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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.
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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

(TWO BRIEFINGS)

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 73 and 74

RIN 3150–AE27

Licensees' Announcements of Safeguards Inspections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations concerning safeguards inspections at facilities that possess a formula quantity of strategic special nuclear material in unirradiated form. The purpose of the rule is to ensure that the presence of NRC safeguards inspectors at affected facilities is not announced nor widely communicated to licensee and contractor personnel without the expressed request to do so by the safeguards inspector. The rule will increase the effectiveness of unannounced safeguards inspections and enable a safeguards inspector to obtain a more accurate view of operations at the facility.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2478.

SUPPLEMENTARY INFORMATION:

Background

The Commission is concerned that the effectiveness of unannounced safeguards inspections at certain facilities required to maintain safeguards may be diminished by the announcement or other communication of the presence of a safeguards inspector on-site, without the expressed request of the safeguards inspector. On November 3, 1992 (57 FR 49656), the Commission published a proposed rule that would prohibit a licensee or its contractors from using an access control measure or other means to intentionally give notice to other persons of the arrival or presence of an NRC safeguards inspector at facilities possessing a formula quantity of strategic special nuclear material in unirradiated form. Similar requirements are in place for power reactor sites as required by 10 CFR 50.70(b)(4).

Safeguards inspections are comprised of material control and accounting inspections, and physical security inspections. The proposed rule was limited to safeguards inspections due to the expediency by which most safeguards degradation can typically be compensated for after the announcement of the presence of an NRC safeguards inspector, such as, by the posting of a security officer. The proposed amendment would impose only procedural changes and is expected to have no economic impact on affected licensees or the public. Violation of these rules may subject a person to the criminal penalties in section 223 of the Atomic Energy Act of 1954, as amended. Notwithstanding, the Commission reiterates the position stated in the notice of proposed rulemaking regarding enforcement action.

As the NRC said when it promulgated 10 CFR 50.70(b)(4), which prohibits nuclear power reactor licensees from communicating the arrival or presence of an NRC inspector unless asked to do so by the inspector:

> Recognizing the possibility of inadvertent communication of an inspector's presence, the NRC expects to reserve enforcement action [only] for significant intentional violations of the [prohibition]. An honest response by an employee to an innocent inquiry that he [or] she just saw an NRC inspector is not [proscribed by] the rule. Therefore, an employee would not be required to lie, in response to a question, about the presence of an NRC inspector (53 FR 42940; October 25, 1988).

Similarly, the NRC recognizes the possibility that some communication of an inspector's presence may even be necessary on occasion. For instance, the person directly in charge of an area being inspected may need to inform certain other people, perhaps higher-level managers, that, because of the inspection, he or she cannot attend a previously scheduled meeting. An employee would not be required by the rule to cancel previous engagements without giving timely and sufficient reason.

Public Comment on the Proposed Rule

The 90-day public comment period for the rule expired on February 1, 1993. Affected licensees sent no comments on the proposed amendment. One letter of comment was received from a concerned citizen. The concerned citizen recommended strengthening the rule to prohibit the announcement of inspections by anyone, not just the licensee, and cited what were considered to be general violations of the existing prohibition contained in 10 CFR 50.70(b)(4). The Commission notes that the comment appears to focus on inspections at power reactor sites, as opposed to the facilities affected by the rule, that is, facilities possessing a formula quantity of strategic special nuclear material in unirradiated form. Further, announced inspections are conducted as part of an overall inspection program. There are many occasions when it is proper and necessary that a licensee have advance notice of an inspection. Notice of these inspections may be widely communicated. The Commission's regulatory authority for prohibiting the announcement of an inspection does not extend beyond its licensees and its own employees. The extension of this authority, as suggested by the comment, is not within the Commission's Federal mandate.

One change has been made to the rule's text published for comment. The Commission has clarified the text that describes those facilities affected by amendments to 10 CFR 74.81. No other changes have been made to the proposed rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this amendment is the type of action described in categorical exclusion 10 CFR 55.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the final rule.

Paperwork Reduction Act Statement

This final rule contains no new nor amended information collection requirements and, therefore, is not

subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval numbers 3150–002 and 3150–0123.

Regulatory Analysis

This final rule will have no significant impact on State and local governments and geographical regions. It may have an impact on health, safety, and the environment, but only in the sense of preventing adverse impacts on health, safety, and the environment through more effective safeguards inspections at affected facilities. The final rule makes it clear that NRC safeguards inspectors are to have a realistic picture of the actual conditions at a site during the inspection process and, therefore, be better able to identify conditions and/or practices for corrective action, and to ensure that licensees comply with laws, regulations, and orders administered by NRC. The final rule imposes procedural changes only on affected licensees at minimal or no cost. This constitutes the regulatory analysis for the final rule.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final amendments will not impose significant cost on any affected licensees regardless of size.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because affected facilities are not licensed under 10 CFR part 50 and, therefore, a backfit analysis is not required. This final rule affects only those facilities that possess a formula quantity of strategic special nuclear material in unirradiated form and imposes only procedural changes at minimal or no cost to the licensee.

List of Subjects

10 CFR Part 73

Criminal penalties, Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIAL

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended; sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); secs. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.46, paragraph (d)(15) is added to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(d) * * *

(15) The licensee may not announce or otherwise communicate to its employees or site contractors the arrival or presence of an NRC safeguards inspector unless specifically requested to do so by the NRC safeguards inspector.

* * * * *

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

3. The authority citation for part 74 continues to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

4. In § 74.81, paragraph (d) is added to read as follows:

§ 74.81 Inspections.

* * * * *

(d) At a facility using and possessing a formula quantity of strategic special nuclear material in unirradiated form, the licensee may not announce or otherwise communicate to its employees or site contractors the arrival or presence of an NRC safeguards inspector unless specifically requested to do so by the safeguards inspector.

Dated at Rockville, MD this 17th day of May 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–12094 Filed 5–20–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 92–AWP–21]

Amendment to Restricted Areas R–2516, R–2534A, and R–2534B; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the title of Restricted Areas R–2516, R–2534A, and R–2534B located in California, to Vandenberg AFB, CA. It also changes the controlling agency and using agency for R–2516. These are administrative changes initiated by the U.S. Air Force to reflect its reorganization. There are no changes to the boundaries, altitudes, times of use, or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 u.t.c. July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Diane Bodenhamer, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–3178.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the title of R–2516 from "Naval Missile Facility Point Arguello, CA," to "Vandenberg AFB, CA." The title of R–2534A and R–2534B is changed from "Point Arguello, CA," to "Vandenberg AFB, CA." This action also changes the controlling agency for R–2516 from "Western Space and Missile Center, Vandenberg AFB, CA," to "FAA, Los Angeles ARTCC," and the using agency for R–2516 from "Western Space and, Missile Center (WSMC)/SE, Vandenberg AFB, CA," to "U.S. Air Force, Commander, 30th Space Wing (30 SPW/CC), Vandenberg AFB, CA." These

administrative changes were initiated by the Department of the Air Force to reflect its reorganization. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is an administrative change and does not affect the boundaries, altitudes, times of use, or activities of the restricted areas. Accordingly, this action will have no effect on current air traffic procedures or routing of civil aircraft operations in the area. The FAA, therefore, finds that there will be no significant impact on the environment as a result of this action.

List of Subjects in 14 CFR Part 73

Aviation safety, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§73.25 [Amended]

2. Section 73.25 is amended as follows:

R–2516 Naval Missile Facility Point Arguello, CA—[Amended]

By removing the title "R–2516 Naval Missile Facility Point Arguello, CA," and substituting "R–2516 Vandenberg AFB, CA," and by removing the present controlling agency and using agency and substituting the following:

"Controlling agency. FAA, Los Angeles ARTCC. Using agency. U.S. Air Force, Commander, 30th Space Wing (30 SPW/CC), Vandenberg AFB, CA."

R–2534A Point Arguello, CA—[Amended]

By removing the title "R–2534A Point Arguello, CA" and substituting "R–2534A Vandenberg AFB, CA."

R–2534B Point Arguello, CA—[Amended]

By removing the title "R–2534B Point Arguello, CA," and substituting "R–2534B Vandenberg AFB, CA."

Issued in Washington, DC, on May 11, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–12068 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket No. 86P–0297]

Cacao Products; Amendment of the Standards of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this final rule to amend the standards of identity for certain cacao products. The amendments will: Provide for the use of safe and suitable nutritive carbohydrate sweeteners, neutralizing agents, and emulsifiers in these products; revise the current milkfat content requirements for milk chocolate, buttermilk chocolate, skim milk chocolate, and mixed dairy product chocolates; eliminate the current nonfat milk solids-to-milkfat ratio for certain cacao products; and revise the standards for coatings. The final rule will also update the language and format of the standards. The amendments will promote honesty and fair dealing in the interest of consumers and, to the extent practicable, will achieve consistency with the Codex Alimentarius Commission (the Codex) International Standards for Chocolate and for Cocoa Powders (Cocoas) and Dry Cocoa—Sugar Mixtures.

DATES: July 20, 1993, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 163.5, effective July 20, 1993.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5106.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 5, 1992 (57 FR 23989), FDA published a tentative final rule to amend the standards of identity for cacao products in part 163 (21 CFR part 163). This tentative final rule addressed comments received in response to a proposed rule on the cacao product standards that was published in the **Federal Register** of January 25, 1989 (54 FR 3615), and that responded to a citizen petition submitted by the Chocolate Manufacturers Association of the United States of America (CMA).

