represents the dilution of sediments from a site by sediments from the entire drainage basin. Applying this ratio (or "dilution" factor) to the concentration in soils from a contaminated site gives the average sediment concentration in the watershed to which fish and shellfish may be exposed. To determine the average watershed acreage per sawmill, EPA mapped the location of over 2500 sawmills to determine the number of sawmills in each of over 2000 hydrologic cataloguing units in the continental United States, as defined by the U.S. Geological Survey.[25] Parameters for biological uptake are established using an empirically-derived sediment: fish bioaccumulation factor. Data from a USDA national food consumption survey are then used to estimate human exposure in the general population. In addition, data from other surveys are used to estimate exposures among recreational fishers. Values of the important parameters used in the analysis are summarized in Table 6 below.

TABLE 6.—PARAMETER VALUES FOR FISH AND SHELLFISH INGESTION PATHWAY

Parameter	Central tendency value	High end value
Site Area (hectares)	1.9	16.2
Ratio of Site Slope to Basin Slope (-)	1.0	1.0
Site Delivery Ratio (-)	0.80	0.62
Soil Concentration (μg/day)	0.218	0.96
Sites per Basin Area (ha)-1	2.79×10^{-6}	1.03×10^{-5}
Cover Factor (-) .	0.04	0.004
Bioaccumulation Factor (-)	0.008	0.1
Consumption Rate (g/day)	.....	.....
Recreational Fishers	30	140
General Population	5.9	38
Ratio of TCDD-TEQ in fish filet to whole body (-)	0.5	0.5
Diet Fraction (-) ..	0.4	0.4

A detailed description of the methodology for the fish and shellfish exposure pathway is found in the background document for today's proposal.

c. *Characterization of risk from usage of chlorophenolic formulations.*

For today's proposal, EPA is taking a generic approach to the characterization of risk from the land disposal of certain wastes generated by the surface protection of wood at sawmill facilities, specifically process drippage and storage yard wash-off. A generic approach is necessary due to a lack of adequate data to perform site-specific risk assessments for a representative sample of sites.[26] With this approach, a generic scenario is developed in order to represent a prototypical sawmill site.

[22] The agency recognizes that the very presence of contaminated soils is a factor that could also discourage residential development of former sawmill sites.

[23] The Agency noted that data from the resoure damage incidents described elsewhere in today's notice suggest that process soils could pose a threat to human health due to contamination with chlorophenols, primarily pentachlorophenol. The data are insufficient to draw any conclusions regarding chlorophenols in storage yard soils. However, any risks posed by soils contaminated with chlorophenols are contingent on residential redevelopment, without prior remediation.

[24] Kuehl, D.W., P.M. Cook, A.R. Batterman, D. Lothenbach, and B.C. Butterworth. Bioavailability of polychlorinated dibenzo-p-dioxins and dibenzofurans from contaminated Wisconsin River sediment to carp. Chemosphere, Vol. 16, pp 667-679, 1987.

[25] The mapping results indicate that among cataloguing units where sawmills are located, there is one sawmill on average for every 270,000 acres, or approximately three sawmills per cataloguing unit. EPA estimates that approximately a third of these sawmills currently surface protect, or about one sawmill on average per cataloguing unit.

[26] EPA notes that a generic approach to risk characterization complements the site-specific data on media contamination from resource damage incidents, as described elsewhere in today's notice. Although useful for judging the reasonableness of the generic assessment, the resource damage incidents do not of themselves provide an adequate basis for characterizing risk.

The prototypical site is characterized in terms of size, waste generation, waste characterization, waste management practices, hydrogeologic characteristics, and drainage basin characteristics based on industry responses to questionnaires, EPA site visits, sampling and analysis data, and other information available to the Agency. The development of this scenario involves the evaluation of each of the parameters that is required in order to characterize human exposure and the selection of specific values for each of those parameters. Each of the exposure pathways described previously was analyzed using this approach.

If the values for all the exposure parameters are selected to represent what is typical (as indicated by the mean or median values for the parameters), then the corresponding risk from such an exposure scenario represents a central tendency estimate. On the other hand, if the values of all the parameters are selected to represent the high end at the same time, then the corresponding risk represents a bounding estimate; such estimates are generally useful only for eliminating certain exposure scenarios from further consideration. In theory, one can generate a distribution of individual risk in a population from the joint distribution of the various exposure parameters. The Agency has determined that EPA risk assessments should, at a minimum, include both central tendency and high-end estimates of individual risk, where the high end represents conceptually the 90th percentile of the population distribution and above. High end estimates are intended to exclude estimates, such as bounding estimates, that are likely to be above the risk to the most exposed individual in the actual population.

In order to characterize the high end risk, the various exposure parameters are first evaluated individually and high-end values for the parameters are selected based on the 90th to 95th percentile of the distribution of the values, or on some less precise measure of the high end where detailed data are not available. For this analysis, one estimate of the high end risk is made by setting each parameter to its high end value, one parameter at a time, and taking the highest of the estimates from this group of scenarios. A second estimate of the high end risk for this analysis is made by setting the exposure parameters to their high end values, two parameters at a time (resulting in a large matrix of exposure scenarios), and taking the highest of the risk estimates from this group of scenarios. These two estimates are intended to represent the lower and upper ends of the high end range of the distribution of risk. EPA requests comment on this approach for making high end risk estimates.

1. *Individual risk from usage of chlorophenolic formulations.* This section presents the results of the Agency's assessment of individual risk associated with the uncontrolled land disposal of process drippage and storage yard run-off from the use of chlorophenols for the surface protection of wood.

For the carcinogenic waste constituents (i.e., pentachlorophenol, PCDDs, and PCDFs), individual risk is described in terms of a lifetime excess cancer risk. The lifetime excess cancer risk represents the estimated upper bound of the 95th percentile confidence interval of the probability that an individual will contract cancer over his or her lifetime due to exposure to a particular substance. The results for PCDDs and PCDFs are combined in terms of 2,3,7,8-TCDD toxicity equivalents (TEQ) by using the toxicity equivalency factors discussed elsewhere in today's notice. For 2,3,4,6-tetrachlorophenol, which is classified as neither a human nor a probable human carcinogen, individual risk is described in terms of a hazard quotient. The hazard quotient is the ratio of the concentration to which an individual is exposed to the media concentration corresponding to the reference dose (otherwise referred to as the health-based level). The higher the hazard quotient, the greater the likelihood that adverse health effects will be observed in an individual and the greater the severity of those effects.

The risk results for the ground water pathway are given in Table 4. These results are broken out separately for drippage in the process area and wash-off in the storage yard. Risks from cross-contaminated non-chlorophenolic formulations would be lower by about a factor of 1400.

TABLE 7.—INDIVIDUAL RISK FROM USAGE OF CHLOROPHENOLIC FORMULATIONS FROM GROUND WATER INGESTION

Constituent	Central tendency	High end
Pentachlorophenol †	$7x10^{-4}$	$2x10^{-2}$ to $3x10^{-1}$
Tetrachlorophenol *	$1x10^{+1}$	$2x10^{+2}$ to $2x10^{+3}$

† Upper bound excess lifetime cancer risk.
* Hazard quotient.

The expected increased risk to a typically exposed individual is $7x10^{-4}$, or a chance of seven in ten thousand of contracting cancer over a lifetime. The assumption is made here that ground water is ingested at the rate of 1.4 liters per day for 9 years. Nine years is typical of the length of time an individual dwells at any one residence and, therefore, of the average duration of exposure to contaminated ground water. The risk calculation assumes that the individual's nine year residency period occurs during the peak nine year exposure segment over the modeling period. Of course, these results are based on the premise that ground water down-gradient of the source of contamination may be used for drinking water. As part of the RCRA section 3007 survey of 166 surface protection facilities, facilities were asked to provide the distance to the nearest ground water well. The survey data indicates that the median distance reported by the 68 responding facilities is 500 feet. Four of the 68 facilities report wells being as close as 100 feet. The further assumptions are made that the well is used for drinking water, is located down-gradient of the facility on the centerline of the plume, and draws from the top of the surficial aquifer. However, since sawmills are often located near rivers and streams, the contaminated ground water plume may be intercepted at least in part by surface water drainages, thereby reducing both the magnitude and likelihood of human exposures. Furthermore, the contaminated plume may not reach a drinking water well for many decades, raising the possibility that biodegradation in situ could significantly lower concentrations in the ground water aquifer. However, the toxicities of the many possible metabolites that may result from

biodegradation have not been characterized and may not be inconsequential. The Agency requests comment on these individual risk estimates.

The risk results for the direct soil ingestion pathway are given in Table 5. Risks from soils contaminated only by cross-contaminated non-chlorophenolic formulations would be lower by about a factor of four. These results are broken out separately for the process area and the storage yard.

TABLE 8.—INDIVIDUAL RISK FROM USAGE OF CHLOROPHENOLIC FORMULATIONS FROM DIRECT SOIL INGESTION

Source	Process area		Storage yard	
	Central tendency	High/End	Central tendency	High/End
Constituent: 2,3,7,8–TCDD TEQ †	2×10^{-5}	5×10^{-5} to 2×10^{-4}	2×10^{-6}	9×10^{-6} to 2×10^{-5}

† Upper bound excess lifetime cancer risk.

The results in Table 5 suggest that the risk from direct soil ingestion by children is considerably smaller than the risk from ground water ingestion. A child exposed to contaminated storage yard soils under typical conditions would be subject to an increased cancer risk of 2×10^{-6} over a lifetime, or a chance of only two in a million. These risk estimates assume soil ingestion rates in the range of 100 mg/day to 200 mg/day from normal hand to mouth behavior. Children who exhibit pica behavior may consume much larger quantities of soil; these children, therefore, could be subject to proportionately higher risks.

Finally, the risk results for the fish and shellfish ingestion pathway are given in Table 6 for two different population groups, recreational fishers and the general population. Risks from this exposure pathway from soils contaminated only by cross-contaminated non-chlorophenolic formulations would be lower by about a factor of four.

TABLE 9.—INDIVIDUAL RISK FROM USAGE OF CHLOROPHENOLIC FORMULATIONS FROM FISH AND SHELLFISH INGESTION

Population	Recreational fishers		General population	
	Central tendency	High/End	Central tendency	High/End
Constituent: 2,3,7,8–TCDD TEQ †	1×10^{-8}	2×10^{-7} to 2×10^{-6}	4×10^{-9}	3×10^{-8} to 3×10^{-7}

† Upper bound excess lifetime cancer risk.

Because storage yard soils represent by far the largest area of contamination at sawmill facilities (the process area being relatively small by comparison), the results in Table 6 are based on PCDD and PCDF levels in storage yard soils only. The risk estimates for the general population and the central tendency risk estimates for recreational fishers have been adjusted by the proportion of hydrologic cataloguing units in which sawmills are located in order to account for the proportion of the market basket of fish and shellfish that could be contaminated by sediment from sawmills. This proportion is estimated to be 40 percent. EPA requests comment on the appropriateness of this methodology.

The results suggest that human exposures through this pathway are of relatively little concern to any particular individual. For a typically exposed individual in the general population, the risk of contracting cancer is increased by only 4×10^{-9}, or a chance of four in a billion. In fact, the estimated concentrations of PCDDs and PCDFs in fish tissues are substantially lower than levels which have been characterized by some investigators as "background" levels, which suggests that sawmills are not one of the more important sources of PCDDs and PCDFs in the aquatic food chain. However, as described elsewhere in today's notice, the methodology EPA used for the fish and shellfish ingestion pathway is based on average sediment concentrations in an entire drainage basin, which can represent thousands of square miles. Concentrations in sediments immediately downstream of contaminated sites would be expected to greatly exceed the average sediment concentration, suggesting the possibility of the existence of significant localized risks which have not been quantified. Also, despite the estimated risks to any one individual not being very high, the overall contribution of PCDDs and PCDFs from surface protection operations to the aquatic environment is of concern because of the large number of facilities and the enormous size of the population potentially exposed via dietary consumption of fish and shellfish. Human exposure to these compounds from a variety of sources are already at sufficiently high levels that any increase in exposure is cause for concern.

2. *Population risk from usage of chlorophenolic formulations.* Population risk represents the number of persons in a given population which may be expected to exhibit adverse health effects, either in terms of morbidity or mortality. Although population risk can be estimated by summing individual risks across the entire population, in practice detailed information on the distribution of individual risk is rarely available. However, for carcinogens which are assumed to exhibit a linear dose-response relationship, an estimate of population risk can be made by multiplying the central tendency estimate of individual risk by the size of the exposed population. This estimate, which represents the number of cases over a lifetime, can be divided by the period of time over which the population is exposed to calculate an "annual average" number of cases during the 70 year period of maximum exposure. An estimate of this type is

made with the implicit assumption that larger risks to more highly exposed individuals in the population are offset by smaller risks to less exposed individuals. For noncarcinogenic effects, population risk can be estimated by multiplying the proportion of the population that receives an exposure which exceeds the reference dose (RfD) by the size of the exposed population. An estimate of this type obviously requires some knowledge of the distribution of individual risk in the exposed population (as measured by the hazard quotient, for example). This estimate also can be converted to an annual average as discussed above.[27]

Estimates of population risks associated with existing environmental contamination for the ground water ingestion pathway, the fish and shellfish ingestion pathway, and the soil ingestion pathway are given in Table 7. Incremental risk associated with the cross-contamination of non-chlorophenolic formulations is discussed in the benefits section of today's proposal. Note that population risk estimates are not made for pentachlorophenol and 2,3,4,6-tetrachlorophenol for the soil-based pathways (i.e., direct soil ingestion and fish and shellfish ingestion) and for 2,3,7,8-TCDD for the ground water pathway, for the reasons cited earlier.

TABLE 10.—POPULATION RISK FROM USAGE OF CHLOROPHENOLIC FORMULATIONS BY EXPOSURE PATHWAY

Pathway	Ground water	Fish and shellfish	Soil
Constituent:			
Pentachlorophenol †	9×10^{-2}	NA	NA
2,3,4,6-Tetrachlorophenol *	$2\times10^{+2}$	NA	NA
2,3,7,8-TCDD TEQ †	NA	1×10^{-2}	2×10^{-5}

† Cancer cases, annual average during 70 year period of maximum exposure.
* Non-cancer cases, annual average during 70 year period of maximum exposure.

For the ground-water pathway, the population risk estimates are based on an estimated exposed population of approximately 17000 individuals over 70 years. This is derived by adjusting the number of sawmills which currently engage in surface protection operations by the proportion of sawmills reporting the presence of a ground water well and making the assumption of one household per well. The residence time or turnover period is assumed to be 9 years, resulting in eight exposed households (or cohorts) over 70 years. The exposed households are assumed to obtain their drinking water from wells which are located 500 feet directly down-gradient of the surface protection operation and draw from the top of a shallow, contaminated surficial aquifer. The rationale for making these particular assumptions is discussed in the risk assessment background document for today's proposal. Because the assumption that each well is located directly down-gradient of the surface protection operation and is used as a drinking water supply is probably quite conservative (particularly given the frequency with which sawmills are located near surface waters that are likely to intercept at least some portion of the contaminated ground water plume), the population risk estimate could be characterized as a bounding estimate. However, the degree of conservatism is reduced by having not considered that other households at farther distances could also be exposed. Also, sawmills that are not currently conducting surface protection operations may have done so in the past and, if so, would most likely have used chlorophenolic formulations. These would represent additional sites that have the potential for human exposure to contaminated ground water. Although community wells would not be expected to draw from very shallow aquifers, such wells could become contaminated to the extent that the surficial aquifer and the water-bearing aquifer are hydraulically connected. If this occurs, the actual population risk could be much higher. However, because the Agency lacks adequate data on the location of community wells relative to sawmills, EPA regards the existence of contaminated community wells as a matter of speculation only, particularly where community water systems are required to comply with the MCL (the maximum contaminant level established under the Safe Drinking Water Act) for pentachlorophenol.

For the fish and shellfish ingestion pathway, the population risk estimates are based on the entire U.S. population, approximately 250 million people, along with the previously discussed assumption that 40 percent of the commercial freshwater and estuarine fish and shellfish come from regions where sawmills that surface protect are located. As presented previously, a central tendency estimate of individual risk was made for the general population. The assumption made here is that all persons in the general population of the U.S. are potentially exposed. EPA believes that this is a reasonable assumption when one considers that the greatest production of lumber occurs in the regions of the U.S. which also produce the highest commercial fish and shellfish catches, in particular the Gulf Coast and the Pacific Northwest regions. EPA requests comment on these assumptions.

For the direct soil ingestion pathway, an estimate of population risk can be made by estimating the number of children that could be exposed to contaminated soils assuming a change in land use from industrial to residential. This could occur where a sawmill is abandoned and, without prior soil remediation, is later developed for residential housing or is sold to a developer or prospective homeowner. As discussed earlier, the population risk can be estimated by multiplying the exposed population by the central tendency estimate of individual risk. However, because the storage yard is so much larger than the process area, only the individual risk value for the storage yard is used in this calculation. Ideally, one would examine local land-use patterns and land values to ascertain the location of sawmills that are likely candidates for residential development. However, this type of information is not readily available to the Agency. Instead, a bounding estimate can be made by assuming an immediate change in land use to rural

[27] Another way of estimating the number of annual cases for non-carcinogenic health effects is to estimate the rate at which individuals are exposed to levels above the reference dose.

residential and estimating the number of potentially exposed children based on rural residential population densities, age demographic data, and estimated turnover times of child-bearing households (i.e., the time period from when one child-bearing household is replaced with another child-bearing household). Taking this approach, a bounding estimate of the size of the exposed population is approximately 500 children over a 70year period. While this can be characterized as a bounding estimate, it does not consider the possibility that a sawmill site located close to an expanding urban area could be converted to high density single family or multifamily housing. Even if only a small number of sawmills were to be developed for high-density housing, the potential population of exposed children could be larger than EPA's estimate.

VIII. Applicability of the Land Disposal Restrictions

RCRA requires EPA to make land disposal prohibition determinations for hazardous wastes that are newly identified or listed in 40 CFR part 261 after November 8, 1984, within six months of the date of final listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). EPA is also required to set levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and longterm threats to human health and the environment are minimized (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Land disposal of wastes that meet treatment standards thus established by EPA is not prohibited.

A general overview of the Agency's approach in performing analysis of the how to develop treatment standards for hazardous wastes can be found in greater detail in section III.A.1. of the preamble to the final rule for Third Third wastes (55 FR 22535, June 1, 1990). The framework for the development of the entire Land Disposal Restrictions program was promulgated in the Solvents and Dioxins rule (51 FR 40572, November 7, 1986).

Treatment standards typically are established based on performance data from the treatment of the listed waste or wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. Treatment standards also are established for both wastewater and nonwastewater forms on a constituent-specific basis. The constituents selected for regulation under the Land Disposal Restriction Program are not necessarily limited to those identified as present in the F033 wastes in today's notice, but include those constituents or parameters that will ensure that the technologies are operated properly.

Wherever feasible, the Agency anticipates transferring BDAT treatment standards for both wastewater and nonwastewater forms of the proposed F033 wastes from the list of treatment standards for F039, the listing for multi-source leachate, promulgated in the Third Third final rule (see 40 CFR 268.43). These treatment standards, in fact, should be generally achievable. If F033 wastes have constituents present that are not currently regulated in these wastes, EPA will develop treatment standards for these constituents and may then propose to add them to the treatment standards for F039. (The Final BDAT Background Document for U and P Wastes/Multi-source Leachate is available from NTIS (National Technical Information Service), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4600. The NTIS numbers for the three-volume set are PB90–234337, PB90–234345, and PB90–234352.

Although data on waste characteristics and current management practices for the proposed F033 wastes have been gathered as part of the administrative record for today's rule, the Agency has not completed its evaluation of the usefulness of these data for developing specific treatment standards or assessing the capacity to treat (or recycle) these wastes.

Available treatment performance data for wastes believed as difficult to treat as F033 show that incineration, chemical dechlorination, and biological treatment are potentially applicable to F033. These technologies have shown some promise in the treatment of dioxin-containing wastes. EPA is, in fact, evaluating the feasibility of developing concentration-based treatment standards based on the performance of chemical dechlorination technologies demonstrated on wood preserving wastes or unspent commercial chemical products used in the formulation of solutions that are precursors to the generation of F033 or F032 (wood preserving waste). These data are also under review for the purpose of developing treatment standards for F033. A collection of the available treatment information has been placed in the docket for today's rule.

EPA intends to propose treatment standards for F033 in a separate rulemaking. However, EPA specifically is soliciting comment and data on the following as they pertain to the proposed listing of F033 wastes identified in today's notice:

(1) Technical descriptions of the treatment systems that are or could potentially be used for these wastes;

(2) Descriptions of alternative technologies (such as bioremediation) that might be currently available or anticipated as applicable;

(3) Performance data for the treatment of these or similar wastes (in particular, constituent concentrations in both treated and untreated wastes, as well as equipment design and operating conditions);

(4) Information on known or perceived difficulties in analyzing treatment residues or specific constituents;

(5) Quality assurance/control information for all data submissions;

(6) Factors affecting on-site and off-site treatment capacity;

(7) Information on the potential costs for set-up and operation of any current and alternative treatment technologies for these wastes; and

(8) Information on waste minimization approaches.

IX. State Authority

A. Applicability of Final Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any plants located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is

directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the Federal HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

1. HSWA Provisions

Because this proposal (with the exception of the proposed CERCLA reportable quantity) will be promulgated pursuant to HSWA, a State submitting a program modification is able to apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

2. Modification Deadlines

Section 271.21(e)(2) of EPA's state authorization regulations (40 CFR part 271) requires that States with final authorization must modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this proposed regulation, if it is adopted as a final rule, will be determined by the date of promulgation of a final rule in accordance with § 271.21(e)(2). If the proposal is adopted as a final rule, Table 1 at 40 CFR 271.1 will be amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are not less stringent than current Federal regulations may continue to administer and enforce their regulations as a matter of State law.