This rulemaking, based on the CMA petition, was initiated under authority of section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)) which required formal rulemaking in any action for the issuance, amendment, or repeal of a food standard. However, the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535), enacted November 8, 1990, removed rulemakings on food standards (except for actions for the amendment or repeal of food standards of identity for dairy products or maple sirup) from the coverage of 21 U.S.C. 371(e). To ensure that no one was prejudiced by this change in procedure, and to ensure that FDA was apprised of all relevant concerns before deciding on a final rule, the agency prepared the June 5, 1992, document as a tentative final rule. In addition, during the time between the proposed rule and the tentative final rule, a number of issues were raised that were outside the scope of the original proposal. Therefore, FDA divided the June 5, 1992, tentative final rule into two sections: Section II.A. *Tentative Final Rule*; and section II.B. *Issues for Future Rulemaking.* (FDA published a notice in the **Federal Register** (57 FR 54195, November 17, 1992) announcing that it was reopening until May 17, 1993, the comment period for those issues in section II.B. of the tentative final rule.)

The agency announced that it intended to issue a final rule on section

II.A. of the June 5, 1992, tentative final rule as expeditiously as possible. Interested persons were given until July 6, 1992, to comment on section II.A. The agency received 11 letters, each containing one or more comments, from trade associations, chocolate manufacturers, and ingredient suppliers. Most comments supported the proposed amendments and urged FDA to proceed to a final rule on the issues in section II.A. as quickly as possible. Several comments requested further clarification of certain issues (e.g., whether certain ingredients would be nutritive carbohydrate sweeteners) or suggested modification of various provisions of the tentative final rule to amend the standards for cacao products. A summary of the specific comments and the agency's responses follow.

II. Sweeteners

In the June 5, 1992, tentative final rule, FDA proposed to amend the standards of identity for certain cacao products to include the functional group designation "nutritive carbohydrate sweeteners" rather than listing specific permitted sweeteners. To minimize possible confusion, the agency included in the preamble of that rule a discussion of the characteristics that, when used collectively, describe the class of sweeteners commonly known as "nutritive carbohydrate sweeteners." In its discussion, FDA stated that nutritive carbohydrate sweeteners: (1) Are relatively low molecular weight saccharides; (2) can be metabolized (i.e., have greater than 2 percent of the caloric value of sucrose per equivalent unit of sweetening capacity); and (3) have sufficient sweetening power to function as sweeteners. FDA also stated that, under the proposed amendment, these sweeteners would have to be "safe and suitable."

In addition, the agency responded to comments requesting clarification on whether certain ingredients would be considered nutritive carbohydrate sweeteners. In its discussion, FDA stated that maltodextrin, which is defined in § 184.1444 (21 CFR 184.1444) as a "nonsweet nutritive saccharide polymer," is not a sweetener for the purpose of these standards. FDA also stated that the comments did not provide sufficient information concerning the nature of fruit juice concentrate and maltodextrin or dextrin mixtures to justify consideration of these combinations of ingredients as nutritive carbohydrate sweeteners that are suitable for use in the manufacture of cacao products.

1. One comment argued that "nutritive carbohydrate sweeteners" should not necessarily consist only of low molecular weight saccharide components. The comment cited the agency's position (57 FR 23989 at 23991) that glucose sirup (defined in § 168.120 (21 CFR 168.120)) as the purified, concentrated, aqueous solution of nutritive saccharides obtained from edible starch) is a nutritive carbohydrate sweetener. The comment also noted that the listing of nutritive carbohydrate sweeteners approved by the Codex and tentatively approved by FDA for use in cacao products is not limited to pure saccharides. The comment maintained that the Codex list includes foods such as honey, glucose sirup, and dried glucose sirup that, like fruit juice concentrate, contain nonsaccharide components. The comment conceded that some concentrated flavor and acid components of certain sweeteners may be too strong or unpleasant to meet with consumer acceptance and, thus, would not be suitable for use in cacao products. However, the comment maintained that the presence of fruit flavors, acids, and fruit juice solids should not, by itself, make a sweetener unsuitable for use in chocolate confections. The comment further stated that some fruit juice concentrates, such as apple juice and white grape juice concentrate, are very bland and are naturally low in acid and nonsaccharide fruit juice solids.

FDA agrees that nutritive carbohydrate sweeteners may contain other components in addition to low molecular weight saccharides. FDA notes that because the saccharides in some nutritive carbohydrate sweeteners are produced from the partial hydrolysis of edible starch, the nutritive carbohydrate sweeteners also contain other components in addition to low molecular weight saccharides. Of course these sweeteners must still have significant sweetness. In glucose sirup, the extent of hydrolysis controls the ratio of low-to-high molecular weight saccharides. Varying the extent of hydrolysis or degree of conversion of starch to sugars affects the characteristics (e.g., sweetness and viscosity) of the product. However, § 168.120(b)(1) requires that glucose sirup contain sufficient low molecular weight saccharides (i.e., not less than 20 percent dextrose equivalent) to ensure sufficient sweetening properties for the ingredient to be considered a sweetener. The higher molecular weight saccharides present in glucose sirup are bland in flavor and are a naturally occurring component of the food. As such, their presence does not preclude the use of glucose sirup as a nutritive carbohydrate sweetener.

FDA noted in the tentative final rule (57 FR 23989 at 23992) that products such as "decolorized, decharacterized grape juice concentrates," which are essentially concentrated solutions of sugars from fruit, are nutritive carbohydrate sweeteners.

Based on the argument supplied by the comment, the agency has further considered the use of fruit juice concentrate-based sweeteners in cacao products. FDA has concluded that to be consistent with its treatment of other nutritive carbohydrate sweeteners that contain higher molecular weight saccharide or nonsaccharide components, the presence of naturally occurring fruit flavors, acids, and fruit solids should not preclude the use of fruit juice concentrates as nutritive carbohydrate sweeteners in cacao products. Therefore, FDA agrees with the comment that fruit juice concentrates, such as apple juice and white grape juice concentrate, would be nutritive carbohydrate sweeteners, suitable for use in certain cacao products.

2. Another comment pointed out that maltodextrin, dextrins, or rice syrup solids are added to fruit juice concentrate-based sweeteners as a carrier or drying aid for the fruit juice concentrate. The comment stated that addition of these substances was necessary to achieve certain physical properties in the sweetener that are required by virtue of the manufacturing process for sweetened cacao products. The comment maintained that because fruit juice concentrate and rice syrup solids are both nutritive carbohydrate sweeteners, a mixture of these ingredients would also be a nutritive carbohydrate sweetener. The comment urged FDA to proceed with final rulemaking for cacao standards and to defer for later consideration the issue of fruit juice concentrate-based sweeteners that contain maltodextrin or dextrin mixtures.

FDA generally agrees with the comment. FDA stated in the tentative final rule (57 FR 23989 at 23992) that rice syrup solids are nutritive carbohydrate sweeteners. Thus, a mixture of fruit juice concentrate and rice syrup solids would also be a nutritive carbohydrate sweetener and may be suitable for use in cacao products. However, except for the standards for chocolate coatings made with vegetable fat, §§ 163.150, 163.153, and 163.155, which provide for the use of safe and suitable bulking agents and formulation aids, there is no provision

for the use of maltodextrin or dextrin in standardized cacao products.

Although FDA has been persuaded by the preceding comment that nutritive carbohydrate sweeteners do not necessarily consist solely of low molecular weight saccharide components, the agency notes that the other components of such sweeteners (e.g., higher molecular weight saccharides in glucose syrup) are naturally occurring constituents of the food and do not negate or detract from the ability of the food to function as a nutritive carbohydrate sweetener.

FDA advises that the naturally occurring nonsaccharide components of an ingredient that has a long history of use as a nutritive carbohydrate sweetener are not the same as a nonsaccharide component in an ingredient that is a blend of a nutritive carbohydrate sweetener and a nonsaccharide. FDA lacks sufficient information to conclude that a sweetener that is a blend of a nutritive carbohydrate sweetener and an ingredient that is not a nutritive carbohydrate sweetener would still be a nutritive carbohydrate sweetener. Because this rulemaking is concerned with whether to expand the provisions in part 163 to provide for the use of nutritive carbohydrate sweeteners in cacao products, considering whether fruit juice concentrate-based sweeteners containing maltodextrin or dextrins would be suitable for use in cacao products is outside the scope of this rulemaking.

However, as stated in section II.B. *Issues for Future Rulemaking* of the tentative final rule (57 FR 23989 at 23996), FDA recognizes that various forms of new sweetening ingredients will become available with advances in food technology and changes in consumer expectations. FDA advised that should it receive comments (or a petition) that support further broadening the provision for the use of safe and suitable sweeteners in cacao products, this action would be addressed in a future rulemaking. The agency intends to consider the request to use fruit juice concentrate-based sweeteners containing maltodextrin or dextrins to sweeten standardized cacao products in any future rulemaking addressing whether it would be desirable to further broaden the provision for the use of sweeteners in cacao products to provide for "safe and suitable sweeteners" rather than "safe and suitable nutritive carbohydrate sweeteners."

3. Another comment stated that based on their composition and metabolism, polyols should be considered "nutritive carbohydrate sweeteners." However, the comment did not offer any information to support its position. Conversely, the comment maintained that if FDA concludes that polyols are not suitable for use as sweeteners in cacao products, it should characterize the acceptable sweeteners as "safe and suitable saccharides" or "safe and suitable sugars" rather than "nutritive carbohydrate sweeteners" to further emphasize the distinction drawn in the tentative final rule between "saccharides," i.e., sugars, and other sweeteners. The comment argued that continued use of the phrase "nutritive carbohydrate sweeteners" in a way that excludes polyols could result in excluding the appropriate use of polyols in many foods. Finally, the comment urged that FDA "recognize that polyols are not 'sugars' so that a properly limited 'sugar free' claim would be appropriate for polyol-sweetened foods."

FDA disagrees with the comment that polyols, also known as polyhydric alcohols or sugar alcohols, are nutritive carbohydrate sweeteners. As stated in the tentative final rule (57 FR 23989 at 23991) and repeated in this preamble, one of the characteristics that collectively describes the class of sweeteners commonly known as "nutritive carbohydrate sweeteners" is that they are relatively low molecular weight saccharides. Based on the first comment discussed in this section, FDA has modified its definition of "nutritive carbohydrate sweeteners" to reflect that some of the sweeteners commonly recognized as nutritive carbohydrate sweeteners do not consist solely of low molecular weight saccharides but may also contain naturally occurring nonsaccharide constituents. However, it is the saccharide component of such sweeteners that traditionally has resulted in their inclusion in the class of sweeteners known as "nutritive carbohydrate sweeteners."

As noted in the tentative final rule (57 FR 23989 at 23992), polyols such as sorbitol (§ 184.1835 (21 CFR 184.1835)) and xylitol (§ 172.395 (21 CFR 172.395)) are usually used as sweeteners in foods for special dietary use. They also provide other technical functions that may be beneficial in chocolate-containing confections. However, as polyhydric alcohols, these ingredients are not saccharides. Further, the polyol sorbitol is defined in § 184.1835 as a "nutritive sweetener," not as a nutritive carbohydrate sweetener.

Because polyols are not nutritive carbohydrate sweeteners, and this rulemaking is concerned with whether to expand the provisions in part 163 to provide for the use of nutritive carbohydrate sweeteners, whether polyols are safe and suitable for use in cacao products is outside the concerns of this rulemaking. The issue of whether polyols are suitable to sweeten standardized cacao products is a subject for a future rulemaking, e.g., whether it would be appropriate to further broaden the provision for the use of sweeteners in cacao products to read "safe and suitable sweeteners" or "safe and suitable nutritive sweeteners" rather than "safe and suitable nutritive carbohydrate sweeteners," as stated in section II.B. *Issues for Future Rulemaking* of the tentative final rule.

FDA also disagrees with the suggestion that it should redesignate the optional sweeteners in cacao standards as "sugars" or "saccharides." FDA proposed to replace the specified optional saccharine ingredients in the cacao standards with the functional group designation "nutritive carbohydrate sweeteners" to provide greater flexibility in the choice of sweeteners that can be used in cacao products and to reduce the need to amend the cacao products standards as other safe and suitable nutritive carbohydrate sweeteners are developed. The action requested by this comment, however, would limit the choice of sweeteners, not expand it, because many nutritive carbohydrate sweeteners (e.g., fruit juice concentrates) are not exclusively composed of saccharides and thus could not be used.

The agency notes that the phrase "nutritive carbohydrate sweeteners" is used extensively in both the scientific literature and in existing FDA standards of identity to refer to the class of sweeteners in question. The phrase is also consistent with Codex provisions for the use of "suitable carbohydrate sweeteners" in cacao products. Therefore, the agency believes that it would be inappropriate, and potentially confusing, to adopt different terminology.

With respect to the use of a "sugar free" claim for polyol-sweetened foods, in a final rule on nutrition labeling (58 FR 2079, January 6, 1993), FDA defined "sugars" as "the sum of all mono- and disaccharides (such as glucose, fructose, lactose, and sucrose)." This definition is set forth in 21 CFR 101.9(c)(6)(ii). In the nutrition labeling final rule (58 FR 2079 at 2099), FDA stated that sugar alcohols are not sugars, that they have many chemical and physiological properties that are different from sugars, and that it is these differences that make them useful as sugar substitutes.

In its final rule on nutrient content claims (58 FR 2302, January 6, 1993),

FDA established § 101.60(c)(1) (21 CFR 101.60(c)(1)), which provides for the use of the term "sugar free" on foods that contain less than 0.5 grams (g) of sugars as defined in § 101.9(c)(6)(ii) per serving. Thus, a food containing sugar alcohols may bear a "sugar free" claim as long as it meets the requirements in § 101.60(c)(1) for "sugar free" and in § 101.9(c)(6)(iii) that sugar alcohol content be disclosed.

4. One comment asserted that the standards for cacao products should be amended to permit the use of any safe and suitable sweetener. The comment stated that this change would allow consumers to select products sweetened with a variety of sweeteners without the confusion of using a nonstandardized or fanciful name. The comment further stated that an appropriate name for such products would be, e.g., "chocolate, sweetened with aspartame."

In the tentative final rule (57 FR 23989 at 23996), FDA advised that should it receive substantive comments (or a petition) supporting action to further broaden the provisions for the use of safe and suitable sweeteners in cacao products, it would consider initiating a separate rulemaking. The agency is limiting this rulemaking to considering whether to provide for the use of nutritive carbohydrate sweeteners in cacao products. Thus, the comment is outside the scope of this rulemaking. The agency has noted the comment and filed it with other letters responding to section II.B. *Issues for Future Rulemaking* of the tentative final rule.

FDA has fully considered the comments and concluded that amending the cacao standards to provide for the use of safe and suitable nutritive carbohydrate sweeteners will provide greater flexibility in the choice of sweeteners in cacao products and will minimize the need to amend the standards as other nutritive carbohydrate sweeteners are found to be safe and suitable for use in these foods.

Accordingly, FDA is amending the standards of identity for sweet chocolate in § 163.123(a)(1) and (b)(2), milk chocolate in § 163.130(a)(1) and (b)(2), and, by cross-reference, the standards of identity for buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), mixed dairy product chocolates (§ 163.145), sweet cocoa and vegetable fat coating (§ 163.150), sweet chocolate and vegetable fat coating (§ 163.153), and milk chocolate and vegetable fat coating (§ 163.155), to provide for the use of nutritive carbohydrate sweeteners, as proposed.

III. Milkfat Content, Milk Solids Content, and Nonfat Milk Solids-to-Milkfat Ratio

5. In the June 5, 1992, tentative final rule, FDA tentatively concluded that it is reasonable to reduce the minimum milkfat content requirement for milk chocolate in § 163.130 so that the proportional milkfat content in milk chocolate is not less than that of milk under the standard of identity for that food in § 131.110 (21 CFR 131.110). The agency also proposed to reduce the maximum milkfat content requirements in buttermilk chocolate (§ 163.135) and skim milk chocolate (§ 163.140), and to reflect these changes in the standard for mixed dairy product chocolates (§ 163.145). In addition, FDA proposed to remove the nonfat milk solids-to-milkfat ratio requirement in the standard of identity for milk chocolate (§ 163.130).

The agency did not receive any comments opposed to these proposed actions. Therefore, FDA is amending § 163.130(a)(2) to reduce the minimum milkfat content requirement in milk chocolate from 3.66 percent to 3.39 percent. The agency is also reducing the maximum milkfat content requirement in buttermilk chocolate (§ 163.135) and skim milk chocolate (§ 163.140) from 3.66 percent to 3.39 percent and amending the standard for mixed dairy product chocolates in § 163.145(a)(2) to reflect these changes. In addition, FDA is removing the nonfat milk solids-to-milkfat ratio requirement in the standard of identity for milk chocolate (§ 163.130), as proposed.

IV. Safe and Suitable Ingredients in Coatings Made With Vegetable Fat

6. In the June 5, 1992, tentative final rule, FDA proposed to expand the provisions for the use of safe and suitable ingredients in coatings made with vegetable fat (§§ 163.150, 163.153, and 163.155) to include dairy-derived ingredients, bulking agents, formulation aids, humectants, and texturizers. There were no objections to this proposed action. Therefore, FDA is amending §§ 163.150, 163.153, and 163.155 to provide for the use of safe and suitable dairy-derived ingredients, bulking agents, formulation aids, humectants, and texturizers as proposed. This action will provide manufacturers with increased flexibility and provide consumers with a wider range of product choices.

V. Calculating Milk Solids Content Requirements in Cacao Products

In its discussion of the use of dairy-derived ingredients in coatings made with vegetable fat (57 FR 23989 at 23995), FDA noted that the minimum requirements for total milk solids in the existing standards for milk chocolate (§ 163.130) and, by cross-reference, milk chocolate and vegetable fat (other than cacao fat) coating (§ 163.155) ensure that these products contain the level of dairy flavor that consumers expect in milk chocolate. Conversely, the agency also noted that the sweet chocolate (§ 163.123) and sweet chocolate and vegetable fat (other than cacao fat) coating (§ 163.153) standards contain maximum milk solids content requirements that limit the dairy flavor of these foods and thus distinguish them from milk chocolate and from coatings made with milk chocolate and vegetable fat. Given the distinction that the regulations draw, the agency tentatively concluded that it would be inappropriate to include dairy-derived ingredients, such as whey or lactose, that do not significantly contribute to the dairy character of the food in determining whether a food complies with minimum or maximum milk solids content requirements.

Consequently, FDA proposed to add new language to the standards for sweet chocolate and vegetable fat coating (§ 163.153) and milk chocolate and vegetable fat coating (§ 163.155) (57 FR 23989 at 23996) specifying that compliance with the total milk solids content requirements in §§ 163.123(a)(2) and 163.130(a)(2) is to be calculated using only those diary ingredients referred to in §§ 163.123(b)(4) and 163.130(b)(4).