It should be noted that authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. (See 40 CFR 271.1(i).) This proposed rule, if finalized, is neither less stringent than nor a reduction in the scope of the current Federal program and, therefore, States would be required to modify their programs to retain authorization to implement and enforce these regulations.

X. Proposed Amendment of SW–846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods)

The Agency is proposing to require that certain wood surface protection plants test the pentachlorophenate concentration of their formulations (see discussion in section IV(B) above) using the analytical and test methods found in SW–846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods). In connection with this proposed testing requirement, the Agency is today proposing to add method 4010 (Immunoassay Test for the Presence of Pentachlorophenate) to the Second and Third Editions of SW–846.

SW–846 contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under subtitle C of the Resource Conservation and Recovery Act, as amended (RCRA). These methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results.

Several of the hazardous waste regulations under subtitle C of RCRA require that specific testing methods described in SW–846 be employed for certain applications. For the convenience of the reader, the Agency lists below a number of the sections currently found in 40 CFR parts 260 through 270 that require the use of a specific method for a particular application, or the use of appropriate SW–846 methods in general. If today's proposal is adopted in final form, the proposed pentachlorophenate testing requirement would be added to this list.

(1) Section 260.22(d)(1)(i)—Submission of data in support of petitions to exclude a waste produced at a particular plant (i.e., delisting petitions);

(2) Section 261.22(a)(1) and (2)—Evaluation of waste against the corrosivity characteristic;

(3) Section 261.24(a)—Leaching procedure for evaluation of waste against the toxicity characteristic;

(4) Sections 264.190(a), 264.314(c), 265.190(a), and 265.314(d)—Evaluation of waste to determine if free liquid is a component of the waste;

(5) Section 266.112(b)(1)—Certain analyses in support of exclusion from the definition of a hazardous waste of a residue which was derived from burning hazardous waste in boilers and industrial furnaces;

(6) Section 268.32(i)—Evaluation of a waste to determine if it is a liquid for purposes of certain land disposal prohibitions;

(7) Sections 268.40(a), 268.41(a), and 268.43(a)—Leaching procedure for evaluation of waste to determine compliance with Land Disposal treatment standards;

(8) Sections 270.19(c)(1)(iii) and (iv), and 270.62(b)(2)(i)(C) and (D)—Analysis and approximate quantification of the hazardous constituents identified in the waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit; and

(9) Sections 270.22(a)(2)(ii)(B) and 270.66(c)(2)(i) and (ii)—Analysis conducted in support of a destruction and removal efficiency (DRE) trial burn waiver for boilers and industrial furnaces burning low risk wastes, and analysis and approximate quantitation conducted for a trial burn in support of an application for a permit to burn hazardous waste in a boiler and industrial furnace.

In situations where hazardous waste regulations under subtitle C of RCRA require that specific testing methods described in SW–846 be employed for certain applications, methods contained in the Second Edition of SW–846, as amended, currently must be utilized. See 40 CFR 260.11 and 270.6(a). In a separate rulemaking, EPA has proposed to require the use of the Third Edition of SW–846, as amended by update I, in lieu of the Second Edition of SW–846, as amended, in situations where the use of SW–846 methods are specifically mandated. See 54 FR 3212 (January 23, 1989).

In other situations, any reliable analytical method may be used to meet other requirements in 40 CFR parts 260 through 270. SW–846 functions in those situations as a guidance document setting forth acceptable, although not required, methods to be implemented by

the user, as appropriate, in responding to RCRA-related sampling and analysis requirements.

In today's proposed rule, the Agency is proposing to require that certain wood surface protection plants test the pentachlorophenate concentration of their formulations using the analytical and test methods found in SW–846. The proposal does not, however, require the use of any one specific SW–846 method. Because the Agency believes that method 4010 is appropriate for the testing requirements proposed today, it is proposing to add that method to SW–846. Method 4010, including its protocol and documentation supporting this proposal can be found in the docket for this rulemaking.

If the portion of the proposed rule referenced above (54 FR 3212 (January 23, 1989)) that would require the use of SW–846 Third Edition methods in lieu of SW–846 Second Edition methods is promulgated and, thereafter, the Agency determines, after reviewing comments submitted, that SW–846 test methods should be required for the proposed pentachlorophenate testing requirement and that Method 4010 should be added to SW–846, the Agency is proposing that Method 4010 be added only to the Third Edition of SW–846 as Update IIA to that edition. If, on the other hand, a final rule replacing the Third Edition of SW–846 for the Second Edition of SW–846 in situations where the use of SW–846 methods is specifically mandated is not promulgated prior to promulgation of a rule finalizing the proposals discussed above in this section, the Agency will consider adding Method 4010 to the Second and Third Editions of SW–846 so that it will be available for use regardless of which edition is mandated.

SW–846 is a document that will change over time as new information and data are developed. Advances in analytical instrumentation and techniques are continually reviewed by the Agency and periodically incorporated into SW–846 to support changes in the regulatory program and to improve method performance. This proposed addition represents such an incorporation. Therefore, although only comments related to the proposals referenced above will be considered in connection with today's proposed rule, EPA also solicits any available data and information that may affect the usefulness of SW–846.

XI. CERCLA Designation and Reportable Quantities

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in §§ 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA section 101(14)(c). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). Accordingly, the Agency is proposing to:

(1) List the proposed F033 hazardous waste as a CERCLA hazardous substance in Table 302.4 of 40 CFR 302.4; and

(2) Establish an adjusted CERCLA RQ of one pound for F033.

Reporting Requirements

Under CERCLA section 103(a), the person in charge of a vessel or plant from which a hazardous substance has been released in a quantity that is equal to or exceeds its RQ shall immediately notify the National Response Center of the release as soon as that person has knowledge thereof. See 40 CFR 302.6. The toll free number of the National Response Center is 1–800–424–8802; in the Washington, D.C. metropolitan area, the number is (202) 426–2675. In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires owners or operators of certain plants to report the release of a CERCLA hazardous substance to State and local authorities. EPCRA section 304 notification must be given immediately after the release of an RQ or more to the community emergency coordinator of the local emergency planning committee for each area likely to be affected by the release, and to the State emergency planning commission of any state likely to be affected by the release. If today's proposal is promulgated as a final rule, releases of one pound or more of F033 waste will be subject to the requirements described above.

Adjustment of RQs

Under Section 102(b) of CERCLA, all hazardous substances newly designated under CERCLA have a statutory RQ of one pound unless and until adjusted by regulation. The Agency's methodology for adjusting RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. (For more detailed information on this methodology, see the preamble to an RQ adjustment final rule published on August 14, 1989 (54 FR 33426).) The intrinsic properties examined, called "primary criteria," are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. Generally, for each intrinsic property, the Agency ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ of 1, 10, 100, 1000, or 5000 pounds. The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria) is generally raised one level. (No RQ level increase based on BHP occurs if the primary criteria RQ is already at its highest possible level [100 pounds for potential carcinogens and 5000 pounds for all other types of hazardous substances except radionuclides].) This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by the degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ of the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased as a result of the BHP.

The methodology summarized above is applied to adjust the RQs of individual hazardous substances. An additional process applies to RCRA listed wastes, which contain individual hazardous substances as constituents. As the Agency has stated (54 FR 33440; August 14, 1989), to assign an RQ to a RCRA waste, the Agency determines the RQ for each constituent of the waste and then assigns the lowest of these constituent RQs to the waste itself.

Under the proposed definition of the F033 waste, its constituents may include 2,3,7,8-tetrachlorodibenzo-p-dioxin, which has an adjusted RQ of one

pound (the lowest RQ). Therefore, the Agency is proposing a one-pound adjusted RQ for F033.

XII. Compliance Costs Associated With the Rule

A. Executive Order 12291

Executive Order 12291 requires EPA to conduct a Regulatory Impact Analysis (RIA) for all "major" rules. A major rule is defined as one that is likely to result in:

(1) An annual impact on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant impacts on competition, unemployment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

EPA has determined that the F033 Listing Proposal is not a major rule, as defined by the above criteria. Nevertheless, the Agency has prepared an abbreviated RIA or "Economic Assessment" (EA) in order to examine costs and benefits likely to occur as a result of this action. The EA is in the public docket for this notice. A brief summary of the Economic Assessment findings is presented below for both the no-list and list option.

B. Cost of Proposed F033 No-List Option

Facilities may choose to take some remedial action as a result of publicity surrounding this action. However, no specific action will be required under this option. As a result, incremental cost impacts to the regulated community are expected to be zero under the no-list option.

C. Cost of Proposed F033 List Option

a. Methodology

i. *General approach.* The objective of the cost analysis was to determine the social cost of the actions potentially regulated firms would take to comply with the proposed F033 listing. The principle used to determine the actions firms would take is that they would undertake the lowest cost alternative available that would satisfy rule requirements.

Facilities have several alternative compliance strategies available to them:

(1) Treat waste as hazardous;

(2) Use a non-PCP formulation and take actions necessary to ensure that concentrations of PCP in surface protection formulations are at or below 0.1 ppm;

(3) Replace equipment and use a non-PCP formulation; or

(4) Go out of business.

Using the least-cost alternative principle, EPA projects that all potentially regulated facilities would choose number two above; use a non-PCP formulation and clean their equipment to ensure that PCP concentrations are less than or equal to 0.1 ppm. Under this scenario, facilities are assumed to test their formulation, clean equipment and test again following cleaning to insure compliance. Furthermore, although not required, facilities are assumed to avoid liability concerns through the added costs associated with offsite disposal of wastes generated during the cleaning process.

ii. *Identification of potentially regulated community.* Any entity that generates wastes from wood surface protection processes containing levels of pentachlorophenate above 0.1 ppm is potentially subject to the proposed rule. Because sapstain can begin to form on wood within hours after it is cut, sawmills are in the best position to apply the anti-stain chemicals. Nevertheless, there are isolated cases in which downstream facilities such as furniture manufacturers and flooring companies prefer to surface-protect wood after they receive it. EPA has learned from industry representatives, however, that few, if any, such facilities would be affected by an F033 listing. Therefore, the Economic Assessment (EA) focuses exclusively on sawmills, for this proposal.

As described elsewhere in this preamble, EPA estimates that there are over 3,200 sawmills currently operating in the United States, of which approximately 980 surface protect at least some portion of their wood. The three primary methods of surface protection are dip tank, green chain, and spray chamber.

iii. *General assumptions.* The following assumptions underlie the Agency's projection of what facilities would do in response to an F033 listing and the resulting cost of these actions:

(1) No facility will be using sodium pentachlorophenate upon promulgation of a final rule;

(2) All current users of sapstain control chemicals were once users of sodium pentachlorophenate;

(3) Sodium pentachlorophenate will not be used again by any facility in the future; and

(4) All affected facilities (980) would currently generate wastes that meet the listing description (i.e., have formulations with pentachlorophenate concentrations greater than 0.1 ppm).

The first three of these assumptions reflect the best information available The last assumption is conservative. Many facilities may currently have formulations with concentrations of pentachlorophenate at or below 0.1 ppm (the approximate number is unknown). Facilities are known to routinely clean their equipment, or did so when they switched formulations.

b. Results

i. *Per facility costs.* Costs of the projected compliance action are assumed to vary across facilities depending on the type of surface protection equipment used and the quantity of lumber processed. Estimated one-time per facility costs range from a low of $1,960 for a sawmill using a spray chamber and producing less than 100 million board feet per year, to as high as $9,350 for a facility using a dip tank and producing more than 100 million board feet per year. Labor, testing and waste disposal are the primary cost factors. Waste disposal costs represent anywhere from six to 70 percent of total estimated facility compliance costs, depending upon equipment used and facility size. In addition, testing costs may vary widely and contribute to the overall range. Labor costs reflect best professional judgment of the estimated hours necessary for a thorough "high pressure" water spray cleaning. These costs also vary based on facility size.

ii. *Total cost estimation.* The total social cost of the proposed rule was calculated by multiplying the number of mills in each industry classification (based on the type of equipment employed and volume of lumber produced) by the per facility cost estimated for that classification.

The aggregate social cost of the proposed F033 listing is estimated to range from $3.5 to $4.5 million. All costs are expected to be incurred entirely within the first year after promulgation of the rule. Forty percent of the facilities sampled were found to have existing PCP levels below the proposed regulatory cutoff (i.e., have formulations with pentachlorophenate concentrations at or below 0.1 ppm). Extrapolating to the total cost figure results in an aggregate low cost estimate of approximately $2.3 million (including affirmative testing for the 40 percent).

This action may also result in classification of certain soils as hazardous, resulting in subtitle C management costs, if they are actively managed. Soil management costs would vary significantly, depending upon the amount of contaminated soil actually

managed and the technology used to dispose of the soil. These factors are difficult to quantify. In practice, the expense of added soil management costs likely would discourage many firms from disturbing (building on, excavating, etc.) areas of contaminated soils. However, even though firms are likely to avoid disturbing contaminated soil areas, some affected facilities may choose to implement stricter soil management requirements out of human health and/or liability concerns. Any estimates of the costs associated with future management of contaminated soils could be only speculative, and are not included in this analysis.

Opportunity costs associated with restricted property use may result from this action. These costs would be reflected in reduced property values. The presence of PCP-contaminated soils may reduce the value of the land by compelling clean-up actions, or through the lost use of restricted areas. These costs are assumed to be reflected in the market value of the property. Furthermore, the Agency feels that most reductions in the market value of property results from past contamination. Opportunity costs, therefore, may be attributable, in many cases, to existing State and Federal laws.

iii. *Agency preferred cleaning option.* Sand blasting and epoxy coating is not required to satisfy rule requirements. However, the Agency recognizes this as the most effective cleaning method available and recommends its use in meeting the required 0.1 ppm PCP concentration level. Sand blasting and epoxy coating would cost approximately $2,500 per facility for the average dip tank and green chain operation. Spray chamber facilities would not be able to employ this method. The most effective alternative for these facilities would be to replace their equipment at costs ranging from $40,000 to $60,000 per facility. None of the above estimates include testing or waste disposal costs.

While sand blasting and epoxy coating (equipment replacement for spray operations) is preferred to ensure the most effective cleaning possible, the Agency recognizes that industry will logically choose the least cost cleaning method available to meet rule requirements. As a result, final cost estimates presented in section C.(b) reflect this assumption.

D. Benefits of Proposed F033 Listing

a. Methodology

i. *Overview.* The objective of the benefits analysis was to estimate the number of cancer cases that could be avoided as a result of the implementation of the proposed rule. To derive this estimate, EPA identified the constituents of concern, identified the exposure pathways, determined the risk to individuals associated with each of the pathways, and correlated the individual risk to the population as a whole by multiplying by the estimated number of exposed persons.

When estimating the potential benefits of the proposed rule, it is important to distinguish between risks that result from past practices and risks from future actions. Because the proposed rule, by its own terms, will not require remediation of existing contamination, it will affect only future actions and will not mandate action with respect to contamination from past practices. The risk analysis conducted in support of this proposed rule examined both risk from past practices as well as incremental risk from action affected by the proposed rule. This proposal addresses only incremental risks, as a result, only the incremental risks are discussed in this section of today's notice.

ii. *Identification of constituents of concern and the measurement of their risks.* The constituents of concern used in the risk assessment include pentachlorophenol (PCP), polychlorinated dibenzo-p-dioxins (PCDD), and polychlorinated dibenzofurans (PCDF). Because of limited quantitative data on the toxicity of the specific isomers and congeners of the latter two constituents, PCDDs and PCDFs were modeled using quantitative values for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), an isomer of dioxin. Tetrachlorophenol (TeCP) is also a constituent of chlorophenolic formulations and was included in the full risk analysis. However, because it is not a carcinogen, results for this constituent are not discussed in this section of today's notice.

As PCP and TCDD are both Class B_2 carcinogens (probable human carcinogens), the magnitude of their risks was measured using carcinogenic slope factors. The slope factors for PCP and TCDD are 1.2×10^{-1} $(mg/kg/d)^{-1}$ and $1.56\times10^{+5}(mg/kg/d)^{-1}$ respectively.

iii. *Identification of exposure pathways and population risks.* EPA modeled risks for three pathways: Ground water ingestion, fish and shellfish ingestion, and soil ingestion. There are also potential exposures from surface water ingestion, soil and dust inhalation, and dermal exposure to soil, but preliminary analysis suggested that these pathways were unlikely to pose significant risks. The exposure scenarios for each of the modeled pathways are as follows:

(A) *Ground-water ingestion.* Hazardous constituents from surface protection wastes can migrate through the soil to ground water. People can be exposed to the contaminated ground water when it is used for drinking water. PCP was used as the constituent of concern for the ground-water analysis because it is more mobile through the soil column than dioxins, which tend to bind to the soil. Contamination of the upper aquifer, from which residential wells might be drawn, was modeled. Thus the potentially exposed population consists of people drinking contaminated water from residential wells located near the source of the contamination. The lower aquifer, from which community wells might be drawn, was not modeled because of the lack of site-specific information on the location of community wells near sawmill facilities.

Standard exposure assumptions used to translate the estimated constituent concentrations in ground water into health risks included ingestion of 1.4 liters of contaminated ground water per day by a 70 kg adult for an average of nine years. The excess lifetime cancer risk to an individual drinking contaminated ground water was estimated to be 5×10^{-7}. This means that an individual exposed to the contamination would have a one in 2,000,000 incremental risk of contracting cancer over his or her lifetime.

To calculate population risk, the Agency assumed that one residential well serving a family of four would be located directly downgradient of each potentially regulated facility. In addition, the population risk estimate was calculated for eight cohorts of individuals consuming contaminated water over a 70 year period. Because cancer cases were not discounted, the exact timing of the onset of cancer was not important. Under these assumptions, an estimated 17,000 individuals would be exposed to contaminants from ground water consumption. The population risk estimate also assumes that exposed individuals would be drinking contaminated ground water during the 70 years that constituent concentrations are at their highest.

(B) *Fish and shellfish ingestion.* Wastes from surface protection processes can be carried into streams and rivers located near potentially regulated sawmills through soil runoff. The Agency assumed that dioxins, which tend to bind with soil, would be present in the runoff.

Risks from fish ingestion were estimated using a five step process.

First, the Agency estimated the expected soil concentrations of dioxins that would be released through cross contamination. Second, it estimated constituent concentrations in stream sediment resulting from erosion of contaminated soils based on erosion rates for the entire drainage basin in which the sawmill is located. Third, using fish-to-sediment bioaccumulation factors, the concentrations of constituents in fish tissue were estimated. Fourth, human exposure to contaminants were estimated based on assumptions about consumption of freshwater and estuarine fish and shellfish. Finally, the carcinogenic slope factor for TCDD was multiplied by the rate of ingestion of TCDD to estimate risk of cancer from ingestion of contaminated fish.

Based on data from the Department of Agriculture 1977–1978 National Food Consumption Survey (NFCS), it was assumed that each person in the US consumes freshwater and estuarine fish and shellfish at a rate of 5.9 grams per day. It was further assumed that consumption of fish would occur for 25,550 days (70 years). The excess lifetime cancer risk from individuals eating contaminated fish was estimated to range from 9.6×10^{-11} to 4.4×10^{-9}, depending upon analytical approach. The Agency's best estimate for this pathway is 8.0×10^{-10}.

Because sawmills are located in the drainage basins that drain into the primary areas for freshwater and estuarine commercial fishing and because commercial fish landings are marketed nationally, it was assumed that the total population of the US would be exposed to contaminated fish and that 24 percent of the commercial fish and shellfish would be contaminated. (The 24 percent figure is based on the assumptions that sawmills which surface protect are located in 40 percent of the drainage basins and that 60 percent of those sawmills will be affected by the rule.) Thus, to estimate population risk, the general population risk was multiplied by the estimated population of the US (250 million).

(C) *Soil ingestion.* Direct human ingestion of contaminated soil, usually by young children, is another potential exposure route. Such exposure would most likely occur under a scenario in which the land on which the sawmill is located is converted to residential use, without significant cleanup of the contaminated soil. Again, the Agency assumed that dioxins would be present in the soil, while PCP would not. The Agency assumed that all facilities would be converted to residential use and that remediation of soil contamination would not take place prior to construction of the residential units. The excess lifetime cancer risk to children eating contaminated soil was estimated to range from 1×10^{-7} to 2×10^{-6}, depending on the analytical approach. The Agency's best estimate for this pathway is 7×10^{-7}.

In estimating population risk, it was assumed that 540 children would be exposed over a 70 year period. The derivation of this population estimate is lengthy and is discussed in the risk assessment background document for today's proposal.

b. Results

EPA estimated the expected decrease in the number of cancer cases that would result from implementation of the proposed rule for each exposure pathway. The best estimate for risks from the ingestion of fish and shellfish (0.2 cancer cases) are substantially higher than risks from ground water and soil ingestion. The results are shown in Table 1 below.

TABLE 1.—ESTIMATED INCREMENTAL CANCER CASES AVOIDED AS A RESULT OF THE PROPOSED RULE

Exposure pathway	Estimated statistical cancer cases avoided over 70 year lifetime
Ground water ingestion	0.005
Fish and shellfish ingestion (general population)	0.200
Soil ingestion	0.0004
Total	0.2054

E. Cost Effectiveness Analysis

a. Results

One measure EPA uses to determine the cost-effectiveness of its regulations is the cost per cancer case avoided. The proposed rule would lead to reduction of an estimated 0.2054 cancer cases (this is a statistical estimate and therefore does not have to be a whole number) at a total cost ranging from $2.3 to $4.5 million. Thus, the cost per cancer case avoided ranges from $10.2 to $21.8 million, using the Agency's best estimate for the fish and shellfish pathway. Alternative analytical approaches for determination of the fish and shellfish pathway result in a cost effectiveness range from $2.1 to $152.4 million. The soil ingestion and ground water pathways have a very minor impact on overall cost effectiveness.

b. Caveats

The cost-effectiveness estimate is very sensitive to the assumptions used to estimate the benefits of the proposed rule. The primary factor leading to overestimation of benefits is that the analysis assumes that *all* of the contaminants remaining in the surface protection equipment will be eliminated as a result of the proposed F033 listing. However, this is likely not to be the case because:

(i) The performance test measures PCP not dioxin, the constituent of concern in the fish and shellfish pathway. Facilities that pass the PCP test may still have small amounts of dioxin remaining in the equipment.