7. One comment noted that the proposed standards for sweet chocolate (§ 163.123), milk chocolate (§ 163.130), buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), and mixed dairy product chocolates (§ 163.145) do not include the limitation restricting calculation of milk solids content of cacao products to specified optional dairy ingredients. The comment stated that because the proposal provided for lactose to be added to standardized cacao products as a nutritive carbohydrate sweetener, and because lactose is a milk solid, the agency should clarify that the limitation also applies to the calculation of milk solids in §§ 163.123, 163.130, 163.135, 163.140, and 163.145. A second comment agreed that when lactose is added as a nutritive carbohydrate sweetener in cacao products, it should not be counted towards the milk solids content requirements of the standards.

The agency agrees with the comments that limiting the dairy ingredients used in calculating the total milk solids content of standardized cacao products

to those that are specified in §§ 163.123(b)(4) and 163.130(b)(4) will ensure that these products contain the level of dairy flavor that consumers expect from each product. Although this position was implied in the preamble of the tentative final rule (57 FR 23989 at 23995), it was only explicitly set out in proposed §§ 163.153 and 163.155. As stated in the tentative final rule, FDA tentatively concluded that it would be inappropriate to include dairy-derived ingredients that do not contribute to the dairy character of the food in determining whether a food complies with the milk solids content requirement. Because FDA is amending the cacao products standards to provide for the use of nutritive carbohydrate sweeteners, including lactose, it is necessary to include the limitation restricting calculation of milk solids content to specified dairy ingredients in these standards.

Therefore, FDA is adding new language to §§ 163.153(a) and 163.155(a) to limit the calculation of the total milk solids content requirements to those dairy ingredients listed in §§ 163.123(b)(4) and 163.130(b)(4), as proposed. FDA is also amending §§ 163.123, 163.130, 163.135, 163.140, and 163.145 to expressly limit the ingredients that are to be included in determining whether a product satisfies the total milk solids content requirements to those ingredients that are specified as optional dairy ingredients in the respective standards.

FDA notes that several of the standards in part 131 (21 CFR part 131) for milk and cream products that are optional dairy ingredients in standardized cacao products (e.g., sweetened condensed milk (§ 131.120), sweetened condensed skimmed milk (§ 131.122), and nonfat dry milk (§ 131.125)) provide for the use of nutritive carbohydrate sweeteners, including lactose. Furthermore, several standards in part 131 (e.g., skim milk (§ 131.143) and lowfat milk (§ 131.135)) provide for the addition of optional dairy or dairy-derived ingredients, including lactose and whey, to increase the nonfat solids content of the food. These standards provide that the ratio of protein to total nonfat solids in the food, and the protein efficiency ratio of all proteins present, shall not be decreased as a result of adding such ingredients. Therefore, the amount of the dairy-derived ingredients that can be added to increase the total solids content of the dairy products in part 131 is limited.

However, according to § 131.120(a), sweetened condensed milk must contain a sufficient quantity of nutritive carbohydrate sweetener to prevent spoilage. Products typically contain 40 to 45 percent by weight nutritive carbohydrate sweetener. Thus, a dairy product such as sweetened condensed milk sweetened with lactose could contain a significant amount of a dairy-derived ingredient (i.e., the added lactose) that would not significantly contribute to the dairy character of the product or to the dairy character of any food in which the lactose sweetened condensed milk was used as an ingredient.

FDA stated (57 FR 23989 at 23995) that dairy-derived ingredients, such as lactose and whey, that do not contribute to the dairy character of a food should not be included in determining whether a food meets the milk solids content requirements of the standards. While the discussion in the tentative final rule addressed the direct addition of dairy-derived ingredients to cacao products, to be consistent with its treatment of dairy-derived ingredients in coatings made with vegetable fat, FDA concludes that the dairy ingredients used to determine whether a food complies with the milk solids content requirements must also significantly contribute to the dairy character of the food, regardless of their source.

Thus, for example, the limitation on calculating milk solids content that it proposed to include in §§ 163.153 and 163.155 (i.e., to limit the calculation of total milk solids content to those dairy ingredients that contribute significant dairy character) will apply not only when lactose is directly added as a nutritive carbohydrate sweetener, but also when it (or any other milk solid or dairy-derived ingredient) is added as a component of any of the specified dairy ingredients used in the food. As stated in the tentative final rule, and supported by comments to the tentative final rule, lactose should not be used in determining whether a food complies with the milk solids content requirements for cacao products. FDA knows of no reason to include a dairy-derived ingredient, such as lactose, in determining whether a cacao product meets the minimum or maximum milk solids content requirements when it is used, for example, to sweeten an optional dairy ingredient, while excluding lactose when it is used as a nutritive carbohydrate sweetener in the cacao product.

Therefore, FDA is adding language to the above limitations in §§ 163.123, 163.130, 163.135, 163.140, 163.145, 163.153, and 163.155 to specify that the amount of the milk solid component beyond that amount that is a normal component of the specified dairy ingredient (e.g., lactose added to sweetened condensed milk) is to be excluded from the calculation of minimum and maximum milk solids content requirements in standardized cacao products. FDA believes that this action is a logical outgrowth of, and fully consistent with, the limitations on determining compliance with the minimum and maximum milk solids requirements proposed in the tentative final rule. FDA also believes that this action will ensure that cacao products contain the level of dairy flavor that consumers expect from each product.

VI. Percent Fat in Chocolate Liquor

In the January 25, 1989, proposed rule (54 FR 3615), FDA proposed to retain the existing cacao fat content requirements for chocolate liquor in § 163.111. The agency also proposed to remove the method of calculating chocolate liquor content based on the weight of nonfat cacao solids in finished sweet chocolate and milk chocolate (§§ 163.123(a)(2) and 163.130(a)(2)).

8. A comment to the proposed rule stated that current research in breeding has produced cacao nibs containing up to 60 percent cacao fat. The comment requested that FDA increase the upper limit for cacao fat content in the standard for chocolate liquor (§ 163.111) from "not more than 58 percent" to "not more than 60 percent" to reflect the changes in cacao fat content of cacao nibs which have resulted from breeding programs. The comment also stated that an increase in cacao fat content in chocolate liquor should not be accompanied by a decrease in nonfat cacao solids in the finished cacao product.

In the tentative final rule, FDA proposed (57 FR 23989 at 23993) to increase the maximum cacao fat content requirement in chocolate liquor (§ 163.111) from 58 percent to 60 percent to reflect an increased fat content in cacao beans. The agency also proposed to retain the calculation to determine chocolate liquor content in the current standards for sweet chocolate (§ 163.123(a)) and milk chocolate (§ 163.130(a) to ensure that the nonfat cacao solids content of these products is not diminished when higher levels of cacao fat are used.

The agency did not receive any comments opposed to these proposed actions. Therefore, FDA is amending the standard for chocolate liquor in § 163.111 by increasing the maximum cacao fat content requirement from "not more than 58 percent" to "not more than 60 percent," and is retaining the calculation to determine chocolate liquor content in the standards for sweet

chocolate (§ 163.123(a)) and milk chocolate (§ 163.130(a)) as proposed.

VII. Chocolate Coatings Made with Vegetable Fat

9. FDA proposed to revise §§ 163.150, 163.153, and 163.155 by removing the phrase "other than cacao fat" from the names of coatings made with vegetable fat (57 FR 23989 at 23994).

FDA also proposed a number of changes to the standards for coatings made with vegetable fat to provide manufacturers with increased flexibility in choice of ingredients and to provide consumers with a broader range of product choices than had been provided by the standards. Specifically, FDA proposed to amend the standard for "sweet cocoa and vegetable fat (other than cacao fat) coating" in § 163.150 to provide for the optional use of chocolate liquor (57 FR 23989 at 23994). FDA stated that this action would allow manufacturers to supplement or replace part of the cocoa in coatings made with sweet cocoa and vegetable fat with chocolate liquor while maintaining the minimum required nonfat cacao solids content requirement for the food. The agency pointed out that this action would also allow consumers to choose from a wider range of products that provide the expected level of chocolate flavor (57 FR 23989 at 23994).

Further, FDA proposed (57 FR 23989 at 23995) to expand the coverage of § 163.155 (milk chocolate and vegetable fat (other than cacao fat) coating) to provide for products that contain less than 3.3 percent by weight of milkfat and are labeled "skim milk chocolate and vegetable fat coating." FDA stated (57 FR 23989 at 23995) that this action would provide a means whereby manufacturers could produce milk chocolate-like coatings with vegetable fats that are not compatible with milkfat, while coatings labeled "milk chocolate and vegetable fat coating" would continue to contain levels of milkfat and milk solids equal to those in milk chocolate.

FDA did not receive any comments opposed to these proposed actions. Therefore, FDA is revising the heading of § 163.150 as *Sweet cocoa and vegetable fat coating*, § 163.153 as *Sweet chocolate and vegetable fat coating*, and § 163.155 as *Milk chocolate and vegetable fat coating*, as proposed. FDA is amending the description in § 163.150(a)(1) to provide for the optional use of chocolate liquor. FDA is also amending the standard for milk chocolate and vegetable fat coating in § 163.155 to provide for products that contain less than 3.3 percent by weight of milkfat and are labeled "skim milk chocolate and vegetable fat coating," as proposed.

VIII. Other Matters

10. Two comments commended FDA for proposing to provide for the use of functional ingredients such as polydextrose in coatings made with vegetable fat. The comments requested that FDA, in promulgating its final rule, also provide for the use of polydextrose in the cacao product standards in §§ 163.110 (cacao nibs), 163.111 (chocolate liquor), 163.112 (breakfast cocoa), 163.123 (sweet chocolate), 163.130 (milk chocolate), 163.140 (skim milk chocolate), and 163.145 (mixed dairy product chocolates). The comments maintained that because polydextrose § 172.841 (21 CFR 172.841) is approved for use in hard and soft candy, and because these categories include the above mentioned foods, the agency should state its approval of the use of polydextrose in the additional cacao products in §§ 163.110, 163.111, 163.112, 163.123, 163.130, 163.140, and 163.145.

The agency disagrees with the comments. FDA notes that the provisions in § 172.841 for the use of polydextrose as a bulking agent, formulation aid, humectant, or texturizer in certain foods (e.g., confections and hard and soft candies) is limited to those foods where such use is not precluded by identity standards established under section 401 of the act. The current standards for cacao products in part 163 do not provide for the use of polydextrose. In its discussion in the tentative final rule, however, the agency noted that providing for the use of ingredients, such as polydextrose, that perform a specific technical effect would be consistent with the history and intent of the standards for coatings made with vegetable fat in §§ 163.150, 163.153, and 163.155, that is to provide for the use of vegetable fat in lieu of additional cacao fat to achieve desired melting characteristics.

FDA notes that the standards for coatings made with vegetable fat provide for products with similar levels of chocolate flavor but with modified characteristics (e.g., melting point) compared to other cacao products. FDA did not propose to provide for the use of bulking agents, formulation aids, humectants, or texturizers in the additional cacao product standards in §§ 163.110, 163.111, 163.112, 163.123, 163.130, 163.140, and 163.145, nor has the agency received any information indicating that such action would be appropriate for these foods. Therefore, providing for the use of bulking agents, formulation aids, humectants, or texturizers in the additional cacao product standards in §§ 163.110, 163.111, 163.112, 163.123, 163.130, 163.140, and 163.145 is outside the scope of this final rule, and FDA is denying the request.

11. One comment stated that it assumed that the omission of the word "ground" in § 163.112(a)(1) to describe the cacao nibs used to make breakfast cocoa was unintentional. The comment stated that the grinding process not only reduces particle size but also reduces bacterial load from the heat that is generated. The comment also stated that the elimination of the requirement that cacao nibs be ground before part of the cacao fat is removed would in fact establish a new process for the manufacture of cacao powders for human consumption.

FDA acknowledges the inadvertent omission of the word "ground" and has made the appropriate editorial changes in § 163.112 to provide that breakfast cocoa, and by cross-reference, cocoa (§ 163.113) and lowfat cocoa (§ 163.114), are prepared by removing part of the fat from ground cacao nibs.

IX. Ingredient Labeling

12. In the **Federal Register** of January 25, 1989 (54 FR 3615), FDA proposed to require label declaration of all optional ingredients used in cacao products. Subsequently, in response to a statutory change enacted by the 1990 amendments, FDA issued a proposal (hereinafter referred to as the ingredient labeling proposal) (see the **Federal Register** of June 21, 1991 (56 FR 28592)), to require label declaration of all ingredients used in standardized foods, including cacao products. In this document, FDA proposed to revise, or to add a new paragraph to, §§ 163.110, 163.111, 163.112, 163.113, 163.114, 163.117, 163.123, 163.130, 163.135, 163.140, 163.145, 163.150, 163.153, and 163.155, to reflect the new ingredient labeling requirements.

FDA stated in the tentative final rule (57 FR 23989 at 23998) that the ingredient labeling proposal supersedes this rulemaking with respect to ingredient labeling. FDA also stated that any comments concerning label declaration of ingredients in cacao products received in response to the ingredient labeling proposal would be considered within the context of that rulemaking.

The June 21, 1991, ingredient labeling proposal was based on the existing cacao standards. FDA published the final rule on ingredient labeling on January 6, 1993 (58 FR 2850). FDA has included in the codified material set

forth in this document language for label declaration of all ingredients used in cacao products, as proposed in the ingredient labeling proposal and finalized on January 6, 1993, except that the agency has made minor editorial changes (e.g., in response to paragraph redesignation). Thus, the new labeling provisions are set forth in §§ 163.110(d), 163.111(d), 163.112(d), 163.113(a), 163.114(a), 163.117(a), 163.123(d), 163.130(d), 163.135(a), 163.140(a), 163.145(a), 163.150(a), 163.153(a), and 163.155(a).

X. Economic Impact

The agency previously conducted an economic assessment of the potential effects of this rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). FDA concluded (57 FR 23989 at 24000) that this action would allow manufacturers to take advantage of new ingredients and technologies and to develop a greater variety of cacao products with a wider range of physical characteristics. The agency found that amending the cacao products standards as proposed would increase flexibility and allow for innovation. FDA also concluded that consumers will benefit from increased product choices and from potentially lower costs.

Because firms will not have to change existing labels, and because no marginal costs are expected to be incurred, the agency found that this rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act, FDA also determined that this final rule will not have a significant adverse impact on a substantial number of small businesses. Finally, FDA concluded that increased flexibility would reduce the costs associated with updating the standards to keep current with technology.

FDA has not received any new information or comments that would alter its previous determinations that: (1) There is no substantive economic issue in this rulemaking, and (2) this is not a major rule. Therefore, FDA finds that this final rule is not a major rule as defined by Executive Order 12291. FDA also finds that this final rule will not have a significant adverse impact on a substantial number of small businesses.

XI. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (see the **Federal Register** of January 25, 1989 (54 FR 3615 at 3618)). No new information or comments have been received that would affect the agency's previous determination that there is no significant effect on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 163

Cacao products, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 163 is revised as follows:

PART 163—CACAO PRODUCTS

Subpart A—General Provisions

Sec.

163.5 Methods of analysis.

Subpart B—Requirements for Specific Standardized Cacao Products

163.110 Cacao nibs.
163.111 Chocolate liquor.
163.112 Breakfast cocoa.
163.113 Cocoa.
163.114 Lowfat cocoa.
163.117 Cocoa with dioctyl sodium sulfosuccinate for manufacturing.
163.123 Sweet chocolate.
163.130 Milk chocolate.
163.135 Buttermilk chocolate.
163.140 Skim milk chocolate.
163.145 Mixed dairy product chocolates.
163.150 Sweet cocoa and vegetable fat coating.
163.153 Sweet chocolate and vegetable fat coating.
163.155 Milk chocolate and vegetable fat coating.

Authority: Secs. 201, 301, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 341, 343, 348, 371, 376).

Subpart A—General Provisions

§ 163.5 Methods of analysis.

Shell and cacao fat content in cacao products shall be determined by the following methods of analysis prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 2200 Wilson Blvd., suite 400, Arlington, VA 22201–3301, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700 Washington, DC.

(a) Shell content—12th ed. (1975), methods 13.010–13.014, under the heading "Shell in Cacao Nibs—Official Final Action," pp. 208–210.

(b) Fat content—15th ed. (1990), method 963.15, under the heading "Fat in Cacao Products—Soxhlet Extraction Method—Final Action, 1973," pp. 770–771.

Subpart B—Requirements for Specific Standardized Cacao Products

§ 163.110 Cacao nibs.

(a) *Description.* (1) Cacao nibs is the food prepared by removing the shell from cured, cleaned, dried, and cracked cacao beans. The cacao shell content is not more than 1.75 percent by weight, calculated on an alkali free basis, as determined by the method prescribed in § 163.5(a).

(2) The cacao nibs, or the cacao beans from which they are prepared, may be processed by heating with one or more of the optional alkali ingredients specified in paragraph (b)(1) of this section.

(3) The cacao nibs, or the cacao beans from which they are prepared, as appropriate, may be further processed with one or more of the optional neutralizing agents specified in paragraph (b)(2) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Alkali ingredients. Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, added as such, or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such, or before shelling from the cacao beans, the total quantity of alkali ingredients used is not greater in neutralizing value (calculated from the respective combined weights of the alkali ingredients used) than the neutralizing value of 3 parts by weight of anhydrous potassium carbonate.

(2) Neutralizing agents. Phosphoric acid, citric acid, and *L*-tartaric acid, added as such, or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such, or before shelling from the cacao beans, the total quantity of phosphoric acid used is not greater than 0.5 part by weight, expressed as P_2O_5. The total amount, singly or in combination, of citric acid and *L*-tartaric acid is not greater than 1.0 part by weight.

(c) *Nomenclature.* The name of the food is "cacao nibs", "cocoa nibs", or "cracked cocoa".

(1) When the cacao nibs, or the cacao beans from which they are prepared, are processed with alkali ingredients specified in paragraph (b)(1) of this section, the name of the food shall be accompanied by the statement "Processed with alkali" or "Processed with ————", the blank being filled in with the common or usual name of the

specific alkali ingredient used in the food.

(2) When the cacao nibs, or the cacao beans from which they are prepared, are processed with neutralizing agents specified in paragraph (b)(2) of this section, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with ————", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in paragraphs (c)(1) and (c)(2) of this section shall precede or follow the name without intervening printed or graphic matter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

§ 163.111 Chocolate liquor.

(a) *Description.* (1) Chocolate liquor is the solid or semiplastic food prepared by finely grinding cacao nibs. The fat content of the food may be adjusted by adding one or more of the optional ingredients specified in paragraph (b)(1) of this section to the cacao nibs. Chocolate liquor contains not less than 50 percent nor more than 60 percent by weight of cacao fat as determined by the method prescribed in § 163.5(b).