(ii) Facilities would not be required to dispose of the wastes from the cleaning process as F033 hazardous waste prior to the effective date of the final rule. As such, facilities can legally avoid the costs of disposing of any cleanup wastes as F033 hazardous wastes. The Agency believes, however, that facilities will choose to manage wastes from the cleaning process as Subtitle C wastes prior to the effective date of the rule, as reflected in the cost analysis. The Agency recognizes the possibility that this listing determination could, in some cases, actually expedite the contamination process, not prevent it, should facilities choose to discard wastes on-site prior to the effective date of the rule.

The results of the analysis may also underestimate the benefits of the proposed rule, and thus the cost-effectiveness. The primary factor leading to a potential underestimate is the fact that all potential exposure pathways were not included in the final benefits estimate. Exposure pathways not estimated include fish ingestion by subsistence fishers whose intake may be much higher than the general population.

XII. Regulatory Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) requires that whenever an agency publishes a notice of rulemaking, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). EPA has prepared such an analysis and a copy is in the public docket for this notice. A brief summary of the analysis follows.

1. Definition of Small Entity

For the purposes of this analysis, EPA has defined a small entity as a sawmill

that produces less than 100 million board feet of lumber annually. No other small organizations or governmental jurisdictions are believed to be affected by the proposed rule. The definition is designed to be consistent with the classifications used in the cost analysis and as inclusive as possible.

2. Sales Test

One way the Agency determines whether regulatory impacts are significant is to conduct a sales test. Facilities are assumed to pass this test if compliance costs are projected to be less than one percent of their annual gross sales. The compliance costs used are the same as those in the EA. Sales are estimated by multiplying the number of board feet produced by $0.20 per board foot, a low-end estimate of the price of lumber. All potentially regulated facilities pass the sales test. According to the analysis, the most adversely affected facilities would be those that own dip tanks and produce less than five million board feet per year. These facilities are estimated to incur cost impacts of approximately 0.89 percent of sales.

3. Profits Test

A second way the Agency determines whether regulatory impacts are significant is to conduct a profits test. Facilities are assumed to pass this test if compliance costs are projected to be less than 10 percent of average annual profits. Profits were assumed to be 1.8 percent of sales based on data from Robert Morris Associates, an often used source of such information.

Facilities producing over five million board feet per year pass the profits test. Those producing less than five million, approximately 400 facilities, nationwide, do not. Compliance costs could be equivalent to as much as 55% of annual profits for some of these entities.

It should be noted that in practice small businesses may not be as adversely affected as the analysis suggests because both estimates of compliance costs and sales are considered conservative. In addition, compliance costs would be incurred only in the first-year, rather than on an annual basis.

B. Paperwork Reduction Act

The information collection requirements in today's proposed rule has been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. An Information Collection Request document has been prepared by EPA (ICR No. 1638.1) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW., (PM–223Y), Washington, DC 20460 or by calling (202) 260–2740.

A revised public reporting burden for this collection of information is estimated to average between six and twenty-six hours per facility, including time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Air pollution control, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: March 31, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40 of the Code of Federal Regulations as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.11 is amended by revising the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" reference of paragraph (a) to read as follows:

§ 260.11 References.

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (Third Edition (November, 1986), as amended by Updates I, II and IIA). The Third Edition of SW–846 and Updates I, II, and IIA (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6934, and 6938.

4. In § 261.31, in the table in paragraph (a), add the F033 listing, as follows:

§ 261.31 Hazardous wastes from non-specific sources.

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * * *	*
F033	Process residuals, wastewaters that come in contact with protectant, discarded spent formulation, and protectant drippage from wood surface protection processes at operations that use surface protection chemicals having an in-process formulation concentration of pentachlorophenate [expressed as pentachlorophenol during analysis] exceeding 0.1 ppm.	(T)
*	* * * *	*

5. Add the following entries in numerical order to appendix VII of part 261:

APPENDIX VII TO PART 261—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazardous waste No.	Hazardous constituents for which listed
*	* * * * * * *
F033	Pentachlorophenol, 2,3,4,6-tetrachlorophenol, 2,4,6-trichlorophenol, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans.
*	* * * * * * *

6. Add the following hazardous constituents (with CAS Numbers) in alphabetical order, to appendix VIII of part 261:

APPENDIX VIII TO PART 261—HAZARDOUS CONSTITUENTS

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* * *	* * *		*
Octachlorodibenzofuran	Same	39001–02–0	
Octachlorodibenzo-p-dioxin	Same	3268–87–9	
Potassium pentachlorophenate	Pentachlorophenol, potassium salt	7778–73–6	
2,3,4,6-tetrachlorophenol, potassium salt	Potassium tetrachlorophenate	53535–27–6	
Sodium pentachlorophenate	Pentachlorophenol, sodium salt	131–52–2	
2,3,4,6-tetrachlorophenol, sodium salt	Sodium tetrachlorophenate	25567–55–9	
* * *	* * *		*

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

7. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

8. Add subpart T to part 264 to read as follows:

Subpart T—Surface Protection Plants

Sec.
264.560 Applicability.
264.561 Formulation analysis and recordkeeping requirements.
264.562 Operating requirements.

Subpart T—Surface Protection Plants

§ 264.560 Applicability.

(a) Owners and operators of wood surface protection operations using in-process protectant formulations that contain (by design or cross-contamination) a pentachlorophenate concentration equal to or less than 0.1 ppm and who do not handle their wastes as F033 wastes are subject to § 264.561.

(b) Owners and operators of wood surface protection operations using in-process protectant formulations that contain (by design or cross-contamination) a pentachlorophenate concentration greater than 0.1 ppm are subject to § 264.562 and are required to manage their wastes in accordance with the requirements of either subpart J or subpart W of this part.

§ 264.561 Formulation analysis and recordkeeping requirements.

(a) Owners and operators must sample and test their surface protectant formulations to determine the concentration of pentachlorophenate (expressed as pentachlorophenol during analysis) contained therein, using a method found in EPA Publication SW–846. The formulation sample to be tested must be taken immediately following operation. Such testing must be conducted by a qualified analytical laboratory. If analysis shows that the concentration of pentachlorophenate in an operation's formulation is equal to or less than 0.1 ppm, the owner/operator must sign the following certification:

I certify, under penalty of law, that the surface protection formulation used by [insert name of operation] has been sampled and tested using a method found in EPA Publication SW–846 and the samples analyzed by (insert name of laboratory and address). The results of this analysis indicated that the concentration of pentachlorophenate (expressed as pentachlorophenol during analysis) in the in-process surface protection formulation is (insert the results of the analysis). I am aware that there are significant penalties for submitting false information, including the possibility of fine and/or imprisonment.

This certification may be provided by a responsible official of the operation or by a registered, professional engineer.

(b) Owners and operators must maintain records on-site until operations cease. These records must include the following:

(1) A description of the method used for sampling and testing;

(2) Results of the analysis conducted in accordance with § 264.561(a); and

(3) A copy of the signed certification required under § 264.561(a).

§ 264.562 Operating requirements.

(a) Owners and operators must hold newly treated wood in the process area after treatment to allow excess drippage of surface protectant to cease and to allow all entrained liquids (from dipping operations) to be removed prior to transfer of the wood to the storage yard. Treated wood must not be removed from the process area until all free liquid drainage has ceased.

(b) Owners and operators of surface protection operations that store treated wood in areas unprotected from precipitation must cover the tops of the wood bundles prior to a precipitation event to prevent precipitation from mobilizing pentachlorophenol constituents into the environment.

(c) Owners and operators of surface protection operations must develop and maintain a contingency plan for immediate response to protectant drippage in the storage yard. In the event of storage yard drippage, the owner/operator must implement this contingency plan by:

(1) Cleaning up the drippage;

(2) Documenting the cleanup and retaining this documentation for three years; and

(3) Managing the contaminated media in accordance with all applicable RCRA regulations.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

9. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

10. Add Subpart T to part 265 to read as follows:

Subpart T—Surface Protection Plants

Sec.
265.435 Applicability.
265.436 Formulation analysis and recordkeeping requirements.
265.437 Operating requirements.

Subpart T—Surface Protection Plants

§ 265.435 Applicability.

(a) Owners and operators of wood surface protection operations using in-process protectant formulations that contain (by design or cross-contamination) a pentachlorophenate concentration equal to or less than 0.1 ppm and who do not handle their wastes as F033 wastes are subject to § 265.436.

(b) Owners and operators of wood surface protection operations using in-process protectant formulations that contain (by design or cross-contamination) a pentachlorophenate concentration greater than 0.1 ppm are subject to § 265.437 and are required to manage their wastes in accordance with the requirements of either subpart J or subpart W of this part.

§ 265.436 Formulation analysis and recordkeeping requirements.

(a) Owners and operators must sample and test their surface protectant formulations to determine the concentration of pentachlorophenate (expressed as pentachlorophenol during analysis) contained therein, using a method found in EPA Publication SW–846. The formulation sample to be tested must be taken immediately following operation. Such testing must be conducted by a qualified analytical laboratory. If analysis shows that the concentration of pentachlorophenate in an operation's formulation is equal to or less than 0.1 ppm, the owner/operator must sign the following certification:

I certify, under penalty of law, that the surface protection formulation used by (insert name of operation) has been sampled and tested using a method found in EPA Publication SW–846 and the samples analyzed by (insert name of laboratory and address). The results of this analysis indicated that the concentration of pentachlorophenate (expressed as pentachlorophenol during analysis) in the in-process surface protection formulation is (insert the results of the analysis). I am aware that there are significant penalties for submitting false information, including the possibility of fine and/or imprisonment.

This certification may be provided by a responsible official of the operation or by a registered, professional engineer.

(b) Owners and operators must maintain records on-site until operations cease. These records must include the following:

(1) A description of the method used for sampling and testing;

(2) Results of the analysis conducted in accordance with § 265.436(a); and

(3) A copy of the signed certification required under § 265.436(a).

§ 265.437 Operating requirements

(a) Owners and operators must hold newly treated wood in the process area after treatment to allow excess drippage of surface protectant to cease and to allow all entrained liquids (from dipping operations) to be removed prior to transfer of the wood to the storage yard. Treated wood must not be removed from the process area until all free liquid drainage has ceased.

(b) Owners and operators of surface protection operations that store treated wood in areas unprotected from precipitation must cover the tops of the wood bundles prior to a precipitation event to prevent precipitation from mobilizing pentachlorophenol constituents into the environment.

(c) Owners and operators of surface protection operations must develop and maintain a contingency plan for immediate response to protectant drippage in the storage yard. In the event of storage yard drippage, the owner/operator must implement this contingency plan by:

(1) Cleaning up the drippage;

(2) Documenting the cleanup and retaining this documentation for three years; and

(3) Managing the contaminated media in accordance with all applicable RCRA regulations.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

11. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C., 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart B—Permit Application

12. Section 270.6 (a) is revised to read as follows:

§ 270.6 References.

(a) When used in part 270 of this chapter, the following publications are incorporated by reference:

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 [Third Edition (November, 1986), as amended by Updates I, II, and IIA]. The Third Edition of SW–846 and Updates I, II, and IIA (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

13. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

14. Section 302.4 is amended by adding an entry for F033 in Table 302.4 to read as follows. The appropriate footnotes to Table 302.4 are republished without change.

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*	*	*	*
F033 Process residuals, wastewaters that come in contact with protectant, discarded spent formulation, and protectant drippage from wood surface protection processes at operations that use surface protection chemicals having an in-process formulation concentration of pentachlorophenate [expressed as pentachlorophenol during analysis] exceeding 0.1 ppm. (T).	.....	.....	1[1*]	4	F033	X	1(0.454)
*	*	*	*	*	*	*	*

† Indicates the statutory source as defined by 1, 2, 3, 4 or below.

* * * * * * *

[4] Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

[1*] Indicates that the 1-pound RQ is a CERCLA statutory RQ.

[FR Doc. 93–9585 Filed 4–26–93; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
April 27, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal Consultation Meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning potential issues in Indian education programs. The potential issues which will be set forth in a tribal consultation booklet to be issued prior to the meetings are as follows:

1. Programs available for American Indian and Alaska Native students funded by the Bureau of Indian Affairs and other Federal Agencies, including school operations.
2. Tribal Consultation Dates.
3. Inclusion of Indian School Equalization Program and tribally Controlled Community College funds in Tribal Self-Governance Compacts.
4. The Indian School Equalization Program (ISEP) Formula.

DATES: July 26, 28, & 30, 1993, for all locations listed below, except, Anchorage, AK, which will be held May 27, 1993. Scheduling of an earlier date for the Alaska meeting is in response to requests of tribal participants at previous consultation meetings in Anchorage. All meetings will begin at 8 a.m. and continue until 3 p.m. (local time) on the dates scheduled. Written comments concerning the consultation meeting items must be received no later than August 23, 1993.

ADDRESSES:

Location	Local contact	Telephone
May 27, 1993		
1. Alaska, Anchorage	Robert Pringle	907/271–4115
July 26, 1993		
1. Nevada, Las Vegas	Fayetta Babby	916/978–4680
2. New Mexico, Gallup	Larry Holman	505/786–6150
3. Minnesota, Mahmomen	Betty Walker	612/373–1090
4. Oklahoma, Tulsa	Jim Baker	405/945–6051
July 28, 1993		
1. Washington, Seattle	Van Peters	503/230–5682
2. New Mexico, Albuquerque	Val Cordova	505/966–3034
3. Virginia, Arlington	Lena Mills	703/235–3233
4. South Dakota, Rapid City	Jim Davis	701/477–6471
July 30, 1993		
1. Arizona, Phoenix	Beverly Mestes	602/562–3557
2. Montana, Billings	Larry Parker	406/657–6375

Written comments should be mailed, to be received, on or before August 23, 1993, to the Bureau of Indian Affairs, Office of Indian Education Programs, MS 3512 MIB, 1849 C Street, NW., Washington, DC 20240, Attn: Dr. John Tippeconnic; or may be hand delivered to room 3512 at the same address.

FOR FURTHER INFORMATION CONTACT: John Tippeconic or Jim Martin at the above address or call 202/208–6123 or 208–3550.

SUPPLEMENTARY INFORMATION: The meetings are a followup to similar twice-a-year meetings conducted by the BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education programs. A consultation booklet for the July meetings is being distributed to Federally recognized Indian tribes, Bureau Area and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons and at each meeting.

Dated: April 16, 1993.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 93–9575 Filed 4–26–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Tuesday
April 27, 1993

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered Status Determination for the Cave Crayfish, Three Puerto Rican Plants, the Duskytail Darter, Palezone Shiner, and Pygmy Madtom; Endangered or Threatened Status for Seven Central Florida Plants; Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Endangered Status Determined for the Cave Crayfish Cambarus Aculabrum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the cave crayfish, *Cambarus aculabrum*, to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This freshwater crayfish is currently known from two caves in Benton County, Arkansas. Groundwater pollution represents the major threat to the species. This determination implements the protection of the Act for *Cambarus aculabrum*.

EFFECTIVE DATE: May 27, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield at the above address (telephone 601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Cambarus aculabrum was described from two cave streams in Benton County, Arkansas by H.H. Hobbs, Jr. and A.V. Brown (1987). It is a small, white, obligate cave-dwelling (troglobitic) crayfish with an overall body length reaching about 48 millimeters (1.8 inches). This species is distinguished from related surface species by a total lack of pigment, and by reduced eyes. It is distinguished from its closest troglobitic relatives by an acute or subacute apex of the anteromedian lobe of the epistome (mouthpart). First form males (those with fully formed and hardened first pleopods, or reproductive appendages) are further separated from the closely related troglobitic species, *Cambarus setosus* anc *C. tartarus*, by the absence of a transverse groove separating the proximolateral lobe from the shaft on the fist pleopod. It differs from first form males of another closely related cave species, *C. zophanastes*, by a longer central projection of the first pleopod that also has a shallow subapical notch (Hobbs and Brown 1987). Recent studies indicate that *Camabrus aculabrum* is genetically distinct from the other cave crayfish species (Koppelman 1990).

The type locality, Logan Cave, is an Ozarkian solution channel located in the Mississippian cherty-limestone Boone Formation of the Springfield Plateau (Hobbs and Brown 1987). A stream flows through the entire length of the cave, approximately 2000 meters (m) [6000 feet(ft)]. Logan Cave also contains a lake approximately 200 m (600 ft) long, 2–6 m (6–18 ft) wide, and 2–3 m (6–9 ft) deep that was formed by the collapse of the cave roof. Water exits the cave approximately 300 m (900 ft) from the lake. *Cambarus aculabrum* is usually observed along the walls of the pool, or along the stream edges. Population numbers appear to be very small in Logan Cave. As many as six crayfish have been seen during one survey, but often none are evident (Hobbs and Brown 1987). In 14 visits to the cave, Brown observed crayfish on only three occasions (Brown *in litt.*, 1987). During a 1990 search of the cave lake and stream by Service biologists, only three *Cambarus aculabrum* were seen, one of which was dead. The U.S. Fish and Wildlife Service purchased 123.9 acres at Logan Cave, including the property that contains the cave's entrances, in 1989. The cave's recharge area covers 30.15 square kilometers (11.64 square miles), most of which is privately owned (Aley and Aley 1987).

Cambarus aculabrum is also known from Bear Hollow Cave, located approximately 38 kilometers (23 miles) from Logan Cave. Bear Hollow Cave is also a solution tunnel in the Boone Formation and contains a small stream approximately 200 m (600 ft) long and 0.2 m (8 inches) deep (Hobbs and Brown 1987). Although there is less available habitat in Bear Hollow Cave than in Logan Cave, as many as nine crayfish have been seen during a single visit (Hobbs and Brown 1987). As in Logan Cave, however, numbers of crayfish observed may vary dramatically between visits. In the Service's 1990 survey, only a single crayfish was found in the Bear Hollow Cave stream. The extent of the Bear Hollow Cave recharge area is unknown. The cave's entrance and surrounding property are privately owned.

In general, very little is known about the ecology and natural history of cave crayfish, and only limited observations have been made of this species. First form males have been collected during the months of January, February, October and December. Females carrying eggs and young *C. aculabrum* have not been observed.

On July 15, 1988, the Service was petitioned by Dr. Arthur Brown, the University of Arkansas, to list *Cambarus aculabrum* as an endangered species. A finding of insufficient information to indicate the petitioned action was warranted was published by the Service in the **Federal Register** (53 FR 52745) on December 28, 1988. The finding noted that at the time of the petition there were 29 caves within the Springfield Plateau that were known to harbor cave crayfish, and in only seven of these had the species of crayfish been determined. Recent cave crayfish surveys (Smith 1984, Figg and Lister 1990) and an electrophoretic investigation (Koppelman 1990) have resulted in the identification of these cave crayfish populations, and confirmed the restricted distribution of *Cambarus aculabrum*. The proposed rule to list the cave crayfish, *Cambarus aculabrum*, as an endangered species was published on May 26, 1992 (57 FR 21929).

Summary of Comments and Recommendations

In the May 26, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in The Northwest Arkansas Times, Fayetteville, Arkansas, on June 14, 1992.

A total of 13 individuals, agencies or organizations commented on the proposed rule: 3 were opposed to the listing action; 4 were in support; 1 stated no objection to the listing; and 5 expressed no position. The Missouri Department of Conservation supported the listing, and noted that groundwater pollution is a threat to many cave organisms. The Arkansas Game and Fish Commission expressed no objection to the listing action.

Opposing comments of a similar nature or point have been grouped into several general issues. These issues and the Service's response to each are discussed below:

Issue 1: Cave waters are polluted by bat waste, not poultry and swine waste.

Response: A large colony of bats occupy Logan Cave during the summer months. The areas where they roost are very localized within the cave. Some of the roosts are over water, some are not. Water quality may be affected locally

and for a distance below a bat roost over water. However, bats and bat guano are a natural component of the cave ecosystem. Bat guano provides an energy source within a cave environment and a foundation for bacterial and fungal growth. Crayfish and other cave organisms can move within and around guano piles and exploit the organisms associated with them for food. While water quality may be locally affected by bat guano, areas of higher water quality are also available for reproduction and other essential life history functions. However, the improper disposal of animal waste can result in water degradation throughout the aquifer which may result in the mortality or impaired reproduction of cave crayfish (see Factor A, below).

Issue 2: Two commenters noted that there are currently eight swine and poultry operations within the immediate recharge area of Logan Cave, not 85 as cited in the proposed rule. They believe that operations peripheral to the recharge area should not be considered as a threat. They consider the contamination potential from poultry and swine farms within the recharge area of Logan Cave to be minimal.

Response: The proposed rule's source for the number of animal confinement areas is Aley and Aley (1987). This document considered individual buildings, not operations, that were used to confine swine or poultry as potential point sources of water contamination. Operations within the recharge area were known to have from one to 12 swine and poultry confinement areas, and a total of 85 confinement buildings were identified from 1980 aerial photographs. While these numbers have probably changed since 1980, indications are that the number of confinement areas are likely to have increased. In fact, one commenter noted that five new poultry confinement areas have been recently constructed, and five others are under construction in the vicinity.

Swine and poultry operations outside of the recharge area are not considered as point source contamination areas. However, wastes from these operations may be applied to agricultural land within the recharge area as fertilizer, and contribute to non-point source contamination.

The Service considers poultry and swine operations in the vicinity of the Logan Cave recharge area as a principal potential source for both point and non-point source groundwater contamination. However, proper waste management, which includes strict adherence to Arkansas Department of Pollution Control and Ecology regulations for the application of animal wastes, can significantly reduce the threat of contamination.

Issue 3: Subterranean habitat for the crayfish is likely to exist that is inaccessible for surveying. Therefore, the size and scope of the species' population and habitat has not been adequately assessed to warrant listing as endangered.

Response: While inaccessible subterranean habitat does occur in the vicinity of the two known populations, this habitat will be affected by the same factors impacting accessible cave habitat. The cave surveys cited in the rule, as well as more recent unpublished survey efforts by Service, State, and private agencies and individuals, support the rarity and restricted distribution of *Cambarus aculabrum*. Although the existence of an unknown population is possible, such a discovery would not offset the magnitude of the activities that threaten the species.

Issue 4: One commenter noted that a 1988 Service response to a petition to list *Cambarus aculabrum* as an endangered species found insufficient evidence to warrant listing. The commenter expressed an opinion that this was still the case.

Response: The Service's finding of insufficient evidence to list *Cambarus aculabrum* was based on a lack of information. The finding noted that at the time of the petition there were 29 caves within the Springfield Plateau that were known to harbor cave crayfish, and in only seven of these had the species of crayfish been determined. Additional survey work since the petition, however, has resulted in the identification of these unknown populations, none of which were determined to be *Cambarus aculabrum* (see Background, above). This new information supported the restricted distribution of *Cambarus aculabrum* as presented in this rule.

Issue 5: One commenter questioned the reliability of the Aley and Aley (1987) study cited in the proposed rule that delineated the Logan Cave recharge area, as well as the competence of the principal investigator, Thomas Aley.

Response: Thomas Aley has performed a number of groundwater drainage studies throughout the country and is widely recognized for his competence and professionalism.

Issue 6: The proposed rule did not document a decline of the species, or provide other proof that the cave crayfish is endangered. There is insufficient evidence that listing is warranted.

Response: While a decline in the species has not been demonstrated, the Service considers endangered status warranted for *Cambarus aculabrum* due to the existence of only two known populations and the immediacy and severity of threats facing both populations.

Issue 7: Service studies on the Ozark cavefish in Logan Cave may threaten *Cambarus aculabrum*.

Response: The Ozark cavefish study in Logan Cave was designed to minimize risk to *Cambarus aculabrum*. Fish drift traps that were used for a short period of time within the cave stream are no longer in use. Drift nets in the stream below the cave entrance are set every two weeks for a 48 hour period. These are checked every 24 hours for cave organisms. No cave crayfish have been taken in these traps.

Issue 8: Listing would result in undue economic hardship for poultry and swine producers. The economic impact of listing *Cambarus aculabrum* should be considered.

Response: The Service is required to base decisions regarding endangered or threatened status solely on biological information and is prohibited from allowing economic or nonbiological factors to affect such decisions. However, the actual extent and limits of listing effects on socioeconomic conditions are usually not as great as many people fear. For example, the Ozark cavefish is a threatened species that also occurs in the Logan Cave drainage. It is unlikely that any additional restrictions will be placed on poultry and swine producers within the recharge drainage as a result of listing *Cambarus aculabrum* that are not already enforced due to the presence of the Ozark cavefish.

Issue 9: Listing may cause rerouting of the proposed U.S. Highway 412, causing increased taxpayer expense.

Response: As noted above, economic factors may not be considered during the listing process. However, since the publication of the proposed rule, the Arkansas Highway and Transportation Department has selected an alternative route for U.S. Highway 412 that will avoid impact to Logan Cave and its recharge area.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the cave crayfish, *Cambarus aculabrum*, should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and

regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the cave crayfish, *Cambarus aculabrum*, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Water quality degradation represents the major threat to *Cambarus aculabrum*. Crayfish must have dissolved oxygen in the water for respiration. Severe water contamination by sewage, animal waste, gasoline, or a number of other materials results in seriously depleted oxygen concentrations and suffocation of cave crayfish. Contamination by toxic compounds, including heavy metals, many organic chemicals, and pesticides can destroy aquatic cave fauna, including crayfish. Sedimentation damages or destroys breeding habitat and invertebrates upon which crayfish feed.

The discrete recharge area of Logan Cave has been delineated (Aley and Aley 1987), and the principal point sources of water contamination within the recharge area have been identified as poultry and hog operations. Using 1980 aerial photos, Aley and Aley identified 85 hog or poultry confinement areas (buildings) adjacent to, or within the cave groundwater recharge area. Sixty-three of these pollution sources were in high to extremely high hazard areas (lands known or presumed to lie within the save groundwater recharge area, or lands that contribute water exclusively to the cave spring). Since their study, one additional poultry operation has been constructed within a few hundred meters of the cave's sinkhole entrance, and a hog confinement area has become operational within one kilometer of the cave. The principal non-point source of water contamination identified by the Aley and Aley study (1987) was the use of liquid animal waste from the livestock operations to fertilize pasture lands in the Logan Cave recharge area. Runoff from improper applications of liquid waste, or heavy precipitation following applications, can rapidly enter the groundwater and result in oxygen depletion.

The Aley and Aley study (1987) also identified residential development as a potential source of water contamination in the Logan Cave aquifer. Although the Logan Cave recharge area is lightly populated at the present, 8 of 11 springs sampled indicated contamination by sewage. In view of the rapid population growth of Benton County, Arkansas, future residential land development represents a potential threat to Logan Cave water quality.

A well has been recently drilled in the immediate recharge area of Logan Cave for agricultural purposes. Water withdrawal through this well could affect flows in the cave during late summer low flow conditions. Exploitation of this portion of the aquifer for future agricultural expansion, commercial or residential development would significantly effect the cave stream flows and the cave crayfish.

Site selection alternatives for the Northwest Arkansas Regional Airport in Benton County include a location within the Logan Cave recharge area. Airport construction activities and airport operation would threaten this population through construction activities, siltation, fuel and oil spills, storm runoff, sewage treatment, and development of associated service industries.

Residential development is the primary threat to the Bear Hollow Cave crayfish population. Residential development may cause water quality degradation in caves due to leakage from sewage disposal systems and solid waste landfills, sedimentation, increased storm runoff, lawn fertilizers, herbicides, and pesticides. Residential growth also attracts secondary developments such as roads and gasoline stations, which contribute to water quality degradation (Aley and Aley 1987).

Bear Hollow Cave lies on the northern edge of Bella Vista Village, a large retirement development. The cave entrance is a large sinkhole at the base of a ridge, and surface runoff in the vicinity of the cave drains into the sinkhole. The hills above the cave entrance have been subdivided for residential use, but many of the lots including those adjacent to the cave have not yet been developed. Currently, the population of Bella Vista Village is approximately 9000. Sewage disposal is by septic tanks. Although current impact to the cave aquifer is not known, the potential impact is significant. Over 36,000 lots have been sold in the community, including all of the lots in the subdivisions adjacent to, or in the vicinity of, Bear Hollow Cave, and the population is expected to increase by 1000/year into the foreseeable future (Jim Medin, General Manager, Property Owners Association, Bella Vista Village, Arkansas, pers. comm., 1990).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The species is currently not of commercial value; however, albinistic cave species are often viewed as items of curiosity and intrigue. Bear Hollow Cave is heavily used by humans, as evidenced by a well-marked trail, extensive graffiti on the cave walls, and a large amount of litter inside the cave. The crayfish population of Bear Hollow Cave is subject to take from human curiosity and for aquarium pets. The entrances to Logan Cave have been purchased by the Service, and access is restricted.

C. Disease or Predation

Diseases are not known for cave crayfish. Predation of crayfish by the Ozark cavefish has been documented by Poulson (1961). The Ozark cavefish occurs in Logan Cave, but is not known from Bear Hollow Cave. Predation by naturally occurring predators is a normal aspect of the population dynamics of a species, and is not considered a threat to an otherwise healthy population of *Cambarus aculabrum*.

D. The Inadequacy of Existing Regulatory Mechanisms

Arkansas requires a scientific collecting permit for collecting any species, except taking for fish bait under other State regulations. Troglobitic species are further protected from possession and sale by Arkansas State law. This affords very limited protected owing to the difficulty of apprehending violators and limited resources for law enforcement. The species is not recognized or protected by any other existing Federal or State regulation.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The limited distribution of *Cambarus aculabrum*, with only two known populations, leaves the species vulnerable to localized environmental degradation. Population numbers in both caves are likely to be very small. The maximum number of crayfish observed from either cave at a single sighting has been 19. Small troglobitic crayfish population size appears to result from food limitation in cave habitats (Culver 1982). Other adaptations that have been noted in cave crayfish and other troglobitic species include lower metabolic rates, increased longevity, delayed maturity and reproduction, and decreased fecundity. One cave crayfish's life span has been estimated from 37 to 176 years, and sexual maturity was reached in 35

years on average (Culver 1982). The life span and other population parameters of *Cambarus aculabrum* are unknown, but it is likely they follow those known for other cave species. These characteristics would make the populations of *Cambarus aculabrum* more vulnerable to environmental pollution, bioaccumulation of toxins, and take, and limit the species' ability to recover from, or adapt to, environmental impacts.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the cave crayfish, *Cambarus aculabrum*, as endangered. Endangered status is appropriate because of the species' limited distribution and the vulnerability and isolation of the only two known populations. An endangered species, as defined by the Act, is threatened with extinction throughout all or a significant portion of its range. Critical habitat is not being designated for reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or, (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for reasons discussed below.

Section 7 of the Act requires Federal agencies to consult with the Service if any action they authorize, fund or conduct is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, if designated. The primary benefit of designating critical habitat lies in the protection of portions of a species' habitat that may be destroyed or adversely modified without the survival of the species being jeopardized. This crayfish, however, is only known to occur in two caves, and has never been reported from any other cave systems despite substantial surveys. With such a limited range, any activity that would destroy or adversely modify either of these caves' habitats would also jeopardize the continued existence of the species. In addition, Logan Cave is owned and protected by the Service as a part of the National Refuge System. Designation of this cave as critical habitat would not afford any additional increment of protection not already afforded by Service ownership. Bear Hollow Cave is privately owned and is easily accessed by the public. The crayfish population in this cave is extremely vulnerable to any vandalism that may occur from its designation as critical habitat. The Service believes that no appreciable benefits would accrue from critical habitat designation that are not afforded by the jeopardy standard and by the protection already afforded to Logan Cave by Service ownership. Protection will be afforded through the section 7 jeopardy standard and by prohibitions against take in section 9. Therefore, it is now prudent to designate critical habitat for *Cambarus aculabrum*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify any designated critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement is expected to include the Environmental Protection Agency through the Clean Water Act's provisions for pesticide registration and waste management actions. The Corps of Engineers will include this species in project planning and operation and during the permit review process. The Federal Highway Administration will consider impacts of bridge and road construction when known habitat may be impacted. Continuing urban development within the drainage basins may involve the Farmers Home Administration and their loan programs. The Soil Conservation Service will consider the species under their farmer's assistance programs.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. Since this species is not in trade, no permits are expected.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Aley, T., and C. Aley. 1987. Water quality protection studies, Logan Cave, Arkansas. Ozark Underground Laboratory. Report to Arkansas Game and Fish Commission. Pp. 1–2, 11–15.

Culver, D.C. 1982. Cave Life (Evolution and Ecology). Harvard Univ. Press. Pp 35, 51–54.

Figg, D.E., and K.B. Lister. 1990. Status survey of the troglobitic crayfish *Cambarus setosus* in Missouri. Missouri Department of Conservation. 7pp.

Hobbs, H.H., Jr., and A.V. Brown. 1987. A new troglobitic crayfish from Northwestern Arkansas (Decapoda: Cambaridae). Proc. Biol. Soc. Wash. 100(4), pp. 1041–1048.

Koppelman, J.B. 1990. A biochemical genetic analysis of troglobitic crayfish (Cambarus spp.) in Missouri, Oklahoma and Arkansas. Report to Missouri Department of Conservation, Oklahoma Natural Heritage Inventory, and Arkansas Game and Fish Commission. 12 pp.

Poulson, T.L. 1961. Cave adaptation in Amblyopsid fishes. Ph.D. dissertation, University of Michigan. Pp. 64–67.

Smith, K.L. 1984. The status of *Cambarus zophonastes* Hobbs and Bedinger, an endemic cave crayfish from Arkansas. Arkansas Natural Heritage Commission, Little Rock, Arkansas. 15 pp.

Author

The primary author of this rule is Paul D. Hartfield (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) for animals by adding the following, in alphabetical order under "CRUSTACEANS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CRUSTACEANS							
*	*	*	*	*	*		*
Crayfish (no common name).	*Cambarus aculabrum.*	U.S.A. (AR)	NA	E	499	NA	NA
*	*	*	*	*	*		*

Dated: February 26, 1993.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 93–9747 Filed 4–26–93; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Endangered or Threatened Status for Seven Central Florida Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status pursuant to the Endangered Species Act of 1973 as amended (Act) for the following five plants: *Cladonia perforata* (Florida perforate cladonia), *Crotalaria avonensis* (Avon Park harebells), *Nolina brittoniana* (Britton's beargrass), *Polygala lewtonii* (Lewton's polygala), and *Polygonella myriophylla* (sandlace). The Service determines threatened status for two plants: *Clitoria fragrans* (pigeon wings) and *Eriogonum longifolium* var. *gnaphalifolium* (scrub buckwheat). All seven plants are found in Highlands and Polk Counties in central Florida; four of the species range farther to the north or east, into Hernando, Lake, Osceola, Orange, and Marion Counties. One plant occurs on a barrier island in Okaloosa County, northwest Florida. Loss of habitat, mainly to citrus groves and residential development, is the primary threat to these species. This rule extends the Act's protection and recovery provisions to these seven species.

EFFECTIVE DATE: May 27, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Michael M. Bentzien, Assistant Field Supervisor, at the above address (telephone: 904–232–2580).

SUPPLEMENTARY INFORMATION:

Background

The seven plants determined to be endangered or threatened inhabit dry upland vegetation (including scrub, high pine, or intermediate "turkey oak barrens") in central peninsular Florida; one, the lichen *Cladonia perforata*, also occurs in coastal scrub in northwestern Florida.

Scrub is "a xeromorphic shrub community dominated by a layer of evergreen, or nearly evergreen oaks * * * or Florida rosemary (*Ceratiola ericoides*), or both, with or without a pine overstory, occupying well drained, infertile, sandy soils" (Myers 1990, pp. 154–155). The usual pine species in scrub is sand pine (*Pinus clausa*). Scrub is the habitat of the Florida scrub jay (*Aphelocoma coerulescens coerulescens*), a threatened species. Scrub occurs on dune ridges along Florida's Gulf and Atlantic coasts and on older inland sand ridges. Endemic plant species (species with limited geographic distributions) occur in scrub in various parts of Florida, with the largest concentration of endemics on the southernmost high interior ridge, the Lake Wales Ridge, northwest of Lake Okeechobee. Plants endemic to the Lake Wales Ridge are concentrated in scrub dominated by Florida rosemary on sites where the sand is apparently particularly devoid of nutrients; sites with slightly better nutrient status usually have dense stands of oaks, hickory, and sand pines (Myers 1990).

The scrub ecosystem is maintained by infrequent high intensity fires, with fires occurring as often as once a decade to less than once a century in sparsely-vegetated rosemary scrub (Myers 1990).

High pine (also called sandhills vegetation) is the other major type of natural vegetation on dry uplands in central Florida. It once was a very widespread forest type in the southeastern United States from Virginia to Texas (Myers 1990, citing several authors). High pine is longleaf pine forest with an open, grassy understory of wiregrass (*Aristida stricta*) and other grasses, numerous herbs, and deciduous turkey oaks (*Quercus laevis*) or bluejack oaks (*Q. incana*) that tolerate being burned to the ground. Frequent low-intensity fires maintained the grassy understory and prevented hardwoods from becoming canopy trees. In central Florida, high pine is intermingled with scrub; and "turkey oak barrens," intermediate between the two types of vegetation, exist in Polk and Highlands Counties (Christman 1988). Most of the "barrens" that are in evidence today may represent the results of logging of longleaf pine, followed by fire suppression, which allowed turkey oaks to reach tree size, and allowed evergreen oaks to invade, but Christman considers some of the barrens to be much older.

On central Florida's Lake Wales Ridge, the great majority of high pine was converted to citrus groves many years ago. Today, scrub is being converted to groves. Urban development is also destroying large areas of upland vegetation. Of approximately 546,800 acres of xeric upland vegetation originally in Highlands and Polk Counties, only approximately 15% remains intact (S. Freidman and J. Fitzpatrick 1992).

Because scrub and high pine in central Florida have many endemic plant taxa (species, subspecies, and varieties) Muller et al. 1989), the Service has responded by listing 13 plants from this region (50 FR 45616, Nov. 1, 1985; 52 FR 2227, Jan. 21, 1987; 52 FR 42068, Nov. 2, 1987). The Service has also listed scrub animals; two lizards (52 FR 42658, Nov. 6, 1987) and the Florida scrub jay (52 FR 20715, June 3, 1987). Other plant species are candidates for listing, including: *Schizachyrium niveum* (scrub bluestem), a species whose northern range limit is imperfectly known; it has been collected as far north as Aluchua County, Florida; *Calamintha ashei* (Ashe's savory, a mint) which has an unusual distribution, occurring in central Florida and southeast Georgia; and *Panicum abscissum* (cutthroat grass) which inhabits moist seeps near scrub and high pine.

Conservation measures that are underway to conserve the central Florida upland flora include:

(1) The State of Florida's Conservation and Recreation Lands program (CARL) is buying land in Highlands and Polk Counties. A completed acquisition, the Arbuckle State Forest and Park (13,700 acres), includes excellent examples of scrub vegetation. Acquisitions in progress in Polk County include Catfish Creek (1,100 acres acquired, 5,200 remaining) and Saddle Blanket Lakes (78 acres acquired, 800 remaining); and in Highlands County, Placid Lakes (negotiations underway). In these two counties, a massive Lake Wales Ecosystems proposal now under consideration incorporates most of the intact scrub and high pine in reasonably large tracts on the Lake Wales Ridge, totalling 32,000 acres (FL Dept. Natural Resources 1992).

(2) The Nature Conservancy has acquired preserves at Tiger Creek and Lake Apthorpe. This private organization has also purchased land at other locations, is assisting State and Federal land projects, and is working on fire management and other management issues for biological preserves.

(3) The Fish and Wildlife Service has proposed to create a Lake Wales Ridge National Wildlife Refuge, totalling about 10,000 acres, for endangered species that inhabit scrub vegetation. The 12 sites that might be acquired overlap with those in State projects. A large tract at Carter Creek (Sebring Highlands subdivision), Highlands County, is tentatively a high priority for acquisition, if funds become available.

Further information on conservation of these plants is provided below, under "Available Conservation Measures".

Discussion of the Seven Species

Cladonia perforata (Florida perforate cladonia) is a conspicuous lichen, "forming large dense clusters 20–60 mm [0.8–2.5 inches] tall" (Hilsenbeck and Muller 1991). *Cladonia* and similar lichens (family Cladoniaceae) are probably the most commonly collected lichens (Evans 1952). *Cladonia subtenuis* or *Cladonia evansii* are used as miniature shrubbery in architectural models and floral arrangements. The latter species is characteristic of scrub (T. Hendrickson, pers. comm., 1992).

The branches of *Cladonia* lichens differ from those of other branched (fruticose) lichens in that the *Cladonia* branches (podetia) are developmentally derived from spore-producing structures, rather than from the vegetative body (thallus) of the fungus that makes up the basic structure of a typical lichen. For *Cladonia perforata*, the vegetative body is not in evidence, and "the podetia, which grow in intricate tufts, are pale yellowish grey, and the surface appears more or less glossy. Individual podetia are mostly 40–60 mm. (1–1.5 inches) in height and their larger axes measure 3–6 mm. in diameter" (Evans 1952, p. 326). The podetia branch dichotomously (i.e., they fork), or they form whorls (splitting into three or more branches). "Wherever a branching takes place a circular opening is formed in the axil (just above the branch), and the larger of these openings measure 1–1.5 mm (0.06 inches) in diameter" (Evans 1952). Toward the top of the plant, where the branches are smaller, the openings are smaller, too. The surfaces of the podetia are uniform. The podetial wall's interior surface, facing the central canal, consists of loosely woven hyphae (fungal strands). "This species is also one of the few lichens that produces the *para*-depside squamatic acid. Although no medicinal or other useful properties for squamatic acid are currently known, this natural product has not been studied in this regard. (Other lichen products *do* have medicinal applications). Squamatic acid is found in nature only in lichens and there only in a few species * * *" (W.L. Culberson, Duke University, *in litt.*, Nov. 1992).

Cladonia uncialis, which is very similar to *Cladonia perforata*, has podetial surfaces with more or less distinct greenish areolae, rather than appearing uniform. *Cladonia uncialis* does not have a perforation in every axil, and its podetial walls have a solid layer of cartilaginous tissue on the interior (Evans 1952). Although Evans reported *C. uncialis* from southwestern Florida, Moore (1968) did not find it in Florida.

Cladonia leporina, which is common in Florida, is very similar to *Cladonia perforata* except that it has no holes in the podetia and the podetia have red tips consisting of spore-producing tissue (apothecia). *Cladonia perforata* has larger, more regularly branched podetia, with perforations. *Cladonia perforata* is illustrated in Hale (1983, p. 18) and in Buckley and Hendrickson (1988).