(2) Optional alkali ingredients specified in paragraph (b)(2) of this section may be used as such in the preparation of chocolate liquor under the conditions and limitations specified in § 163.110(b)(1).

(3) Optional neutralizing agents specified in paragraph (b)(3) of this section may be used as such in the preparation of the chocolate liquor under the conditions and limitations specified in § 163.110(b)(2).

(4) Chocolate liquor may be spiced, flavored, or seasoned with one or more of the ingredients listed in paragraphs (b)(4), (b)(5), and (b)(6) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat and cocoas (breakfast cocoa, cocoa, or lowfat cocoa);

(2) Alkali ingredients. Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, added as such, or in aqueous solution;

(3) Neutralizing agents. Phosphoric acid, citric acid, and *L*-tartaric acid, added as such, or in aqueous solution;

(4) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(5) Butter or milkfat; or

(6) Salt.

(c) *Nomenclature.* The name of the food is "chocolate liquor", "chocolate", "unsweetened chocolate", "bitter chocolate", "baking chocolate", "cooking chocolate", "chocolate coating", or "unsweetened chocolate coating".

(1) When any optional alkali ingredient specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the statement "Processed with alkali" or "Processed with ————", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(3) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with ————", the blank being filled in with the common or usual name of the specific neutralizing ingredient used in the food.

(3) When one or more spices, flavorings, or seasonings specified in paragraphs (b)(4) and (b)(5) of this section are used in the chocolate liquor, the label shall bear an appropriate statement, e.g., "Spice added", "Flavored with ————", "Seasoned with ————", or "With ———— added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this section, showing optional ingredients used, shall precede or follow the name without intervening printed or graphic matter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

§ 163.112 Breakfast cocoa.

(a) *Description.* (1) Breakfast cocoa is the food prepared by pulverizing the material remaining after part of the cacao fat has been removed from ground cacao nibs. Breakfast cocoa contains not less than 22 percent by weight of cacao fat as determined by the method prescribed in § 163.5(b).

(2) Optional alkali ingredients specified in paragraph (b)(1) of this section may be used as such in the preparation of breakfast cocoa under the conditions and limitations specified in § 163.110(b)(1).

(3) Optional neutralizing agents specified in paragraph (b)(2) of this section may be used as such in the preparation of the breakfast cocoa under the conditions and limitations specified in § 163.110(b)(2).

(4) Breakfast cocoa may be spiced, flavored, or seasoned with one or more of the ingredients listed in paragraphs (b)(3) and (b)(4) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Alkali ingredients. Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, used as such, or in aqueous solution;

(2) Neutralizing agents. Phosphoric acid, citric acid and L-tartaric acid, used as such, or in aqueous solution;

(3) Spices, natural and artificial flavorings, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter; or

(4) Salt.

(c) *Nomenclature.* The name of the food is "breakfast cocoa", or "high fat cocoa".

(1) When any optional alkali ingredient specified in paragraph (b)(1) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompanied by the statement "Processed with alkali", or "Processed with ————", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" o.

"Processed with ————————", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section are used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added", "Flavored with ————————", or "With ———————— added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow the name without intervening printed or graphic matter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

§ 163.113 Cocoa.

(a) *Description.* Cocoa is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for breakfast cocoa in § 163.112, except that the cacao fat content is less than 22 percent, but not less than 10 percent by weight, as determined by the method prescribed in § 163.5(b).

(b) *Nomenclature.* The name of the food is "cocoa" or "medium fat cocoa".

§ 163.114 Lowfat cocoa.

(a) *Description.* Lowfat cocoa is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for breakfast cocoa in § 163.112, except that the cacao fat content is less than 10 percent by weight, as determined by the method prescribed in § 163.5(b).

(b) *Nomenclature.* The name of the food is "lowfat cocoa".

§ 163.117 Cocoa with dioctyl sodium sulfosuccinate for manufacturing.

(a) *Description.* Cocoa with dioctyl sodium sulfosuccinate for manufacturing is the food additive complying with the provisions prescribed in § 172.520 of this chapter. It conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients, for breakfast cocoa in § 163.112, or for cocoa in § 163.113, or for lowfat cocoa in § 163.114, except that the food additive contains dioctyl sodium sulfosuccinate (complying with the requirements of § 172.810 of this chapter, including the limit of not more than 0.4 percent by weight of the finished food additive).

(b) *Nomenclature.* The name of the food additive is "cocoa with dioctyl sodium sulfosuccinate for manufacturing" to which is added any modifier of the word "cocoa" required by the definition and standard of identity to which the food additive otherwise conforms. When the food additive is used in a fabricated food, the phrase "for manufacturing" may be omitted from any declaration of ingredients required under § 101.4 of this chapter.

§ 163.123 Sweet chocolate.

(a) *Description.* (1) Sweet chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more optional nutritive carbohydrate sweeteners, and may contain one or more of the other optional ingredients specified in paragraph (b) of this section.

(2) Sweet chocolate contains not less than 15 percent by weight of chocolate liquor complying with the requirements of § 163.111, as calculated by subtracting from the weight of the chocolate liquor used the weight of the cacao fat therein and the weights therein of any alkali, neutralizing, and seasoning ingredients, and multiplying the remainder by 2.2, dividing the result by the weight of the finished sweet chocolate, and multiplying the quotient by 100. The finished sweet chocolate contains less than 12 percent by weight of total milk solids based on those dairy ingredients specified in paragraph (b)(4) of this section, exclusive of any added sweetener or other dairy derived ingredient that is added beyond that amount that is normally present in the specified dairy ingredient.

(3) Semisweet chocolate or bittersweet chocolate is sweet chocolate that contains not less than 35 percent by weight of chocolate liquor complying with the requirements of § 163.111 and calculated in the same manner as set forth in paragraph (a)(2) of this section.

(4) Cacao fat is determined by the method prescribed in § 163.5(b).

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat;

(2) Nutritive carbohydrate sweeteners;

(3) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(4) Dairy ingredients:

(i) Cream, milkfat, butter;

(ii) Milk, concentrated milk, evaporated milk, sweetened condensed milk, dried milk;

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk;

(iv) Concentrated buttermilk, dried buttermilk; and

(v) Malted milk; or

(5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* The name of the food is "sweet chocolate", "sweet chocolate coating", "semisweet chocolate", "semisweet chocolate coating", "bittersweet chocolate", or "bittersweet chocolate coating", as appropriate.

(1) When optional alkalizing ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate was prepared, the label shall bear the statement "Processed with alkali", or "Processed with ————————", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate was prepared, the label shall bear the statement "Processed with neutralizing agents", or "Processed with ————————", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section are used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added", "Flavored with ————————", or "With ———————— added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

§ 163.130 Milk chocolate.

(a) *Description.* (1) Milk chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more of the optional dairy ingredients and one or more optional nutritive carbohydrate sweeteners, and may contain one or more of the other optional ingredients specified in paragraph (b) of this section.

(2) Milk chocolate contains not less than 10 percent by weight of chocolate liquor complying with the requirements of § 163.111 as calculated by subtracting from the weight of the chocolate liquor used the weight of cacao fat therein and the weights of alkali, neutralizing and seasoning ingredients, multiplying the remainder by 2.2, dividing the result by the weight of the finished milk chocolate, and multiplying the quotient by 100. The finished milk chocolate contains not less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of total milk solids based on those dairy ingredients specified in paragraph (b)(4) of this section, exclusive of any added sweetener or other dairy-derived ingredient that is added beyond that amount that is normally present in the specified dairy ingredient.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat;

(2) Nutritive carbohydrate sweeteners;

(3) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasonings that do not either singly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(4) Dairy ingredients:

(i) Cream, milkfat, butter;

(ii) Milk, concentrated milk, evaporated milk, sweetened condensed milk, dried milk; and

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk; or

(5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* The name of the food is "milk chocolate" or "milk chocolate coating".

(1) When optional alkali ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement "Processed with alkali", or "Processed with ————————", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement "Processed with neutralizing agents", or "Processed with ————————", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section are used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added", "Flavored with ————————", or "With ———————— added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

(d) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

§ 163.135 Buttermilk chocolate.

(a) *Description.* Buttermilk chocolate is the food that conforms to the standard of identity, and is subject to the requirements for label declaration of ingredients for milk chocolate in § 163.130, except that:

(1) The optional dairy ingredients are limited to sweet cream buttermilk, concentrated sweet cream buttermilk, dried sweet cream buttermilk, and any combination of these; and

(2) The finished buttermilk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of sweet cream buttermilk solids based on those dairy ingredients specified in paragraph (a)(1) of this section, exclusive of any added sweetener or other dairy-derived ingredient that is added beyond that amount that is normally present in the specified dairy ingredient.

(b) *Nomenclature.* The name of the food is "buttermilk chocolate", "buttermilk chocolate coating", "sweet buttermilk chocolate", "sweet buttermilk chocolate coating", "sweet cream buttermilk chocolate", or "sweet cream buttermilk chocolate coating".

§ 163.140 Skim milk chocolate.

(a) *Description.* Skim milk chocolate is the food that conforms to the standard of identity, and is subject to the requirements for label declaration of ingredients for milk chocolate in § 163.130, except that:

(1) The optional dairy ingredients are limited to skim milk, evaporated skim milk, concentrated skim milk, sweetened condensed skim milk, nonfat dry milk, and any combination of these; and

(2) The finished skim milk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of skim milk solids based on those dairy ingredients specified in paragraph (a)(1) of this section, exclusive of any added sweetener or other dairy-derived ingredient that is added beyond that amount that is normally present in the specified dairy ingredient.