Cladonia perforata was first collected by George Llano in 1945 on Santa Rosa Island, and was named by Evans (1952). Llano and Evans both stated the site was in Escambia County, but Wilhelm and Burkhalter (1990) showed that the site was really in Okaloosa County, and had been paved over sometime between 1945 and the mid 1950's, when Llano revisited the area. The lichen was not collected again until Moore (1968)

found it in Highlands County, central Florida during her massive survey of Florida lichens in which she examined nearly 6,000 specimens, most of them collected by herself from 1964 through 1967. Buckley and Hendrickson (1988) relocated the remnants of Moore's population, and searched the surrounding area, including Archbold Biological Station, whose well-mapped vegetation contains 84 "rosemary balds", small hills of excessively drained sand (Archbold soil series) occupied by Florida rosemary, an array of smaller vascular plants (many of them endemic, including *Hypericum cumulicola* and *Eryngium cuneifolium*), and often a blanket of reindeer lichens. Buckley and Hendrickson (1988) found *Cladonia perforata* on six rosemary balds, and they report that ecologist Ann Johnson found the lichen on a seventh bald. They extended the search beyond Archbold Biological Station, but could find *Cladonia perforata* only in a six square mile area south and west of the station.

Wilhelm and Burkhalter (1990) relocated the lichen near its original locality on Santa Rosa Island (Eglin Air Force Base, Okaloosa County) but could not find it elsewhere on the barrier islands in an extensive search from Gulf Shores, Alabama, to Grayton Beach, Florida (Wilhelm and Burkhalter 1990).

By 1989, *Cladonia* and similar lichens had been collected throughout Florida; both Evans and Moore had conducted a great deal of field work. The Alexander W. Evans Herbarium is now at the Smithsonian Institution. It contains the type specimen of *Cladonia perforata* and more recent collections by Barbara Moore, Ann Buckley, Theodore Hendrickson, Gerould Wilhem and James Burkhalter, and a recent voucher specimen from Eglin Air Force Base made by Lt. Col. Douglas Ripley. The Smithsonian has no specimens from localities other than those reported above, and this indirect evidence suggested that "the range and occurrences of this lichen are truly limited" (Mason E. Hale, Jr. and Sherry K. Pittam, Botany, Smithsonian Institution, *in litt.*, Dec. 1989).

Hilsenbeck and Muller (1991) with several collaborators conducted a survey for *Cladonia perforata*, searching rosemary scrub at 111 sites throughout Florida. They enlisted James Allison and Thomas Patrick (Georgia Freshwater Wetlands and Heritage Inventory) to search similar areas in southeast Georgia (15 sites in 8 counties). Separately, as part of coastal inventories for the Florida Natural Areas Inventory, Ann Johnson and collaborators searched coastal scrubs along the lower east coast of Florida (Martin, Palm Beach, and St. Lucie Counties).

Hilsenbeck and Muller assembled the existing data to show that the lichen had been found at only 12 sites (including 6 on Archbold Biological Station). Earlier estimates of up to 15 sites were mistaken. In Okaloosa County, they confirmed the two known sites on Santa Rosa Island. They found that one site had recently been destroyed in Highlands County, but failed to find any new sites. They concluded that the lichen is indeed rare, with an estimated total of at least 26,000 individuals: 17,000 on one private site, 3,000 on another private site, 4,400 on Archbold Biological Station, and only 1,300 individuals on Santa Rosa Island. The largest site with *Cladonia perforata* is protected by its private owner; neither State nor Federal acquisition of the two private sites is presently contemplated.

In addition to the sites reported by Hilsenbeck and Muller, the Lake Apthorpe Preserve in Highlands County, owned by The Nature Conservancy, has *Cladonia perforata* (G. Babb, The Nature Conservancy, pers. comm., 1991; voucher specimen by Eric Menges at Archbold Biological Station). In January 1993, a biologist with the Archbold Biological Station discovered an additional population near the coast in southeast Florida in Martin County.

Both the central and panhandle Florida habitats of *Cladonia perforata* are rich in endemic vascular plant species that are associated with Florida rosemary. Several species or pairs of closely-related species have disjunct distributions between the two areas, much like *Cladonia perforata*. They include: *Lupinus aridorum* and *L. westianus*, *Paronychia chartacea*, and *Conradina brevifolia* and *C. canescens*.

Clitoria fragrans (pigeon wings) (Fanz 1979) is a member of the pea family (Fabaceae or Leguminosae). It is one of three species of the genus occurring in the southeastern states. The others are the butterfly pea, *Clitoria mariana*, and a species escaped from cultivation, *C. ternata*.

Clitoria fragrans is an erect perennial herb, 15–50 cm (6–20 inches) tall, with one or a few stems growing from a thick horizontal root that may be more than 2 m (6 feet) long. The stems are wiry (1–2 mm or 0.04–0.08 inch thick) and somewhat zigzag. The leaves have 3 rather leathery leaflets. Leaflets of the upper leaves are linear (lower leaves somewhat wider) and are obtuse (blunt) at the tip. The leaflets of *Clitoria mariana* are wider and are acute (pointed) at the tip.

Clitoria fragrans has two types of flowers: chasmogamous (showy insect pollinated) and cleistogamous (small, lacking petals, self-pollinating). Chasmogamous flowers are usually borne in pairs. The flowers are inverted so that the anthers and stigma touch the backs of visiting insects (the only other legume genus with inverted flowers is *Centrosema*, with two species in central Florida). The corolla has one large petal, the standard petal, 3.5–4.5 cm (1.5–2 inches) long (Fanz 1977) or 4.5–5 cm long (Isely 1990), colored lilac. The keel is small and white. The common name, pigeon wings, refers to the appearance of the flower. It was suggested by McFarlin on a herbarium specimen and adopted by Fanz (1979). Flowers with petals appear from May to June, with a few petalless (cleistogamous) flowers borne as late as September. Small thought the flowers were fragrant. Fanz (1977) detected only a very faint fragrance, but noted a heavy scent of flowering saw palmettos at the locality where Small collected the plant. The seed pod is borne on a stipe (stalk) that projects from the dried calyx (Isely 1990, p. 153; Fanz 1977, pp. 696–698; Mabberley 1987, p. 131).

Clitoria fragrans is easily distinguished from *C. mariana* by its purplish, glaucous stems, non-twining habit (it is an upright herb, not a vine), narrower leaflets, smaller flowers, and long-stipitate fruits (Fanz 1977, p. 702). The flowers of *Centrosema* differ from those of *Clitoria* by having shorter calyx tubes. *Centrosema arenicola* is restricted to much the same habitats as *Clitoria fragrans*, but has a somewhat larger range.

Clitoria fragrans was described by J.K. Small (1926) from specimens he collected near Sebring, Highlands County. McFarlin applied the name *Clitoria pinetorum* to specimens he collected, but he never published the name (Fanz 1977). Small (1933, p. 722) transferred the North American species of *Clitoria* to a new genus, *Martiusia*, but Fanz (1977) returned them to *Clitoria*.

Clitoria fragrans is distributed mainly on the Lake Wales Ridge in Highlands and Polk Counties (Fanz 1977, Wunderlin et al. 1980a, Christman 1988). On the Ridge, it is protected at Arbuckle State Forest and Park, Archbold Biological Station (private), Lake Apthorpe and Tiber Creek (The Nature Conservancy), and at Saddle Blanket Lakes (State acquisition project). It is also present at several sites that may be acquired by the State and/or Fish and Wildlife Service, including Carter Creek (Sebring Highlands) and a tract south of Lake Placid. It is reported to occur at the Avon Park Air Force Range (on the Bombing Range Ridge, a

separate landform from the Lake Wales Ridge) (Florida Natural Areas Inventory). It can be considered protected there. Fanz (1977) notes a collection made in Leesburg, Lake County in 1910, and a 1964 collection from Osceola County, 12 miles south of Holopaw via US 441. This site is on one of a series of low ridges with scrub vegetation in ranching country.

Clitoria fragrans occurs in scrub vegetation, turkey oak barrens, and at least at the edges of high pine (Christman and Judd 1990); it appears to have habitat preferences similar to *Eriogonum longifolium* var. *gnaphalifolium* and *Polygala lewtonii*, although its range does not extend as far north as these species. Fanz (1979) considers it a species of white sand soils, while the other two species tend to occur on yellow sand. Christman (pers. comm., 1992) considers it a species of yellow sand.

Crotalaria avonensis (Avon Park harebells) is also a member of the pea family. It was first collected by Ray Garrett of Avon Park in 1950; his specimen was assigned to *Crotalaria maritima* (=*C. rotundifolia*) by D.B. Ward in 1967. This specimen was not examined by Windler (1974) for his revision of the genus. Subsequently, K. DeLaney collected the plant in 1986 and, with R. Wunderlin, described it as a new species distinct from *Crotalaria rotundifolia*, a variable species that ranges from Virginia to Panama (DeLaney and Wunderlin 1989).

Crotalaria avonensis is a perennial herb. A vertical tap root produces flowering stems that originate as much as 10 cm (4 inches) below the surface, grow upright for only a few centimeters above the surface, and terminate in flowering racemes. The leaves are roughly 1–2 cm (0.5–1 inch) long, rounded, somewhat succulent, and coated with white or yellowish-white hairs. The racemes are both terminal and on short secondary branches opposite leaves. The flower, shaped like a typical pea flower, has a yellow corolla about 8–9 mm (0.3–0.4 inch) long. The keel petal (at the bottom of the corolla) is shorter than the wing petals (in *C. rotundifolia*, the wing petals are shorter). The seed pods are inflated, tan to gray to maroon, hairless or nearly so, 14–25 mm (.56–1.0 inch) long, and contain up to 18 seeds per pod. The pods can be nearly as long as the upright flower stalks that hold them in place. Flowering begins in mid-March and continues profusely until June. After flowering, the plants enter a vegetative phase, forming clusters of stems that give a clumped or rosette appearance. The plants are dormant from late fall or early winter until March. *Crotalaria rotundifolia* does not have a pronounced reproductive cycle, flowering most of the year (DeLaney and Wunderlin 1989).

Crotalaria avonensis is one of the most narrowly distributed of the Lake Wales Ridge endemics, currently known only from three sites, including the Saddle Blanket Lakes and Carter Creek tracts that might be protected through acquisition (K. DeLaney, *in litt.*, 1991). It typically grows in full sun on bare white sand or in association with clumps of reindeer lichens of the genus *Cladonia*, but many individuals occur in partial shade of other plants (DeLaney and Wunderlin 1989).

Scrub buckwheat is in the genus *Erigonum*, included in the Polygonaceae (jointweed family). This genus lacks the sheathing stipules (ocreae) that are typical of the family. *Eriogonum* includes about 150 species, mostly in western North America. Florida has only two species, both native to high pine: *Eriogonum tomentosum* is common throughout the northern part of the state, as far south as Highlands County. The second species, named *Eriogonum floridanum* by J.K. Small (1903), is restricted to central Florida (Small 1933, p. 445). Subsequent publications on Florida's flora have consistently adopted Small's treatment of *E. floridanum* as a full species (Kral 1983, p. 445; Ward 1979, p. 86; Wunderlin 1982, p. 169). This is a reasonable approach because *E. floridanum* is separated by hundreds of miles from the most similar taxa. However, James Reveal (1968), the expert on the genus, prefers an alternative approach. He treats the Florida plants as a variety of *Eriogonum longifolium*, a widespread, variable species that is represented east of the Mississippi by var. *harperi* (a candidate for Federal listing) in northern Alabama, Tennessee, and Kentucky (Kral 1983 and Kentucky heritage program data), and by *Eriogonum longifolium* var. *gnaphalifolium* Gandoger. Gandoger's (1906) name for the plant was based on a specimen collected near Eustis, Florida by "Hitchcock", evidently the eminent grass systematist A.S. Hitchcock. The Service accepts Reveal's taxonomic treatment in recognition of his expertise in this complex genus, while acknowledging that there are differences of opinion among botanists as to how to apply nomenclatural ranks to geographically isolated, morphologically distinguishable plant populations.

Scrub buckwheat is a perennial herb with a single stem that grows from a stout, woody root. Most of the leaves are at the base of the stem. They are 15–20 cm (6–8 inches) long, narrowly oblanceolate, entire, and green or bronze-green above, densely white-wooly beneath. Leaves on the stem are smaller and arranged alternately. The stem is erect, up to 1 m (3 feet) tall, and terminates in an open panicle. Each branch of the panicle ends in a cup-shaped involucre, with 5–8 teeth about 5 mm (0.2 inch) long. Within each involucre, 15–20 flowers form a cluster, with the stalk of each flower starting out erect, then reflexing so the flower hangs down below the involucre. Each flower is 6–8 mm (0.2–0.3 inch) long, with 6 linear sepals. The involucre and flowers are silvery, silky-pubescent. The only other species of *Eriogonum* in Florida, *E. tomentosum*, has leafy bracts in the racemes and the flowering stem has opposite leaves (Ward 1979, Wunderlin 1982). Both plants are illustrated in Rickett (1967). Because scrub buckwheat is a large, conspicuous plant that can not be mistaken for any other, its distribution is accurately known.

Scrub buckwheat "occurs in habitats intermediate between scrub and sandhills [high pine], and in turkey oak barrens from Marion County to Highlands County" (Christman 1988, p. 136). Other plants, including *Polygala lewtonii*, *Chionanthus pygmaeus*, and *Prunus geniculata*, occur in the same places. The northern range limit for scrub buckwheat is in Ocala National Forest and areas of mixed scrub and high pine south of Ocala in Marion County; suitable habitat and possibly the plant extend south into northern Sumter County. Scrub buckwheat historically occurred near Eustis in Lake County (there are no recent records), and it still occurs near Clermont in remnants of high pine with *Polygala lewtonii* and several endangered plant species. Scrub buckwheat occurs at other scattered localities, including Southwest Orange county, the northwest corner of Osceola County, and on the Lake Wales Ridge in Polk and Highlands Counties, as far south as Archbold Biological Station, south of Lake Placid. Most of the recent records for the species are from Polk and Highlands Counties, partly because intensive biological surveys of scrub vegetation have been conducted in those counties (Christman 1988; pers. comm. by K. DeLaney and E. Menges, 1991). Scrub buckwheat may once have occurred in the Tampa area, if a specimen cited by Gandoger as the type specimen of "*E. longifolium* var. *floridana*" should be assigned to this variety. An upland in southern Marion County where this species occurs

extends into Sumter County, and the plant's range may extend into Sumter, too.

Scrub buckwheat is protected in the Ocala National Forest, Lake Arbuckle State Forest and State Park, and Nature Conservancy preserves at Tiger Creek and Lake Apthorpe. Scrub buckwheat is likely to be protected at Catfish Creek and several other tracts if State or Federal land acquisition occurs as planned.

Nolina brittoniana (scrub beargrass) was collected and described by G.V. Nash (1895). H.H. Bartlett (1909) reviewed the genus in the Southeast and described the only other species of *Nolina* in Florida, *Nolina atopocarpa*, a candidate for Federal listing that occurs in the panhandle and in the peninsula from St. Augustine south to Charlotte County. The genus *Nolina* belongs to the Agavaceae (agave family), which includes century plants and yuccas. The genus is centered in southwestern North America (Mabberley 1987). The Agavaceae are often included in the Liliaceae (lily family), in the broad sense.

Nolina brittoniana is a perennial growing from a short, thick, fleshy, bulblike rootstock. The leaves are 1–2 meters long (3–6 feet) and 6–13 mm (0.2–0.5 inch) wide, forming a rosette with the youngest leaves upright and the oldest lying nearly flat on the ground. The flowering stem, usually solitary, grows at least 2 meters (6 feet) high from the rosette in April. The inflorescence is a panicle with about 6 branches; when in bloom, the branches are covered with small white six-parted flowers, making the plant very conspicuous (Kral 1983, Wunderlin et al. 1980b). Individual plants appear to usually have all male or all female flowers. The plants bear abundant seed, which is easily germinated, and the plant is not difficult to propagate (S. Wallace, Bok Tower Gardens, pers. comm., 1990). In nature, this species occurs as scattered specimens, and rarely if ever forms large colonies. *Nolina atopocarpa*, a species of dry flatwoods, may occur in the vicinity of *Nolina brittoniana;* this species has shorter leaves, greenish flowers, and asymmetric fruits (*N. brittoniana* has symmetrical fruits, triangular in cross section).

Nolina brittoniana occurs in scrub, high pine, and even occasionally in hammocks (Christman 1988). Its range is from the south end of the Lake Wales Ridge in Highlands County north to Orange County (Orlando) and northern Lake County. An apparently isolated locality was reported from Hernando County, north of Tampa.

On the Lake Wales Ridge, *Nolina brittoniana* occurs in both Highlands and Polk Counties, where it occurs in most of the tracts that are targeted for acquisition by the State or by the Fish and Wildlife Service. Northeast of Polk County, *Nolina brittoniana* occurred in the northwest corner of Osceola County and western Orange County (where it was collected in 1958). The plant probably still exists in Orange County, but remaining habitat is being destroyed very rapidly. In Lake County, *Nolina brittoniana* occurs in remnants of high pine on hills west of Lake Apopka, near Clermont. Also in Lake County, the type specimens of *Nolina brittoniana* were collected near Eustis in 1894, and the plant was collected near Tavares in 1941. Robert McCartney (pers. comm., 1990), a knowledgeable field worker, considers the northern range limit for *Nolina brittoniana* to be northern Lake County; however, to the north, a specimen was collected on "low ground" near Belleview, Marion County in 1928. Christman (1988) doubts this locality, but suitable habitat does exist in the vicinity. The plant was collected in a "much disturbed, old white sand scrub with hardwood intrusion" north of Tampa in Hernando County, in 1961. Larger scrubs in the same area have probably not been searched for rare plants.

Polygala lewtonii (Lewton's polygala) is a member of the Polygalaceae (milkwort family). It was first collected near Frostproof, Florida by F.L. Lewton in 1894, and was named by Small (1898). Further information on plants named by Small is provided in Austin 1987. The status of *Polygala lewtonii* as a distinct species was affirmed by Blake (1924) and James (1957). The genus has since been reviewed by Miller (1970) and Saulmon (1971).

Polygala lewtonii is a perennial with a taproot. Each plant produces one to several annual stems, which are spreading, upward-curving, or erect, and are often branched. The leaves are small, sessile, rather succulent, broader toward the tip, and are borne upright, tending to overlap along the stem, like shingles. The normally opening flowers are in erect, loosely flowered racemes up to 1.5 cm (0.6 inch) long. They are about 0.5 cm long and bright pink (Wunderlin et al. 1981) or "attractive purplish-red" (Ward and Godfrey 1979). Each flower is about 3.5 mm (0.14 inch) long. Two of the five sepals are enlarged and wing-like, between which the largest of the three petals forms a keel that ends in a tuft of finger-like projections (Ward and Godfrey 1979). This species is closely related to *Polygala polygama*, a widespread species that tends to form larger clumps and has a longer root, narrower leaves, and differently shaped wing sepals. *Polygala polygama* has short branches that hug the ground, bearing inconspicuous self-pollinating (cleistogamous) flowers. *Polygala lewtonii* is inferred to have similar cleistogamous flowers (James 1957 cited in Ward and Godfrey 1979), but Wunderlin et al. (1981) are not clear that they have been observed.

Polygala lewtonii occurs most frequently in habitats intermediate between high pine and scrub (turkey oak barrens), as well as in both habitats (Christman 1988, Wunderlin et al. 1981). It has been collected in Highlands, Polk Osceola, Lake, and Marion Counties. In Highlands County, it was collected at two sites near Sebring in 1945 and 1955, but was not seen again (Wunderlin et al. 1981) until recently, when it was found in turkey oak barrens northeast of Sebring (J. Fitzpatrick, Archbold Biological Station, pers. comm., 1992).

In Polk County, *Polygala lewtonii* is currently known to occur in Arbuckle State Forest and Park, the State's Catfish Creek land acquisition project (G. Babb, The Nature Conservancy, *in litt.*, 1991), The Nature Conservancy's Tiger Creek Preserve (Wunderlin et al. 1981), at a site near Davenport that was partly bulldozed in 1991, and in the Poinciana residential development (N. Bissett, *in litt.*, 1991). It also occurs at a site with the endangered Florida ziziphus (*Ziziphus celata*) (DeLaney et al. 1989).

In Osceola County, *Polygala lewtonii* was collected in 1974 at the northwest corner of the county, on a dry prairie above Lake Davenport. In Lake County, the plant has been collected in scrub four miles north of Astatula and from at least five sites in the hills between Lake Apopka and Clermont. These hills were once covered with high pine that had a significant number of scrub plant species, including the endangered *Prunus geniculata* (scrub plum), *Nolina brittoniana* (Wunderlin et al. 1981), and *Warea amplexifolia* (wide-leaf mustard) (Judd 1980). *Polygala lewtonii* was collected once near Eustis (James 1957, cited in Wunderlin et al. 1981). The plant was collected from Ocala National Forest (Marion County) in firebreaks near Juniper Springs, 1949, and apparently not again until 1991, when it was found in scrub (C. Greenberg, Univ. of FL, pers. comm., 1992).

Polygonella myriophylla, a member of the Polygonaceae (jointweed family), was first collected by J.K. Small and DeWinkler on a scrub ridge south of Frostproof, Polk County, Florida. Small (1924) described it as a new species,

Dentoceras myriophylla. Horton (1963) combined two of Small's genera with the genus *Polygonella*, making this species *Polygonella myriophylla*. The common name of sandlace comes from Christman (1988); other possibilities are Small's jointweed (Florida Natural Areas Inventory) or woody wireweed (Wunderlin 1982).

Polygonella myriophylla is a sprawling shrub that, as G.L. Webster noted on a herbarium specimen, has the habit of the popular landscaping plant creeping juniper, *Juniperus horizontalis* (cited in Wunderlin et al. 1980c). The shrub's many branches zigzag along the ground and root at the nodes, forming low mats. The lower parts of the creeping branches have reddish-brown bark that cracks and partly separates in long, flat, interlacing strips. The short lateral branches are upright, leafy, and end in flowering racemes. *Polygonella myriophylla* has the distinctive sheathing stipules (ocreae and ocreolae) typical of the jointweed family. The leaves are needle-like, fleshy, 3–10 mm (0.1–0.4 inch) long. The small flowers have white (or pink or yellow) petal-like sepals up to 3–4 mm (0.1 inch) long. Because this shrub's appearance is so unique, information on its distribution and abundance is particularly complete and accurate.

Polygonella myriophylla is, curiously, absent from the southern tip of the Lake Wales Ridge. Its range extends from Archbold Biological Station northward along the Lake Wales Ridge to the Davenport-Poinciana area in northern Polk County. Further northeast, it occurs at one site in Osceola County and three in western Orange County where it occurs with the endangered scrub lupine *Lupinus aridorum* (Wunderlin 1984). The Orange County sites are at Vineland, a rapidly developing portion of the Orlando metropolitan area. A report of *Polygonella myriophylla* from Lake County was based on a misidentification (Wunderlin et al. 1980c, Christman 1988). Kral's (1983) distribution map places this plant in DeSoto County, based on a specimen collected by J.K. Small and J.B. DeWinkler in 1919, before Highlands County was created in 1921 (specimen cited in Wunderlin et al. 1980c).

Polygonella myriophylla occurs within scrubs that cover about 25,000 acres (Christman 1988). It is currently protected at Archbold Biological Station (where it is rare), Saddle Blanket Lakes and Catfish Creek (State acquisition projects), and Lake Apthorpe (The Nature Conservancy). It is abundant in several tracts that are proposed for acquisition by the State or the Service.

Previous Federal Action

Federal government actions on four of the seven plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. *Nolina brittoniana, Polygala lewtonii, and Polygonella myriphylla* were included in these documents as endangered species, and *Clitoria frangrans* as a threatened species.

On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This proposal included *Nolina brittoniana, Polygala lewtonii*, and *Polygonella myriophylla*. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal.

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480). This notice included *Clitoria fragrans, Eriogonum longifolium* var. *gnaphalifolium* (under the name *Eriogonum floridanum*), and *Polygala lewtonii* as category 1 candidates, and *Nolina brittoniana* and *Polygonella myriophylla* as category 2 candidates. Category 1 candidates are those for which the Service currently has on file substantial information on biological vulnerability and threats to support preparation of listing proposals, while category 2 candidates are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the notice of review (48 FR 53640); the notice changed *Eriogonum longifolium* var. *gnaphalifolium* to a category 2 species. Another updated notice of review published September 27, 1985 (50 FR 39526), changed *Polygonella myriophylla* to a category 3C species (no longer a candidate for Federal listing), based on a status survey that gave the impression that the plant was secure because it is locally abundant. Christman (*in litt.* 1987, 1988) pointed out that this was a mistake: *Polygonella myriophylla* is "much rarer, and more endangered, than several federally-listed scrub species, including *Paronychia chartacea, Chionanthus pygmaeus, Polygonella basiramia, Prunus geniculata*, for example."

On February 21, 1990 (55 FR 6184), the plant notice was again revised, assigning category 1 candidate status to all five plants that had previously been candidates, based on an abundance of new survey information. The 1990 notice assigned category 2 status to *Crotalaria avonensis* and to *Cladonia perforata*. Since then, a status survey on *Cladonia perforata* has been completed and further information on *Crotalaria avonensis* has been received from Mr. Kris Delaney, qualifying these species for category 1 status.

Based on the Service's system for ranking candidate species for listing, which has a range of 1 to 12, the listing priority number for each of the five endangered species in this rule was 2. *Clitoria fragrans* and *Eriogonum longifolium* var. *gnaphalifolium*, the two threatened species, were assigned a listing priority number of 8 and 9, respectively. A complete explanation of the Service's listing and recovery priority guidelines was published in the **Federal Register** of September 21, 1983 (48 FR 43098).

Petitions

The Service was petitioned to list the lichen *Cladonia perforata* by Ms. Ann Buckley in a letter received June 5, 1989. The Service found the action requested by the petition to be warranted, but precluded by work on other species having higher priority for listing (55 FR 31610, August 3, 1990). An administrative finding of "warranted but precluded" was repeated in October 1991, as discussed below, in connection with the Service's annual review of recycled petitions.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all

petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Clitoria fragrans, Nolina brittoniana, Polygala lewtonii,* and *Polygonella myriophylla* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1991, the Service found that the petitioned listing of these species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of a listing proposal on September 30, 1992 (57 FR 45020) constituted the final petition finding for these five species. The September 30, 1992, proposal also included *Eriogonum longifolium* var. *gnaphalifolium* and *Crotalaria avonensis,* for which no petition had been received.

Summary of Comments and Recommendations

In the September 30, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice which invited general public comment was published on October 18, 1992, in the Sebring News-Sun newspaper (Highlands County) and on October 20, 1992, in the Hernando Times (Hernando County), Daily Commercial (Leesburg, Lake County), Ocala Star-Banner (Marion County), Daily News (Fort Walton Beach, Okaloosa County), The Orlando Sentinel (Orange County), and the Highlander (Lake Wales, Polk County). Comments were received from a member of the Polk County Board of County Commissioners and seven individuals. All commenters supported the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Cladonia perforata, Crotalaria avonensis, Nolina brittoniana, Polygala lewtonii,* and *Polygonella myriophylla* should be classified as endangered species, and that *Clitoria fragrans* and *Eriogonum longifolium* var. *gnaphalifolium* should be classified as threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cladonia perforata* A.W. Evans (Florida perforate cladonia), *Clitoria fragrans* Small (pigeon wings), *Crotalaria avonensis* DeLaney & Wunderlin (Avon Park harebells), *Eriogonum longifolium* Nuttall var. *gnaphalifolium* Gandoger (=*Eriogonum floridanum* Small) (scrub buckwheat), *Nolina brittoniana* Nash (Britton's beargrass), *Polygala lewtonii* Small (Lewton's polygala), and *Polygonella myriophylla* (Small) Horton (sandlace) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

All seven plants have already suffered serious loss of habitat to agriculture (citrus groves and pastures) and residential development, and all are threatened by future development. The Lake Wales Ridge in Polk and Highlands Counties originally had 250,000 acres of xeric upland vegetation (scrub and high pine), of which 27,500 acres remain. Because the plant species endemic to scrub or high pine in central Florida had much narrower local distributions within the Ridge (each species is likely to be found in only a fraction of seemingly suitable habitat), the loss of habitat for particular species has often been more severe than the overall figures indicate.

Citrus groves are being expanded rapidly on the southern Lake Wales Ridge because the area escaped the worst effects of severe freezes during the 1980's, especially December 1989. Development of a citrus grove recently caused the destruction of one population of *Cladonia perforata,* and other significant recent losses of scrub habitat have been documented from aerial photography by scientists at Archbold Biological Station. Property taxation in most Florida counties favors agricultural land use and penalizes leaving land "idle" in native vegetation. These policies may change; Polk County already has "preservation" zoning to protect natural vegetation.

The population of the Lake Wales Ridge is increasing as retirees and other immigrants to Florida, as well as retirees from within Florida, are attracted to areas with low costs of living and the perception of few urban problems. It is anticipated that immigration into central Florida will continue. This threatens the seven plants because most of them (*Cladonia perforata* and *Polygala lewtonii* appear to be exceptions) occur in subdivisions with unimproved lots without streets or utilities. The lack of streets discouraged building; the divided ownerships of these subdivisions and the high prices for which lots were originally sold discouraged the conversion of these subdivisions to citrus. As a result, these subdivisions have unintentionally protected the native vegetation, and several may be acquired as biological preserves, despite the difficulty of purchasing land on a lot-by-lot basis. There may be little time available to begin land acquisition at the largest subdivision under consideration for acquisition, Sebring Highlands (Carter Creek), where assessments collected from landowners have built up to a large enough sum to pave the main road through the subdivision. An electric line has already been built, so with the road paved, widespread construction of houses can be anticipated.

Funding for State or Federal land acquisition to conserve central Florida plants is not yet assured. Existing land acquisition plans by the Service focus on purchasing and managing scrub rather than high pine; this leaves *Eriogonum longifolium* var. *gnaphalifolium* and *Polygala lewtonii* unprotected. The State intends to purchase high pine, but funding for land management could be limited.

The largest populations of the lichen *Cladonia perforata* are on private land; the principal landowner intends to protect the lichen, but it is necessary to be cautious about the long-term conservation of this area.

In the counties north of Highlands and Polk, the pressures of residential development are generally severe, and historic populations of plants in the Orlando (Orange County area), as well as Eustis and Clermont (Lake County) areas, are known to have disappeared.

Clitoria fragrans occurs on Avon Park Air Force Range and has been collected on a low ridge with scrub in southern Osceola County, in a region of large ranches. The plant's habitat is appropriately managed on the Air Force Range, and conservations with range conservationists with the Soil Conservation Service indicate that scrub is quite likely to remain intact on ranches. Similarly, *Eriogonum longifolium* var. *gnaphalifolium* and *Polygala lewtonii* are probably secure in Ocala National Forest, although evaluation is needed of the distribution and management of these two species in the Forest. The relative security of these two species in parts of their range is the

primary reason for classifying them as threatened rather than endangered.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is little commercial trade in these seven plants, although *Nolina brittoniana* and *Polygonella myriophylla* are propagated and sold on a limited scale (Association of Florida Native Nurseries 1989). Commercial trade in these species should not adversely affect them, provided that nursery operators abide by State law and the Florida Native Plant Society's policy on transplanting native plants from the wild (Schwartz and Young 1992).

C. Disease or Predation

Not applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

Nolina brittoniana and *Polygala lewtonii* are listed as endangered species, and *Clitoria fragrans* and *Eriogonum longifolium* var. *gnaphalifolium* are listed as threatened species under the Preservation of Native Flora of Florida law (section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will provide additional protection through the consultation requirements of section 7, recovery planning, and the prohibitions of section 9, which include the Act's additional penalties for taking of plants in violation of Florida law. The Florida law provides for automatic addition of federally listed plants to the State's list as endangered species.

Efforts by the Service to protect the threatened Florida scrub jay may benefit other plants and animals of the scrub. The scrub jay inhabits much of the scrub vegetation on the Lake Wales Ridge. The Endangered Species Act's prohibition against take of listed animals (section 9(a)(1)(B)) means that landowners seeking to destroy scrub habitat upon which scrub jays depend run the risk of a "taking" violation unless they obtain a section 10(a)(2) permit, which the Service can issue only if the landowner submits or participates in an acceptable conservation plan for the scrub jay.

As explained in the background section, 13 plant species from central Florida scrub and high pine habitat are already federally listed and recovery plans have been prepared (Fish and Wildlife Service 1987a, 1990). A final rule is in preparation to list a fourteenth species, the shortleaved rosemary *Conradina brevifolia*. Efforts already underway to conserve the 13 plants should benefit most of the species in this rule.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Fire occurs in scrub vegetation at irregular intervals. For all of the plants listed in this rule, other than the lichen *Cladonia perforata*, fire is probably beneficial. For the lichen, however, fire seems to be entirely destructive. The largest populations of the lichen are in the largest existing rosemary balds, which seem to have been affected by fires at extremely long intervals; the area "supports an uneven-aged stand of sand pines, with the oldest trees approaching 100 years" (Myers 1990). At the neighboring Archbold Biological Station, *Cladonia perforata* probably benefited from many years of fire suppression, which also left the Station grounds susceptible to wildfire. Today, the Station is implementing a prescribed fire program that probably offers the best long-term chance to maintain rosemary balds with *Cladonia* lichens, but there is a real possibility that lichen populations may be harmed by fires.

Human activities, including off road vehicle use, trash dumping, and inadvertent trampling during outdoor recreation activities, threaten most of these plants. The lichen *Cladonia perforata* appears to be vulnerable to public use on Eglin Air Force Base, Santa Rosa Island.

Hurricane storm surges may wash over the lichen populations on Santa Rosa Island.

The limited geographic distribution of each of the seven species, the fragmentation of remaining habitat into small segments isolated from each other, and the small sizes of populations of some species, especially *Cladonia perforata* and *Polygala lewtonii*, exacerbate the threats faced by these species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Crotalaria avonensis, Nolina brittoniana, Polygala lewtonii*, and *Polygonella myriophylla* as endangered species, and *Clitoria fragrans* and *Eriogonum longifolium* var. *gnaphalifolium* as threatened. Each of the species listed as endangered is likely to become extinct in a significant portion of its range within the foreseeable future, meeting the Act's requirements for listing as an endangered species. The two species listed as threatened are likely to become endangered species if effective conservation measures are not taken, meeting the Act's definition of threatened species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Except for the relatively few protected sites with one or more of these species, the populations of these species are on unprotected private land where they would gain no added protection from designation of critical habitat, and where such a designation might motivate landowners to extirpate the plants. Designation of critical habitat might also attract persons wishing to collect plants for horticultural purposes, with or without the written permission of the landowner that is required by Florida law. For these reasons, it would not be prudent to determine critical habitat for the seven plant species. The State and The Nature Conservancy are working to acquire lands to conserve these plants. Many private owners of scrub habitat occupied by the threatened Florida scrub jay have been, or will be, contacted by the Service as part of its efforts to prevent take of the bird without permit (including destruction of nests or of occupied habitat). As a result, these landowners are aware of the importance of scrub habitat, if not of individual plant species. Protection of the plant species will be addressed through the recovery process and through the section 7 consultation process. For these reasons, the Service considers designation of critical habitat not to be prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibition against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Conservation of *Eriogonum longifolium* may require ensuring that use of herbicides in forestry or road right-of-way maintenance does not jeopardize this plant. It is not clear whether restrictions on herbicide use would be necessary to protect *Clitoria fragrans*, which occurs on grazing lands. The other species appear not to occur in situations where herbicide restrictions would be warranted. Implementation of any such restrictions would involve the Environmental Protection Agency (EPA).

Cladonia perforata occurs on a Gulf barrier island that is part of Eglin Air Force Base; *Clitoria fragrans* occurs on Avon Park Air Force Range, and *Eriogonum longifolium* var. *gnaphalifolium* occurs in the Ocala National Forest. The Service is currently aware of no ongoing or pending Federal actions (except for possible EPA involvement noted above) either on these lands or elsewhere that would affect these plants.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species, and 17.71 and 17.72 for threatened species, set forth a series of general prohibitions and exceptions that apply to all listed plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances.

It is anticipated that few trade permits will be sought or issued because the seven plant species are of limited horticultural interest, and only two (*Nolina brittoniana* and *Polygonella myriophylla*) may be in commerce across state lines. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

A complete list of all references cited herein, as well as others, is available upon request from the Service's Jacksonville Field Office (see **ADDRESSES** section).

Author

The primary author of this rule is Mr. David Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* *	*	*	*	*	*	*
Agavaceae—Agave family:						
* *	*	*	*	*	*	*
Nolina brittoniana	Britton's beargrass	U.S.A. (FL)	E	500	NA	NA
* *	*	*	*	*	*	*
Cladoniaceae—Reindeer moss family:						
Cladonia perforata	Florida perforate cladonia	U.S.A. (FL)	E	500	NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• •	•	•	•	•		•
Fabaceae—Pea family:						
• •	•	•	•	•		•
Clitoria fragrans	Pigeon wings	U.S.A. (FL)	T	500	NA	NA
Crotalaria avonensis	Avon Park harebells	U.S.A. (FL)	E	500	NA	NA
• •	•	•	•	•		•
Polygalaceae—Milkwort family:						
• •	•	•	•	•		•
Polygala lewtonii	Lewton's polygala	U.S.A. (FL)	E	500	NA	NA
• •	•	•	•	•		•
Polygonaceae—Buckwheat family:						
• •	•	•	•	•		•
Eriogonum longifolium var. *gnaphalifolium* (=*Eriogonum floridanum*).	Scrub buckwheat	U.S.A. (FL)	T	500	NA	NA
• •	•	•	•	•		•
Polygonella myriophylla	Sandlace	U.S.A. (FL)	E	500	NA	NA
• •	•	•	•	•		•

Dated: April 8, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–9748 Filed 4–26–93; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Puerto Rican Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. These plants, including two shrubs and one grass species, are endemic to Puerto Rico, and all are restricted to the southwestern part of the island. With the exception of one site on the Cabo Rojo National Wildlife Refuge, the habitat of all three species is threatened with modification and loss due to various types of development. *Aristida chaseae* may also be affected by competition from introduced grass species. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii.*

EFFECTIVE DATE: May 27, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622; and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331–3580).

SUPPLEMENTARY INFORMATION:

Background

Aristida chaseae (no common name) was discovered by Agnes Chase near Boquerón in 1913. It was known only from the type collection for many years, until it was discovered by Paul McKenzie in 1987 on the Cabo Rojo National Wildlife Refuge. This new population, which contains from 150 to 175 plants, is approximately 8 km to the south of the type locality. The species apparently has been eliminated from the type location, possibly as a result of competition from vigorous, introduced grass species (McKenzie et al. 1989; Proctor 1991).

Later in 1987, McKenzie and Dr. George Proctor located a third population on the rocky, exposed upper slopes of Cerro Mariquita in the Sierra Bermeja, a range of hills also found within the municipality of Cabo Rojo. This range of hills is the oldest geologic formation in Puerto Rico and is known for its high plant endemism. Additional localities on ridges to the west within the Sierra Bermeja were found in 1988. In these hills, it occurs at elevations between 150 and 300 meters (McKenzie et al. 1989; Proctor 1991).

Aristida chaseae is a perennial grass with densely tufted, wide-spreading culms which may reach from 50 to 60 cm in length. The leaf blades are involute, 2 to 3 mm wide and 10 to 15 mm long. The panicles are narrow and may be from 10 to 15 cm in length. The glumes are equal, 10 to 13 mm long and acuminate or awn-tipped. The lemma is approximately 12 mm long, narrowed at the summit but scarcely beaked and scaberulous of the upper half. The callus is 1 mm long and densely pilose. The awns are equal, somewhat

divergent, flat at the base, not contorted except with age and approximately 2 cm long.

Lyonia truncata var. *proctorii* was discovered in September of 1987 by Dr. George Proctor and described by Dr. Walter Judd in 1990 (Judd 1990). It is only known from the type locality, the upper slopes and summits of Cerro Mariquita (elevations of 250 to 300 m) in the Sierra Bermeja. Approximately 63 individual plants have been reported from two locations: 18 to the northwest of the summit and 45 just to the east of the summit (Proctor 1991).

Lyonia truncata var. *proctorii* is an evergreen shrub which may reach up to 2 meters in height. The leaves are alternate, elliptic to ovate, coriaceous, and from 0.9 to 4.5 cm long and 0.4 to 2.3 cm wide. The leaf margins may be toothed and the lower surface is sparsely to moderately lepidote and moderately to densely pubescent. The inflorescences are fasciculate with from 2 to 15 flowers. Pedicels are from 2 to 5 mm in length and sparsely pubescent. Flowers are small (0.7 to 1.6 mm in length), white, and urn-shaped. The fruit is a dry capsule, 3 to 4.5 mm in length and 2.5 to 4 mm in width, sparsely pubescent, and contain seeds approximately 2.5 mm in length.

Vernonia proctorii was discovered in September of 1987 by Dr. George Proctor, Dr. Horst Haneke and Paul McKenzie. It is known to occur only on the summit of Cerro Mariquita in the Sierra Bermeja of southwestern Puerto Rico at elevations between 270 and 300 meters. Plants are scattered throughout a scrub woodland which covers several acres. The population has been estimated at approximately 950 individual plants at this one known location (Proctor 1991).

Vernonia proctorii is a small erect shrub which may reach a height of 1.5 meters. The stems and trunk are densely pubescent with silvery uniseriate hairs and with a knobby appearance due to the persistent petiole bases. Leaves are alternate, ovate to orbicular, subsessile or with the petioles appressed to the stem, and from 1.5 to 3.5 cm long and 1.0 to 2.6 cm wide. The upper blade surface is green to olive-green and moderately strigose with scattered glistening globular trichomes. The lower surface is grayish-green, sometimes becoming rusty with age, and densely sericeous. The leaf margins are densely ciliate with silvery hairs. Flowers are borne in terminal clusters of 2 to 5 heads, each approximately 3 mm in length, and bright purple in color. Achenes are from 2 to 3 mm long and sericeous with silvery hairs.

Aristida chaseae, *Lyonia truncata* var. *proctorii* and *Vernonia proctorii* were recommended for listing by Dr. George Proctor during a September 1988 meeting concerning the revision of the candidate plant species list in Puerto Rico and the U.S. Virgin Islands. They were subsequently included as category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the notice of review for plants published February 21, 1990 (55 FR 6184). A proposal to list the three species as endangered was published in the **Federal Register** of September 3, 1992 (57 FR 40429).

Summary of Comments and Recommendations

In the September 3, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general comment was published in the San Juan Star on September 20, 1992, and in El Día on October 2, 1992. Nine letters of comment were received and are discussed below. A public hearing was neither requested nor held.

The Cabo Rojo National Wildlife Refuge, Fish and Wildlife Service, supported the listing of the three species. The Refuge biologist indicated that *Aristida chaseae*, found on the Refuge, was apparently suffering from the effects of competition from exotic vegetation.

Four letters were received from different areas within the Puerto Rico Department of Natural Resources that supported the listing of the three species. The Forest Service area of the Department expressed interest in the propagation of the species. Two letters originating from the Research area recommended that *Aristida chaseae* and *Lyonia truncata* var. *proctorii* be listed as threatened rather than endangered. The Department's primary response, however, emphasized the threat to the species' habitat, stating that the high scenic value of the area would attract developers and that current zoning regulations did not provide strong protection to the range of hills. The Service believes that development is a significant threat and that considering the highly restricted distribution of these species, a classification of endangered is more appropriate than threatened.