(b) *Nomenclature.* The name of the food is "skim milk chocolate", "skim milk chocolate coating", "sweet skim milk chocolate", or "sweet skim milk chocolate coating".

§ 163.145 Mixed dairy product chocolates.

(a) *Description.* Mixed dairy product chocolates are the foods that conform to the standard of identity, and are subject to the requirements for label declaration of ingredients for milk chocolate in § 163.130, except that:

(1) The optional dairy ingredients for each of the foods are mixtures of two or more of the following:

(i) Any dairy ingredients specified in § 163.130;

(ii) Any dairy ingredients specified in § 163.135;

(iii) Any dairy ingredients specified in § 163.140; or

(iv) Malted milk; and

(2) The finished mixed dairy product chocolates shall contain not less than 12

percent by weight of total milk solids derived from those dairy products referred to in paragraph (a)(1) of this section, exclusive of any added sweetener or other dairy-derived ingredient that is added beyond that amount that is normally present in the specified dairy product, and may contain less than 3.39 percent by weight of milkfat. The quantity of each component used in any such mixture is such that no component contributes less than one third of the weight of the total milk solids contributed by that component which is used in the largest proportion.

(b) *Nomenclature.* The name of the food is "chocolate", or "chocolate coating", preceded by the designation of the type of milk ingredients used as prescribed in paragraph (a) of this section in order of predominance by weight, e.g., "milk and skim milk chocolate".

§ 163.150 Sweet cocoa and vegetable fat coating.

(a) *Description.* Sweet cocoa and vegetable fat coating is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for sweet chocolate in § 163.123, except that:

(1) In the preparation of the product, cocoa or a mixture of cocoa and chocolate liquor is used in such quantity that the finished food contains not less than 6.8 percent by weight of nonfat cacao solids, calculated on a moisture-free basis;

(2) One or more optional ingredients specified in paragraph (b) of this section are used; and

(3) The requirement in § 163.123(a)(2) limiting the total milk solids content to less than 12 percent by weight does not apply.

(b) *Optional ingredients.* (1) Breakfast cocoa, cocoa, lowfat cocoa;

(2) Chocolate liquor;

(3) Safe and suitable vegetable derived fats, oils, and stearins other than cacao fat. The fats, oils, and stearins may be hydrogenated;

(4) Safe and suitable dairy-derived ingredients; and

(5) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "sweet cocoa and vegetable fat coating". Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food, e.g., "sweet cocoa and _____ oil coating", the blank being filled in with the common or usual name of the specific vegetable fat used.

§ 163.153 Sweet chocolate and vegetable fat coating.

(a) *Description.* Sweet chocolate and vegetable fat coating is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for sweet chocolate in § 163.123, except that one or more optional ingredients specified in paragraph (b) of this section are used. Compliance with the requirement in § 163.123(a)(2) limiting the total milk solids content to less than 12 percent by weight shall be calculated by including only those dairy ingredients referred to in § 163.123(b)(4), exclusive of any added sweetener or other dairy-derived ingredient that is added beyond that amount that is normally present in the specified dairy ingredient.

(b) *Optional ingredients.* (1) Safe and suitable vegetable derived fats, oils, and stearins other than cacao fat. The fats, oils, and stearins may be hydrogenated;

(2) Safe and suitable dairy-derived ingredients; and

(3) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "sweet chocolate and vegetable fat coating". Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food, e.g., "sweet chocolate and _____ oil coating", the blank being filled in with the common or usual name of the specific vegetable fat used.

§ 163.155 Milk chocolate and vegetable fat coating.

(a) *Description.* Milk chocolate and vegetable fat coating is the food that conforms to the standard of identity, and is subject to the requirements for label declaration of ingredients for milk chocolate in § 163.130 or skim milk chocolate in § 163.140, except that one or more optional ingredients specified in paragraph (b) of this section are used. Compliance with the requirement in § 163.130(a)(2) that the product contains not less than 12 percent by weight of nonfat milk solids shall be calculated using only those dairy ingredients referred to in § 163.130(b)(4), exclusive of any added sweetener or other dairy-derived ingredient that is added beyond that amount that is normally present in the specified dairy ingredient.

(b) *Optional ingredients.* (1) Safe and suitable vegetable derived oils, fats, and stearins other than cacao fat. The oils, fats, and stearins may be hydrogenated;

(2) Safe and suitable dairy-derived ingredients; and

(3) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "milk chocolate and vegetable fat coating" or "skim milk chocolate and vegetable fat coating", as appropriate. Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food, e.g., "milk chocolate and _____ oil coating", the blank being filled in with the common or usual name of the specific vegetable fat used

Dated: May 6, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–11963 Filed 5–20–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 874

[Docket No. 91M–0401]

Medical Devices; Reclassification and Codification of Microsurgical Argon Laser for Rhinology and Laryngology

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to HGM Medical Laser Systems, Inc., reclassifying the microsurgical argon laser for use in rhinology and laryngology from class III (premarket approval) to class II (special controls). The order is being codified in the Code of Federal Regulations as specified herein.

DATES: The reclassification was effective on July 16, 1991. The codification becomes effective June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Harry Sauberman, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1230.

SUPPLEMENTARY INFORMATION: On August 18, 1989, FDA filed the reclassification petition submitted by HGM Medical Laser Systems, Inc., requesting reclassification of the microsurgical argon laser from class III to class II. FDA consulted with the Ear, Nose, and Throat Devices Panel (the Panel). The Panel, during an open public meeting on November 14, 1989, recommended that FDA reclassify the microsurgical argon laser for use in rhinology and laryngology for the purpose of coagulating and vaporizing soft and fibrous, but not osseous, tissues from class III to class II. In addition, the Panel

recommended that FDA assign a low priority for the development of a performance standard for such uses of the argon laser device. The Panel also recommended that specific labeling for the device include a warning to use a laser plume evacuator when performing laser surgery. FDA considered the Panel's recommendations and tentatively agreed that the generic type of device, the argon laser device for use in rhinology and laryngology, be reclassified from class III to class II, and that the promulgation of a performance standard for the device be low priority. Consequently, in the **Federal Register** of January 24, 1991 (56 FR 2728), FDA issued the Panel's recommendation for public comment.

FDA received one comment on the Panel's recommendation to reclassify the argon laser device. The comment expressed concern about some uses of the device, including use in the surrounding tissue of the nasal passages and larynx, and suggested that clinical studies be conducted to evaluate the efficacy of the device in these areas. However, the comment did not disagree with the Panel's recommendation to reclassify the device to class II.

After reviewing the data in the petition and presented before the Panel, and after considering the Panel's recommendation and the comment's suggestions, FDA, based on the information set forth, issued an order to the petitioner on July 16, 1991, reclassifying the microsurgical argon laser for use in rhinology and laryngology from class III to class II. In addition, FDA changed the generic description of the device from microsurgical argon laser to argon laser for otology, rhinology, and laryngology. As required by 21 CFR 860.134(b)(6) and (b)(7), FDA is announcing the reclassification of this generic type of device. In addition, FDA is codifying the reclassification of this device by revising § 874.4490.

Under the Medical Device Amendments of 1976 to the Federal Food, Drug, and Cosmetic Act (the act), devices were to be classified in class I (general controls) if there was information showing that the general controls of the act were sufficient to provide reasonable assurance of safety and effectiveness; devices were to be classified in class II (performance standards) if there was insufficient information showing that general controls themselves would provide such assurance, but there was sufficient information to establish a performance standard that would provide such assurance; devices were to be classified in class III (premarket approval) if there was insufficient information to support placing a device in class I or class II and the device was life-sustaining or life-supporting or was for a use of substantial importance in preventing impairment of human health. As a minimum, all devices in any class were to be subject to the regulatory requirements of general controls.

The Safe Medical Devices Act of 1990 (the SMDA) amended the act to change the definition of a class II device. Under the SMDA, class II devices are those devices for which there is insufficient information to show that general controls themselves will provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance, including the promulgation of a performance standard. Thus, the definition of a class II device was changed from "performance standards" to "special controls."

It is the agency's position that the SMDA does not require the agency to obtain new reclassification recommendations from a panel which had recommended reclassification under the previous definition of class II. The Panel recommended the microsurgical argon laser for use in rhinology and laryngology be reclassified from class III (premarket approval) to class II (performance standards). Under the SMDA, FDA may establish a performance standard, as well as establish other special controls, including postmarket surveillance, patient registries, guidelines, and other appropriate actions it believes necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, FDA's final determination was made under the standard set forth in the SMDA.

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

After considering the economic consequences of approving this reclassification, FDA certifies that this final rule requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor an analysis under the Regulatory Flexibility Act (Pub. L. 96–354). This reclassification will not have a significant economic impact on a substantial number of small entities. All manufacturers of microsurgical argon lasers for use in rhinology and laryngology will no longer be required to comply with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e) and, therefore, will not be subject to the costs of such compliance.

Costs that manufacturers may incur from reclassification into class II are those associated with complying with special controls, once they are imposed. The magnitude of the economic savings attributable to this reclassification depends on the number of premarket approval studies that would have been required of the manufacturers had reclassification not occurred. These savings may not be reliably calculated to permit an accurate quantification of the economic savings.