The Department of Biology of the University of Puerto Rico, Mayaguez Campus, supported the listing of the three species, emphasizing the threat that development poses to the Sierra Bermeja. Both the "Servicios Cientificos y Tecnicos" of Puerto Rico (Scientific and Technical Services), in two letters, and The Conservation Agency in Rhode Island provided letters of support for the listing of the species as endangered. The latter also recommended the designation of critical habitat. The Service's reasons for not designating critical habitat are discussed in detail under a subsequent section of this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that these species should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Aristida chaseae* Hitchcock, *Lyonia truncata* Urban var. *proctorii* Judd, and *Vernonia proctorii* Urbatsch are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

All three species are found on privately owned land currently subject to intense pressure for agricultural, rural and tourist development. The land is currently being cleared for grazing by cattle and goats. Adjacent land is being subdivided for sale in small farms, some destined for tourist and urban developments. Only *Aristida chaseae* occurs outside of the Sierra Bermeja, on the nearby Cabo Rojo National Wildlife Refuge, where the population occurs within and along a little used roadway.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these species.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

One of the most important factors affecting the continued survival of these species is their limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Wildfires are a frequent occurrence in this extremely dry portion of southwestern Puerto Rico. McKenzie et al. (1989) indicate that *Aristida chaseae* may have once extended throughout sandy coastal areas and rocky hillsides in southwestern Puerto Rico, but that competition from vigorous, introduced grasses such as *Brachiaria subquadripara* may have eliminated the species from the majority of this area.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* as endangered. *Lyonia truncata* var. *proctorii* and *Vernonia proctorii* are known to occur only on the upper slopes and ridges of the Sierra Bermeja. *Aristida chaseae* is currently known from only two areas. Deforestation for rural, agricultural, and tourist development are imminent threats to the survival of the species. *Aristida chaseae* appears to be threatened also by competition from introduced grasses. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for these species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent for these species. The number of individuals of *Aristida chaseae, Lyonia truncata* var. *proctorii* and *Vernonia proctorii* is sufficiently small that vandalism and collection could seriously affect the survival of the species. Taking is an activity that is difficult to control, and it is only regulated by the Act with respect to endangered plants in cases of (1) removal and reduction to possession of these plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying these plants in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps in the **Federal Register** would only increase the likelihood of such activities and would not provide offsetting benefits. No Federal involvement outside of the Cabo Rojo National Wildlife Refuge is known or anticipated at this time. The Service believes that any future Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for these three species, as discussed above. Federal involvement is anticipated only for the population of *Aristida chaseae* located on the Cabo Rojo National Wildlife Refuge.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these three species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for

copies of the regulations on listed plants and inquiries regarding prohibitions and permits should be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Judd, W.S. 1990. A new variety of *Lyonia* (Ericaceae) from Puerto Rico. Jour. Arnold Arb. 71:129–133.

McKenzie, P.M., R.E. Noble, L.E. Urbatsch, and G.R. Proctor. 1989. Status of *Aristida* (Poaceae) in Puerto Rico and the Virgin Islands. Sida 13(4):423–447.

Proctor, G.R. 1991. Status report on *Aristida chaseae* Hitchcock. *In* Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Proctor, G.R. 1991. Status report on *Lyonia truncata* Urban var. *proctorii* Judd. *In* Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Proctor, G.R. 1991. Status report on *Vernonia proctorii* Urbatsch. *In* Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico 196 pp.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

Part 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend 17.12(h) by adding the following, in alphabetical order under Asteraceae, Ericaceae and Poaceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and Threatened Plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* *	*	*	*	*	*	*
Asteraceae—Aster family:						
* *	*	*	*	*	*	*
Vernonia proctorii	None	U.S.A. (PR)	E	501	NA	NA
* *	*	*	*	*	*	*
Ericaceae—Heath family:						
* *	*	*	*	*	*	*
Lyonia truncata var. *proctorii*	None	U.S.A. (PR)	E	501	NA	NA
* *	*	*	*	*	*	*
Poaceae—Grass family:						
* *	*	*	*	*	*	*
Aristida chaseae	None	U.S.A. (PR)	E	501	NA	NA
* *	*	*	*	*	*	*

Dated: April 9, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–9749 Filed 4–26–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Duskytail Darter, Palezone Shiner and Pygmy Madtom

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines endangered status for three fishes—the duskytail darter (*Etheostoma* (*Catonotus*) sp.), palezone shiner (*Notropis* sp., cf. *procne*), and pygmy madtom (*Noturus stanauli*)—under the Endangered Species Act of 1973, as amended (Act). The duskytail darter is presently known to inhabit only five short stream reaches—the Little River, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee; and Copper Creek and Clinch River, Scott County, Virginia. Two other historic duskytail darter populations are extirpated. The palezone shiner is presently known from only two stream

reaches—the Paint Rock River, Jackson County, Alabama, and the Little South Fork Cumberland River, Wayne and McCreary Counties, Kentucky. Two other historic palezone shiner populations are extirpated. The pygmy madtom has been collected from only two short river reaches—the Duck River, Humphreys County, Tennessee, and the Clinch River, Hancock County, Tennessee. The madtom may no longer exist in the Duck River. All three fishes presently coexist with other federally listed species in all stream reaches, except the Duck River. All these fishes and their habitats are impacted by deteriorated water quality, primarily resulting from poor land use practices. The limited distribution of these fishes also makes them very vulnerable to toxic chemical spills.

EFFECTIVE DATE: May 27, 1993.

ADDRESSES: The complete file of this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/665–1195, Ext. 228).

SUPPLEMENTARY INFORMATION:

Background

The duskytail darter (*Etheostoma* (*Catonotus*) sp.) is being scientifically described by Robert Jenkins (Roanoke College, *in litt.*, 1992).This small (2-inch) fish, which coexists with other federally listed species in all stream reaches it inhabits, is straw to olivaceous in color. It inhabits rocky areas in gently flowing shallow pools and eddy areas of large creeks and moderately large rivers in the Tennessee and Cumberland River systems (Starnes and Etnier 1980; Burkhead and Jenkins, in press; Layman, in press; Clyde Voigtlander, Tennessee Valley Authority, *in litt.*, 1991). Historically, the duskytail was likely more widespread. However, it presently has a very fragmented distribution (Etnier and Starnes, in press; Jenkins and Burkhead, in press). The Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Environment and Conservation recognize this fish as a threatened species (Starnes and Etnier 1980). The species is recognized as an endangered species by the Virginia Department of Game and Inland Fisheries (Sue Bruenderman, Virginia Department of Game and Inland Fisheries, *in litt.*, 1992).

Although the fish fauna of the Tennessee and Cumberland River systems has been extensively surveyed, the duskytail has been collected from only seven short river reaches—Little River, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee; Abrams Creek, Blount County, Tennessee; South Fork Holston River, Sullivan County, Tennessee; and Copper Creek and Clinch River, Scott County, Virginia. The duskytail is apparently extirpated from Abrams Creek and South Fork Holston River, as it has not been found in either area in recent years (Jenkins and Burkhead, in press).

The Little River population inhabits about 9 river miles (Layman, in press). Layman (in press) stated that the duskytail in the lower reaches of the Little River was undoubtedly lost when the area was impounded. This population is potentially threatened by water withdrawal and increasing residential and commercial development in the watershed (Clyde Voigtlander, *in litt.*, 1991).

The duskytail exists downstream of U.S. Forest Service lands in about 0.5 river mile of Citico Creek (Peggy Shute, Tennessee Valley Authority, personal communication, 1991). Although the majority of the Citico Creek watershed is controlled by the Forest Service, much of the populated reach is privately owned, and stream-side habitat destruction has been observed in the area (Clyde Voigtlander, *in litt.*, 1991).

The duskytail inhabits about 17 river miles of Copper Creek. Although the duskytail is characterized as generally rare or uncommon in Copper Creek (Burkhead and Jenkins, in press), this creek may support the largest population of the fish (Clyde Voigtlander, *in litt.*, 1991). According to the Virginia Department of Game and Inland Fisheries (Bud Bristow, *in litt.*, 1991), this population is threatened by siltation, riparian erosion, and agricultural pollution. Jenkins (Roanoke College, *in litt.*, 1992) stated that, during three visits to Copper Creek in 1992, the fish was very rare at sites where the largest numbers were found in the early 1970s. He further stated, "This doesn't look good for the species or Copper Creek."

One duskytail specimen was collected from the Clinch River in 1980, about 1 river mile below the mouth of Copper Creek (Burkhead and Jenkins, in press). This area has been well sampled since 1980, but not additional specimens have been encountered. This one fish may represent periodic downstream movement from Copper Creek, and a viable dusktail population may not exist in the Clinch River.

Duskytail darters have been taken from only one site on the Big South Fork of the Cumberland River. Although other collections have been made in the Big South Fork, no other populations have been found (Jack Collier, National Park Service, personal communication, 1990; Melvin Warren, Southern Illinois University, personal communication, 1990). This population, although within the Big South Fork National Recreational Area (BSFRA), is potentially threatened by runoff from coal mines in the upper watershed above the BSFRA (Jack Collier, personal communication, 1990).

The duskytail darter populations are threatened by the general deterioration of water quality resulting from siltation and other pollutants from poor land use practices, coal mining, and waste discharges. Etnier and Starnes (in press) stated that this darter "* * * and other darters dependent upon silt-free, rocky pools in large streams and rivers, such as the ashy darter, have apparently suffered more from the effects of siltation than have darters typical of swift riffles."

The palezone shiner (*Notropis* sp., cf. *procne*) is being scientifically described by Melvin Warren (personal communication, 1990). This small (2-inch), slender fish, which coexists with other federally listed species in all stream reaches it inhabits, has a translucent and straw-colored body with a dark midlateral stripe. It occurs in large creeks and small rivers in the Tennessee and Cumberland River systems and inhabits flowing pools and runs with sand, gravel, and bedrock substrates (Warren and Burr 1990).

The fish is listed by the Kentucky State Nature Preserves Commission (Kentucky State Nature Preserves Commission 1991) as an endangered species. In Alabama, the species is considered threatened (Pierson 1990). Although the species is believed to be extirpated from Tennessee, the Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Environment and Conservation recognize this fish as a species in need of management (Starnes and Etnier 1980).

Although numerous and extensive fish collections have been made in the Tennessee and Cumberland River systems, the palezone shiner has been taken from only four rivers—the Paint Rock River, Jackson County, Alabama; the Little South Fork Cumberland River, Wayne and McCreary Counties, Kentucky; Marrowbone Creek,

Cumberland County, Kentucky; and Cove Creek, Clinch River drainage, Campbell County, Tennessee (Starnes and Etnier 1980; Warren and Burr 1990; Richard Hannan, Kentucky State Nature Preserves Commission, *in litt.*, 1990). Based on the results of a recent status survey (Warren and Burr 1990), only two palezone populations remain. No palezone shiners were found in either Marrowbone or Cove Creek. However, the fish still exists in about 3 river miles of the Paint Rock River and in about 30 river miles of the Little South Fork Cumberland River.

The palezone shiner's distribution has apparently been reduced by such factors as impoundments and the general deterioration of water quality from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges. Richard Hannan (*in litt.*, 1990) stated that the palezone possibly inhabited the main stem of the Cumberland River in Kentucky prior to impoundment. Warren and Burr (1990) reported that diversity and density of the benthic fish community in the Little South Fork of the Cumberland River has been severely reduced. Anderson (1989) found that nearly all freshwater mussels in the lower third of the South Fork were eliminated in the 1980s; he attributed the loss to toxic runoff from surface coal mines. Warren and Burr (1990) stated, "The limited distribution of the species in the Paint Rock River definitely appears correlated with increasing agriculture and associated increase in stream siltation * * *" Clyde Voigtlander (*in litt.*, 1992) stated that the Tennessee Valley Authority (TVA) had identified that the Paint Rock River palezone shiner population was in the timber-sourcing area for three proposed wood-chip mills. He further stated, "Subsequent analysis of potential effects of large-scale timber harvesting (clear-cutting) led us [TVA] to conclude that the palezone shiner would likely experience population-level effects, i.e., effects on individuals and populations of the species, but not the species as a whole."

The pygmy madtom (*Noturus stanauli*) was described by Etnier and Jenkins (1980). This species, which is known from two populations separated by about 600 river miles, was once likely more widespread (O'Bara 1991). However, like some other catfish in the genus *Noturus*, the pygmy madtom is presently rare and has a fragmented distribution (Etnier and Jenkins 1980). The pygmy madtom is the smallest (maximum length 1.5 inches) of the known madtoms (Etnier and Jenkins 1980). It has a very distinctive pigmentation pattern; it is very dark above the body midline and light below. The species is found in moderate to large rivers on shallow pea-size gravel shoals with moderate to strong current. The Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Environment and Conservation recognize this fish as a threatened species (Starnes and Etnier 1980).

The fish fauna of the Tennessee River valley has been extensively surveyed (O'Bara 1991); however, the pygmy madtom has been collected from only two short river reaches. It has been taken from the Duck River, Humphreys County, Tennessee, and from the Clinch River, Hancock County, Tennessee. Based on the results of recent surveys (O'Bara 1991), the fish still exists in the Clinch River, and it is possibly extirpated from the Duck River. Five specimens were taken at one of the two known historic sites in the Clinch River by O'Bara (1991) in the fall of 1990. O'Bara (1991) did not find the species in the Duck River during his 1990 survey and reported that the species had not been taken from the Duck River since 1974.

Etnier and Jenkins (1980), in their description of this species, report that it has been taken in only about one-half of the collections made at the Clinch River sites and only about one-fourth of the collections at the Duck River site. Thus, although the species has not been taken in recent years in the Duck River, it may still survive there.

The pygmy madtom, which coexists with other federally listed species in the Clinch River, is threatened by the general deterioration of water quality from siltation and other pollutants associated with poor land use practices and waste discharges. The section of the Duck where the species has historically been taken is being seriously threatened by stream-bank erosion. The aquatic resources of the Clinch River are potentially threatened by increased urbanization, coal mining, and poorly managed agricultural practices. Because the pygmy madtom may exit in only one short river reach, this population could easily be lost from a single toxic chemical spill.

In the Service's notice of review for animal candidate species, published in the **Federal Register** of January 6, 1989 (56 FR 58840), September 18, 1985 (50 FR 37958), and December 30, 1982 (47 FR 58454), the palezone shiner and pygmy madtom were indicated to be category 2 candidates. A category 2 species is one that is being considered for possible addition to the Federal lists of endangered and threatened wildlife and plants, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. During October and November of 1990, the Service mailed 138 notification letters to potentially affected government agencies and interested individuals requesting comments regarding the possible listing of these three fishes. None of the commenters expressed opposition, and some provided additional information on the species' status and distribution. In early 1991, based on all available information, the Service concluded that each of these fishes qualified as a category 1 species, with the palezone shiner and pygmy madtom being assigned a listing priority of 2, and the duskytail darter a priority of 5 (see **Federal Register** of September 21, 1983 (48 FR 43098) for a discussion of the Service's listing priority guidelines). All three species were proposed for listing as endangered in the **Federal Register** of July 8, 1992 (57 FR 30191).

Summary of Comments and Recommendations

In the July 8, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated July 14, 1992, and requested to comment. Legal notices were published in the following newspapers: News-Democrat, Waverly, Tennessee, July 24, 1992; Huntsville Times-News, Huntsville, Alabama, July 24, 1992; Kingsport Times-News, Kingsport, Tennessee, July 26, 1992; McCreary Record, Whitley, Kentucky, July 28, 1992; and The Morning Daily Times, Maryville, Tennessee, July 28, 1992.

Five written comments were received. Four were from various government agencies (Tennessee Valley Authority, Virginia Department of Game and Inland Fisheries, Kentucky State Nature Preserves Commission, and Tennessee Wildlife Resources Agency), and one was from an individual. None expressed opposition to the proposed rule. All additional pertinent information provided by these commenters has been incorporated into the final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the duskytail darter, palezone

shiner and pygmy madtom should be classified as endangered species. Procedures found a section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the duskytail darter (*Etheostoma* (*Catonotus*) sp.), palezone shiner (*Notropis* sp., cf. *procne*), and the pygmy madtom (*Noturus stanauli*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The Tennessee and Cumberland Rivers previously supported one of the world's richest assemblages of temperate freshwater river fishes (Starnes and Etnier 1986), but these rivers are now two of our most severely altered river systems. Most of the main stem of both rivers and many of the tributaries are impounded (over 2,300 river miles, or about 20 percent, of the Tennessee River and its tributaries with drainage areas of 25 square miles or greater are impounded (Tennessee Valley Authority 1971)). In addition to the loss of riverine habitat within impoundments, most impoundments also seriously alter downstream aquatic habitat.

Coal mining-related siltation and associated toxic runoff have adversely impacted many stream reaches. Numerous streams have experienced fish kills from toxic chemical spills, and poor land use practices have fouled many waters with slit. The runoff from large urban areas has degraded water and substrate quality. Because of the extent of habitat destruction, the aquatic faunal diversity in many of the basins' rivers has declined significantly. Many species that once existed throughout major portions of these basins now exist only as isolated remnant populations (Neves and Angermeier 1990). Because of this destruction of riverine habitat, 8 fishes and 24 mussels in the Tennessee and Cumberland River basins have already required Endangered Species Act protection, and numerous other aquatic species in these two basins are currently considered candidates for Federal listing.

The fish fauna of the Tennessee and Cumberland River systems have been extensively surveyed (Ronald Cicerello, Kentucky State Nature Preserves Commission; David Etnier, University of Tennessee; Robert Jenkins, Roanoke College; Christopher O'Bara, Tennessee Technological University; Charles Saylor, Tennessee Valley Authority; Melvin Warren and Brooks Burr, Southern Illinois University; personal communications, 1990). Yet, only a few isolated populations of the duskytail darter, palezone shiner, and pygmy madtom remain (see "Background" section for a discussion of the current and historic distribution of and threats to the remaining populations). These fishes have been and are presently adversely impacted by the factors described above. Unless steps are taken to protect these fishes, the number and size of their populations are expected to decline.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The specific areas inhabited by these fishes are presently unknown to the general public. As a result, their overutilization has not been a problem. However, vandalism could pose a problem, especially if the specific inhabited reaches were to be revealed, such as through the designation of critical habitat. Most of the stream reaches inhabited by these fishes are extremely short and could easily be lost through the act of vandals using readily available toxic chemicals. Although scientific collecting is not presently identified as a threat, take by private and institutional collectors could pose a threat if left unregulated. Federal protection of these species will help to minimize illegal or inappropriate take.

C. Disease or Predation

Although these fishes are undoubtedly consumed by predators, there is no evidence that predation is a threat to them.

D. The Inadequacy of Existing Regulatory Mechanisms

States within these species' ranges prohibit the taking of fishes and wildlife for scientific purposes without a State collecting permit. However, the species are generally not protected from other threats. Federal listing will provide additional protection for the species under the Endangered Species Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Because the existing duskytail darter, palezone shiner, and pygmy madtom populations inhabit short river reaches, they are vulnerable to extirpation from accidental toxic chemical spills. As the populated stream reaches of all three fish species are isolated from each other by impoundments, recolonization of any extirpated population would not be possible without human intervention. The absence of natural gene flow among populations of these fishes leaves the long-term genetic viability of these isolated populations in question.

Additionally, several madtom species have, for still unexplained reasons, been extirpated from portions of their range. Etnier and Jenkins (1980) speculated that this may "* * * in addition to visible habitat degradation, be related to their being unable to cope with olfactory 'noise' being added to riverine ecosystems in the form of a wide variety of complex organic chemicals that may occur only in trace amounts." If madtoms are adversely impacted by increased concentrations of complex organic chemicals, an increase in these materials could be a problem for the pygmy madtom.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these three fishes in determining to make this rule final. Based on this evaluation, the preferred action is to list the duskytail darter (*Etheostoma* (*Catonotus*) sp.), palezone shiner (*Notropis* sp., cf. *procne*), and pygmy madtom (*Noturus stanauli*) as endangered. Presently, the duskytail darter inhabits only five short stream reaches, the palezone shiner is known from only two stream reaches, and the pygmy madtom possibly occurs in only one short stream reach. All three fishes and their habitat have been and continue to be impacted by water quality deterioration resulting from poor land use practices and by water pollution. The limited distribution of these fishes also makes them vulnerable to toxic chemical spills. Because of the restricted nature of these populations and their vulnerability, endangered status appears to be the most appropriate classification for the species. (See **Critical Habitat** section for a discussion of why critical habitat is not being designated for these fishes.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Section 7(a)(2) of the Act, and regulations codified at 50 CFR part 402, require Federal agencies to insure, in

consultation with and with the assistance of the Service, that activities they authorize, fund or conduct are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat, if designated. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. Such a determination would result in no known benefit to these three species.

As part of the development of this final rule, Federal and State agencies were notified of these fishes' distributions, and they were requested to provide data on proposed Federal actions that might adversely affect the species. Should any future project be proposed in areas inhabited by these fishes, the involved Federal agency will already have the distributional data needed to determine if the species may be impacted by their action. Each of these species occupies a very limited range, and any adverse modification of any inhabited river reach would likely jeopardize the species' continued existence. Therefore, habitat protection for these species can be accomplished through the section 7 jeopardy standard and the section 9 prohibitions against take. Thus, no additional benefits would accrue from critical habitat designation that would not also accrue from the listing of these species.

In addition, as these species are very rare, with populations restricted to extremely short stream reaches, unregulated taking for any purpose could threaten their continued existence. The publication of critical habitat maps in the **Federal Register** and local newspapers, and other publicity accompanying critical habitat designation, could increase the collection threat and increase the potential for vandalism, especially during the often controversial critical habitat designation process. (See the "Summary of Factors Affecting the Species" section, Part B, "Overutilization for commercial, recreational, scientific, or educational purposes," for a further discussion of threats to the species from vandals.) The locations of populations of these species have consequently been described only in general terms in this final rule. Precise locality data are available to appropriate Federal, State, and local government agencies and individuals from the Service office described in the "ADDRESSES" section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that might have programs affecting these species. Three projects that could impact the palezone shiner were identified. Three wood-processing companies have applied to the Nashville District, U.S. Army Corps of Engineers (Corps), for permits under section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act and to TVA for shoreline leases and section 26–A permits to construct and operate wood-chip mills located between Bridgeport, Alabama, and New Hope, Tennessee. The construction of the facilities will not impact the palezone shiner. However, the potential timber-harvest area for the wood-chip mills encompasses the reach of the Paint Rock River that is populated by the palezone shiner (TVA 1992). The Service has recently conducted a formal conference with TVA and the Corps regarding the potential impact of the wood-chip mills to the palezone shiner. The Service concluded that harvesting logs for the wood-chip mills in the Paint Rock River watershed would likely jeopardize the continued existence of the palezone shiner. However, the Service offered a reasonable and prudent alternative involving controls on timber-harvest methods that would avoid the likelihood of jeopardy to the palezone shiner.

Additional Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, coal mining, reservoir construction, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are found at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. These species are not in trade, and such permit requests are not expected.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the

Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Anderson, R.M. 1989. The effect of coal surface mining on endangered freshwater mussels (Molluska: Uniondae) in the Cumberland River drainage. M.S. Thesis, Tennessee Technological University, Cookeville, TN.

Burkhead, N.M., and R.C. Jenkins. In press. Fishes, *in* Virginia's Endangered Species. McDonald and Woodward Co., Blacksburg, VA.

Etnier, D.A., and R.E. Jenkins. 1980. *Noturus stanauli*, a new madtom catfish (Ictaluridae) from the Clinch and Duck Rivers, Tennessee. Bull, Alabama Mus. Nat. Hist. 5:17–22.

Etnier, D.A., and W.C. Starnes. In press. The Fishes of Tennessee. University of Tennessee Press, Knoxville, TN.

Jenkins, R.C., and N.M. Burkhead. In press. The Freshwater Fishes of Virginia. American Fisheries Society, Bethesda, MD.

Kentucky State Nature Preserves Commission. 1991. Endangered, Threatened, and Special Concern Plant and Animal Species of Kentucky. March 1991. 15 pp.

Layman, S.R. In press. Life history of the relict, duskytail darter *Etheostoma* (*Catonotus*) sp., in the Little River, Tennessee.

Neves, R.J., and P.L. Angermeier. 1990. Habitat alteration and its effects on native fishes in the upper Tennessee River system, east-central USA. J. Fish Biol. 37 (Supplement A), 45–52.

O'Bara, C.J. 1991. Final report on the status of the pygmy madtom (*Noturus stanauli*). Unpub. Report to Tennessee Wildlife Resources Agency, Nashville, TN.

Pierson, J.M. 1990. Status of endangered, threatened, and special concern freshwater fishes in Alabama. J. Alabama Acad. Sci. 61(2)106–116.

Starnes, W.C., and D.A. Etnier. 1980. Fishes. Pages B1–B134. In: D.C. Eagar and R.M. Hatcher (eds.). Tennessee's Rare Wildlife Volume 1: The Vertebrates. Tennessee Heritage Program.

_____. 1986. Drainage evolution and fish biogeography of the Tennessee and Cumberland Rivers drainage realm. In The Zoogeography of North American Freshwater Fishes (C.H. Hocutt, and E.O. Wiley, eds.), pp. 325–361. New York: John Wiley.

Tennessee Valley Authority. 1971. Stream length in the Tennessee River Basin. Tennessee River Authority, Knoxville, TN. 25 pp.

_____. 1992. Draft environmental impact statement, chip mill terminals on the Tennessee River; Volumes 1 and 2. Tennessee Valley Authority, Knoxville, TN. 613 pp.

Warren, M.L., and B.M. Burr. 1990. Status of the palezone shiner (*Notropis* sp., cf. *procne*), a Federal candidate for listing. Unpub. Report to the U.S. Fish and Wildlife Service, Asheville, NC. 27 pp.

Author

The primary author of this final rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195, Ext. 228).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Fishes, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Darter, duskytail	*Etheostoma (Catonotus)* sp..	U.S.A. (TN and VA) .	Entire	E	502	NA	NA
*	*	*	*	*	*		*
Madtom, pygmy	*Noturus stanauli*	U.S.A. (TN)	Entire	E	502	N/A	NA
*	*	*	*	*	*		*
Shiner, palezone	*Notropis* sp.	U.S.A. (AL, KY, and TN).	Entire	E	502	NA	
*	*	*	*	*	*		*

Dated: April 12, 1993.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 93–9750 Filed 4–26–93; 8:45am

Billing Code 4310–55–P–M

federal register

Tuesday
April 27, 1993

Part V

Department of Transportation

Coast Guard

33 CFR Part 168

Escort Requirements for Vessels in the Navigable Waters of the United States; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 168

[CGD 91-202a]

RIN 2115-AE-10

Escort Requirements for Vessels in the Navigable Waters of the United States

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In this advance notice of proposed rulemaking (ANPRM), the Coast Guard seeks comment on where an escort should be required for vessels navigating in the waters of the United States and which vessels should be required to comply with an escort rule. Recommendations are also sought on what the escort vessel should be expected to do.

DATES: Comments must be received on or before June 28, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-202a), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Captain Gerald T. Willis, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267-6732.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD XX-XXX) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and any late comments to the extent practicable. It may change this proposal in view of the comments.

Drafting Information

The principal persons involved in drafting this document are Captain Gerald T. Willis, Project Manager, and Ms. Joan Tilghman, Project Counsel, OPA 90 Staff.

Background and Purposes

The Coast Guard has been delegated broad authority to control vessel movement in the navigable waters of the Untied States under the Ports and Waterways Safety Act of 1972 (PWSA) (Pub. L. 92-340) as amended by the Port and Tanker Safety Act of 1978 (Pub. L. 95-474), found at 33 U.S. Code 1221-1236. Under section 1223(a)(4), the Coast Guard may control vessel traffic in areas determined to be hazardous by, among other things, establishing vessel size, speed, and draft limitations and vessel operating conditions. In accordance with section 1224, prior to imposing such controls, various factors, including the following, are to be considered:

1. The scope and degree of the risk or hazard involved;
2. Vessel traffic characteristics and trends, including traffic volume, sizes and types of vessels involved, and the presence of unusual cargoes;
3. Port and waterway configurations and variations in local conditions of geography, climate, and other similar factors;
4. Environmental factors; and
5. Economic impact.

Specific, but limited, authority regarding escort of certain tankers also exists in the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380). Section 4116(c) of OPA 90 requires the Coast Guard, as delegated by the Secretary of Transportation, to define areas where single hull tankers over 5,000 gross tons (GT) transporting oil in bulk must be escorted by at least two towing vessels, or by some other vessel which the Secretary considers appropriate. These defined areas must include Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to Untied States jurisdiction). On July 7, 1992, the Coast Guard proposed a rule to implement section 4116(c) in Prince William Sound and Puget Sound (57 FR 30058). The comment period was reopened on March 26, 1993, to obtain additional information 958 FR 16391).

In the NPRM, the Coast Guard sought comment on whether to extend the applicability of the OPA 90 escort rule to other areas and to other kinds of vessels, and stated that there would be a separate rulemaking to address these issues. An option presented for expanding an escort rule beyond section 4116(c) of OPA 90 was to use Coast Guard authority under the PWSA.

This ANPRM solicits further comment on applying an escort rule to other areas of the navigable waters of the U.S. and other vessels. Before it can issue workable and effective national escort rules, the Coast Guard must decide what the escort vessels are expected to accomplish, so that the regulatory approach results in reducing the risk of harm in the event of a vessel casualty. To establish a sensible approach, it is necessary to assess what existing escort vessels can do, given current technological capability and design of the escort vessel and the characteristics of the vessel being escorted.

Why there is a need for providing escorts for certain vessels. A principal focus of OPA 90 is reducing the risk of spills of oil and hazardous substances, and the injury to human health and damage to the environment resulting from such spills. The PWSA focuses on broad preventive measures to improve vessel navigation in U.S. waterways to reduce the risk of collision or grounding. With the introduction of supertankers, as well as the increased shipment of hazardous substances by vessel, the risk of a serious pollution incident as the result of a marine casualty has increased. Traffic volumes in confined harbors and narrow channels has increased; larger vessels are less maneuverable than smaller ones used in earlier years.

Although OPA 90 focuses on minimizing the risks of casualties from vessels carrying oil as cargo, oil tankers are not the only types of vessels which may pose a substantial risk of collisions or groundings, with resultant environmental damage. Many other vessels pose a risk of high-consequence environmental or public health incidents because of the quantity of bunker oil (fuel) they carry, or the vessel's transit near congested areas, sensitive environmental areas, or in confined waterways. Vessels carrying hazardous materials, hazardous substances, or other dangerous cargo also pose a potential risk of harm from spills, and a vessel which itself does not pose a risk may be the cause of a spill from an oil tanker or other vessel carrying dangerous cargo.

Which vessels should require an escort. Several comments to the NPRM suggested that the Coast Guard include the following vessels in the escort rule: All single or double-hull oil tankers, irrespective of tonnage; all vessels over 5,000 gross tons (GTs); and all ships over 10,000 long tons displacement. Some comments stated that the Coast Guard should consider the character of the area the vessel is transiting in determining whether to require an escort. For example, any ship transiting an area defined as a "marine sanctuary" would require an escort.

The Coast Guard seeks further comment on the criteria it should use to determine if any vessels, in addition to those covered by section 4116(c) of OPA 90, should have an escort. Should the type of cargo carried, the vessel size or configuration, the proximity to areas where serious consequences may result from a spill, or a combination of these factors, determine which vessels must be escorted? Is there some other principle which should be applied to make this determination?

What should an escort vessel be expected to do. A paramount question is what should an escort vessel be expected to do. In making this decision, the Coast Guard must decide what it means "to escort," and whether there are vessels in service that are capable of escorting.

The meaning of "escort." Tugboats (tugs) have traditionally been used in ship handling to assist larger vessels when maneuvering at slow speeds in confined waters, such as during berthing. OPA 90 contemplates that escorts should be required when oil tankers are transiting in more open waters at higher speeds.

The demands placed on escort vessels have increased commensurately. There are expectations that in the event of a casualty on the vessel being escorted, the escorting vessel will be able to control the movement of the escorted vessel sufficiently to avoid a collision or grounding, as well as the traditional assistance in berthing. Some newer tugs are highly maneuverable and can perform these services for escorted vessels at speeds higher than that achievable by a conventional tug. In addition, there are expectations that the escorting vessel should be capable of assisting in spill containment and cleanup and possibly have firefighting capability.

The question arises whether providing an escort means: being available to facilitate transit through narrow or confined waterways at other than slow speeds and berth a vessel; steer or tow the vessel in the event of a propulsion or steering failure, either running free or made fast to the vessel; and provide spill mitigation and firefighting in the aftermath of a casualty. The Coast Guard envisions that in the most basic definition, "escorting" must encompass the ability to render timely assistance to a disabled ship to prevent a grounding or collision, as well as perform the traditional services of facilitating slow speed transit and berthing.

In some circumstances, a timely response must be accomplished in minutes (e.g., a steering gear failure at a critical moment when the vessel is negotiating a narrow channel). In this situation, a timely response may be possible only if the escorted ship is traveling at a relatively slow speed and the escort vessel already is tethered to the ship.

In other circumstances, an assist may take hours and still be satisfactory (e.g., a propulsion failure in the middle of Prince William Sound thirty miles from the nearest shore). In that circumstance, an escort vessel might be free-running nearby or ready to get underway from a strategic location within the sound.

In any event, the question must be addressed concerning which tugs can render service in an emergency to prevent a grounding or collision. A conventional tug, with forward and astern propulsion thrust, generally has stability characteristics to tolerate only moderate transverse towline forces. Further, the amount of force it can generate is largely proportionate to its horsepower and propeller configuration. Horsepower and tug configuration are factors in setting the speed at which the tug escort can travel safely relative to the speed of the ship it escorts. Because it maneuvers with some difficulty in close quarters at speeds greater than 6 knots, a conventional tug may be incapable of providing the type of emergency service which the Coast Guard believes is inherent in all phases of "escorting."

Tractor tugs have a propulsion configuration which allows these vessels to thrust throughout 360 degrees from the tug's fore and aft axis. In addition to the traditional duties of straight ahead pushing or pulling, tractor tug design offers another potential advantage. The hull form and stability characteristics permit the vessel to operate with high transverse towline forces.

Should the Coast Guard prescribe specifications for escort service? If so, should they be design or performance specifications? Alternatively, should the Coast Guard set forth specific items for vessel owners or operators to consider when selecting an escort? Are there simulator programs which could aid in verifying escort vessel performance? How should weather and sea conditions be accounted for in setting specifications for escorts? Should the performance or design requirements for escort vessels be tailored to the environment in which the vessel will serve? Should the escort vessels be subject to any type of inspection for verification of physical capabilities such as towing gear, hull attachments, horsepower, stability, or other operating parameters? What other factors should be considered in setting specifications for the escort vessel?

Should vessels subject to escort regulations be required to have specific towing connections? The Coast Guard published proposed rules concerning removal equipment requirements in the **Federal Register** on September 29, 1992 (57 FR 44912), which would require that certain tankers entering U.S. waters be fitted with an emergency towing arrangement. Which, if any, of the vessels not subject to the removal equipment requirements proposed regulation, should be required to have similar equipment? Should the regulations require that these vessels be able to deploy an emergency towline from a "dead ship" with minimal crew member assistance? Should these vessels be required to conduct periodic emergency towing drills?

Other than Prince William Sound, Alaska, and Puget Sound, Washington, in what areas should the Coast Guard require escorts? An approach the Coast Guard has considered is to require escorts in areas designated as "environmentally sensitive" by Area Committees established under OPA 90. However, there are other approaches that could be used. Comments to the NPRM suggested defining escort areas by the volume of traffic carrying hazardous cargo, the amount of tanker and barge traffic, or the presence of single hull tankers transporting bulk oil or vessels transporting chemicals. Are there other approaches for determining where to require escorts? What is the relative merit of the various approaches? Is there a single standard for defining other areas or should each waterway be assessed individually? Which of the various factors contained in section 1224 of the PWSA are relevant?

Comments to both the NPRM and this ANPRM will be considered during development of any rule. Commenters to this notice are requested to address in which specific areas of the United States, other than Prince William Sound and Puget Sound, tug escorts should be required and the rationale for those

requirements. Comments should be as specific as possible on why tug escorts are needed for each geographic area. What is the expected benefit for that particular area? The discussion should include hazards, sensitive areas, economic benefits or disadvantages and any other factors considered appropriate for the Coast Guard to consider.

Regulatory Evaluation

The Coast Guard anticipates that any proposed rule would be non-major under Executive Order 12291 and would not be significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979); however, the Coast Guard cannot quantify the economic impact at this stage of the process, because it has yet to choose an option.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether the proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because the ANPRM is not proposing any particular rules, considering small entity impacts is premature. However, the Coast Guard welcomes preliminary information and data on the expected small entity impact of any of the options discussed.

Collection of Information

There have been no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) identified at this stage of the rulemaking.

Federalism

The Coast Guard has analyzed this ANPRM under the principles and criteria contained in Executive Order No. 12612. It does not have enough information to determine whether this proposal has sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has concluded that it is premature to make an assessment of the environmental impact of any rules that might be adopted, because there is no action proposed right now. The Coast Guard will conduct any required assessment under the National Environmental Policy Act if it develops a notice of proposed rulemaking.

Dated: April 21, 1993.

A. Cattalini,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93-9840 Filed 4-26-93; 8:45 am]

BILLING CODE 4910-14-M

federal register

Tuesday
April 27, 1993

Part VI

The President

Executive Order 12846—Additional Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro)

Federal Register
Vol. 58, No. 79
Tuesday, April 27, 1993

Presidential Documents

Title 3—

The President

Executive Order 12846 of April 25, 1993

Additional Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, in view of United Nations Security Council Resolution No. 757 of May 30, 1992, No. 787 of November 16, 1992, and No. 820 of April 17, 1993, and in order to take additional steps with respect to the actions and policies of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the national emergency described and declared in Executive Order No. 12808 and expanded in Executive Order No. 12810 and No. 12831,

I, WILLIAM J. CLINTON, President of the United States of America, hereby order:

Section 1. Notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order:

(a) All property and interests in property of all commercial, industrial, or public utility undertakings or entities organized or located in the Federal Republic of Yugoslavia (Serbia and Montenegro), including, without limitation, the property and interests in property of entities (wherever organized or located) owned or controlled by such undertakings or entities, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked;

(b) All expenses incident to the blocking and maintenance of property blocked under Executive Order Nos. 12808, 12810, 12831 or this order shall be charged to the owners or operators of such property, which expenses shall not be met from blocked funds. Such property may also be sold or liquidated and the proceeds placed in a blocked interest-bearing account in the name of the owner;

(c) All vessels, freight vehicles, rolling stock, aircraft and cargo that are within or hereafter come within the United States and are not subject to blocking under Executive Order Nos. 12808, 12810, 12831 or this order, but which are suspected of a violation of United Nations Security Council Resolution Nos. 713, 757, 787 or 820, shall be detained pending investigation and, upon a determination by the Secretary of the Treasury that they have been in violation of any of these resolutions, shall be blocked. Such blocked conveyances and cargo may also be sold or liquidated and the proceeds placed in a blocked interest-bearing account in the name of the owner;

(d) No vessel registered in the United States or owned or controlled by United States persons, other than a United States naval vessel, may enter the territorial waters of the Federal Republic of Yugoslavia (Serbia and Montenegro); and

(e) Any dealing by a United States person relating to the importation from, exportation to, or transshipment through the United Nations Protected Areas in the Republic of Croatia and those areas of the Republic of Bosnia-Hercegovina under the control of Bosnian Serb forces, or activity of any kind that promotes or is intended to promote such dealing, is prohibited.

Sec. 2. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act and the United Nations Participation Act as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate the authority set forth in this order to other officers and agencies of the Federal Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 3. Nothing in this order shall apply to activities related to the United Nations Protection Force, the International Conference on the Former Yugoslavia, and the European Community Monitor Mission.

Sec. 4. The definitions contained in section 5 of Executive Order No. 12810 apply to the terms used in this order.

Sec. 5. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 6. This order shall not affect the provisions of licenses and authorizations issued pursuant to Executive Order Nos. 12808, 12810, 12831 and in force on the effective date of this order, except as such licenses or authorization may hereafter be terminated, modified or suspended by the issuing federal agency.

Sec. 7. (a) This order shall take effect at 12:01 a.m. Eastern Daylight Time, April 26, 1993.

(b) This order shall be transmitted to the Congress and published in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
April 25, 1993.

[FR Doc. 93–10012
Filed 4–26–93; 9:55 am]
Billing code 3195–01–P

Editorial note: For the President's message to Congress on these additional economic measures against Serbia and Montenegro, see issue 17 of the *Weekly Compilation of Presidential Documents.*

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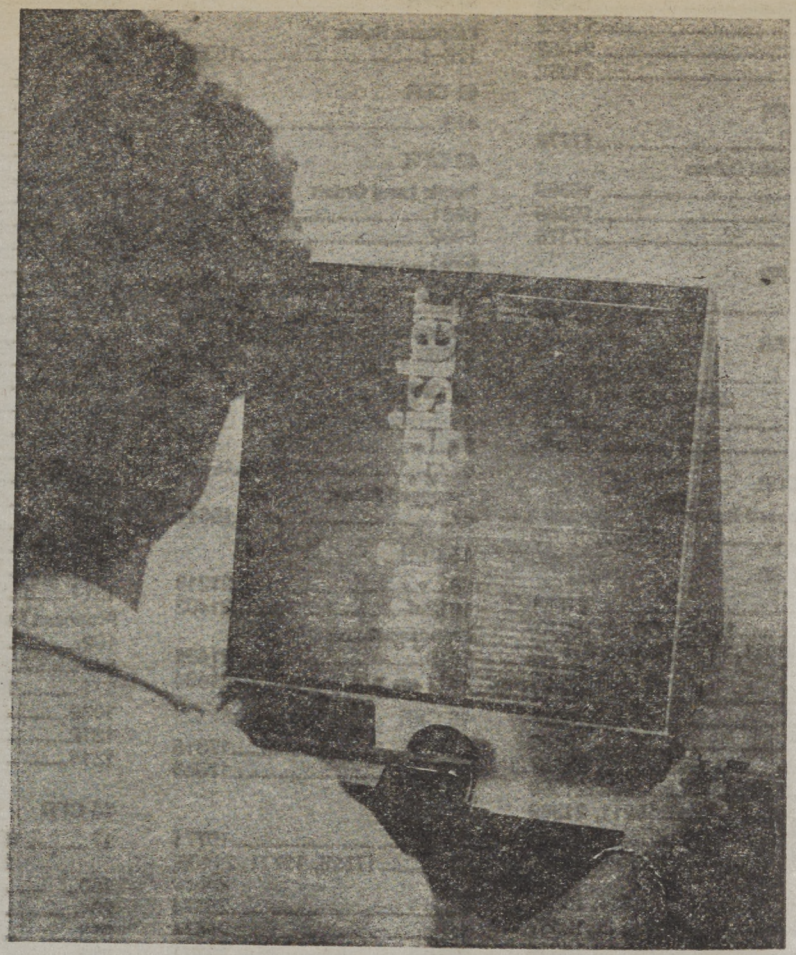

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