List of Subjects in 21 CFR Part 874

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 874 is amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 874.4490 is revised to read as follows:

§ 874.4490 Argon laser for otology, rhinology, and laryngology.

(a) *Identification.* The argon laser device for use in otology, rhinology, and laryngology is an electro-optical device which produces coherent, electromagnetic radiation with principal wavelength peaks of 488 and 514 nanometers. In otology, the device is used for the purpose of coagulating and vaporizing soft and fibrous tissues, including osseous tissue. In rhinology and laryngology, the device is used to coagulate and vaporize soft and fibrous tissues, but not including osseous tissues.

(b) *Classification.* Class II.

Dated: April 2, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–12077 Filed 5–20–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 890

[Docket No. 91N–0232]

Physical Medicine Devices; Revocation of the Classification of Mechanical Automobile Hand and Foot Driving Control

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the physical medicine device classification regulations by removing the mechanical automobile hand and foot driving control classification regulation. The agency no longer believes these products are medical devices. Also, any safety concerns about these products are more appropriately addressed by the National Highway Traffic Safety Administration (NHTSA).

EFFECTIVE DATE: May 21, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 23, 1983 (48 FR 53032 at 53048), FDA published a final rule classifying the mechanical automobile hand and foot driving control as a class II medical device. Later, in the **Federal Register** of March 2, 1992 (57 FR 7339), FDA published a proposed rule to amend the physical medicine devices regulations by removing the mechanical automobile hand and foot driving control classification regulation. The agency issued the proposal because it no longer believed that these products were medical devices and that the primary risks presented by the product were motor vehicle safety concerns, more appropriately regulated by NHTSA.

In response to a letter from FDA, NHTSA stated in a letter dated February 19, 1991, that the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392) authorizes NHTSA to: (1) Set performance requirements for motor vehicle equipment; (2) investigate allegations that motor vehicle equipment, such as mechanical hand and foot driving controls, contain defects related to motor vehicle safety; and (3) take appropriate action.

Interested persons were invited to submit comments. One comment was received. This comment, from the U.S. Small Business Administration, stated that FDA had failed to adequately address the effect of the proposed action on small businesses. The agency has determined that this rule will decrease, rather than increase, any burden on manufacturers of this equipment, while maintaining adequate safety regulation as provided by NHTSA's authorities (see Economic Impact of this document). Accordingly, FDA is issuing this final rule to remove the mechanical automobile hand and foot driving control classification regulation. Persons who have additional questions concerning issues related to NHTSA may contact Mary Versailles at 202–366–2992.

Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(8) and (a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully examined the economic impact of this final rule. The Commissioner of Food and Drugs certifies that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (Pub. L. 96–395). This final rule will have the effect of relieving manufacturers of this equipment from the requirement of complying with FDA's medical device regulations. Therefore, this final rule will relieve an existing burden on the industry. There will be no immediate economic effect from the regulation of these products by NHTSA as NHTSA has not yet set any performance requirements for these products. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been analyzed, and it has been determined that the final rule is not a major rule as defined in section 1(b) of the Executive Order.

List of Subjects in 21 CFR Part 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 890 is amended as follows:

PART 890—PHYSICAL MEDICINE DEVICES

1. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

§ 890.3450 [Removed]

2. Section 890.3450 *Mechanical automobile hand and foot driving control* is removed from subpart D.

Dated: April 15, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–12076 Filed 5–20–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8417]

RIN 1545–AQ53

Limitation on Passive Activity Losses and Credits—Technical Amendments to Regulations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final and temporary regulations (T.D. 8417), which were published in the **Federal Register** for Friday, May 15, 1992 (57 FR 20747). The final and temporary regulations related to the limitation on passive activity losses and credits.

EFFECTIVE DATE: May 15, 1992.

FOR FURTHER INFORMATION CONTACT: Donna J. Welch, (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these correcting amendments adopted as final regulations changes to the regulations under section 469 of the Internal Revenue Code, as amended. The regulations also revised the temporary regulations to reflect where portions have been adopted as final.

Need for Correction

As published, T.D. 8417 contained errors which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR 1.446–1 through 1.483–2T

Accounting, Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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

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

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

Par. 2. Section 1.469–1T(e)(5) is amended by removing the reference "§ 1.469–1(e)(5)" and adding the reference "§ 1.469–1(d)(2)(xii)" in its place.

§ 1.469–2 [Amended]

Par. 3. Section 1.469–2(d)(2)(xii) is amended by removing the reference "280(c)(5)" and adding the section "280A(c)(5)" in its place.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–12033 Filed 5–20–93; 8:45 am]

BILLING CODE 4830–01–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

Records and Reports for State and Local Governments

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This final rule is based on a Notice of Proposed Rulemaking ("NPRM") published on June 17, 1992. This final rule reduces the report filing requirement from once a year to once every other year for those political jurisdictions subject to the reporting requirements covered by this regulation. Such jurisdictions include those, other than public school districts, with 100 or more full-time employees and similar jurisdictions with from 15 to 99 full-time employees from whom the Commission requests the filing of reports. Starting with the 1993 survey year and every odd-numbered year thereafter, those jurisdictions will be required to file EEO–4 reports. The Commission takes this action for budgetary reasons.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division at (202) 663–4958 (voice) or (202) 708–9300 (TDD), or Thomas J. Schlageter, Assistant Legal Counsel, Office of Legal Counsel at (202) 663–4670 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: The Commission received three public comments in response to the NPRM published in the **Federal Register** on June 17, 1992. The comments responded to the invitation in the preamble of the NPRM to discuss whether the reporting period should be reduced from once a year to every other year for state and local governments. All three commenters supported the proposed change.

Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, and to make reports therefrom as required by the Equal Employment Opportunity Commission. Accordingly, the Commission has issued regulations which set forth the reporting requirements for various kinds of employers. State and local government jurisdictions have been required to submit annual reports to the Commission since 1973. The change to biennial reporting is intended to reduce the cost and reporting burden on such jurisdictions as required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* However, the recordkeeping requirements of § 1602.30 remain unchanged. The Commission has waived the requirement for filing such reports for 1992. Starting with the 1993 survey year and every odd-numbered year thereafter, those jurisdictions will be required to file EEO–4 reports.

This change will cut in half the number of hours spent in complying with this reporting requirement and thus the change will result in significant cost reductions. Since this change involves a decreased reporting requirement, it will benefit rather than harm the reporting entities. The Commission has also determined that the reduction in reporting requirements will not substantially affect the utility of the information being collected. Thus, the Commission certifies under 5 U.S.C. 605(b) enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this change will not result in a significant impact on small entities, including small governmental jurisdictions, and that a regulatory flexibility analysis therefore is not required.

List of Subjects in Part 1602

Administrative practice and procedure, Equal employment opportunity; Intergovernmental relations, Reporting and recordkeeping requirements.

For the Commission,

Tony E. Gallegos,

Chairman.

Accordingly, 29 CFR part 1602 is amended as follows:

PART 1602—[AMENDED]

1. The authority citation for part 1602 continues to read as follows:

Authority: 42 U.S.C. 2000e-8, 2000e-12; 44 U.S.C. 3501 et seq.; 42 U.S.C. 12117.

2. Section 1602.32 is revised to read as follows:

§ 1602.32 Requirement for filing and preserving copy of report.

On or before September 30, 1993, and biennially thereafter, certain political jurisdictions subject to Title VII of the Civil Rights Act of 1964, as amended, shall file with the Commission or its delegate executed copies of "State and Local Government Information Report EEO–4" in conformity with the directions set forth in the form and accompanying instructions. The political jurisdictions covered by this section are (a) Those which have 100 or more employees, and (b) Those other political jurisdictions which have 15 or more employees from whom the Commission requests the filing of reports.

Every such political jurisdiction shall retain at all times a copy of the most recently filed EEO–4 at the central office of the political jurisdiction for a period of 3 years and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of section 710 of title VII, as amended.

[FR Doc. 93–12083 Filed 5–20–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–92–27]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Sarasota/Manatee Metropolitan Planning Organization (MPO) and the Florida Department of Transportation (FDOT), the bridge owner, the Coast Guard is modifying the regulations of the Anna Maria Drawbridge, mile 89.2, 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: June 21, 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 June 29, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (57 FR 92–15220). 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 Cortez Drawbridge which is located 1.8 miles to the south. 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 Anna Maria and Cortez 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 caused by the backup of vessels awaiting an opening 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). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule 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, the Coast Guard amends 33 CFR part 117 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)(2) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(d) * * *

(2) The draw of the Anna Maria (SR 64) bridge, mile 89.2, 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: 16 April 1993.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 93–12023 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI 14–1–5067; FRL–4203–6]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Statewide Sulfur Dioxide Rules

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On January 2, 1992, USEPA proposed to approve Wisconsin's Statewide Sulfur Dioxide (SO_2) rules for most sources as revisions to its State

Implementation Plan (SIP). The rules that were proposed for approval consist of portions of Natural Resources (NR) 417.07, Wisconsin Administrative Code, which contains Statewide sulfur dioxide emission limitations; NR 417.04, Wisconsin Administrative Code—Southeast Wisconsin Intrastate Air Quality Control Region (AQCR), which contains emissions restrictions for small sources in southeastern Wisconsin; and numerous administrative orders, new source permits, and elective operating permits that were submitted as site-specific SIP revisions for sources that needed more restrictive emission limitations than the categorical to ensure attainment of the air quality standards.

USEPA is approving these revisions in this action. Also in the January 2, 1992, notice, USEPA proposed to disapprove certain portions of the SIP revision. USEPA is taking no action in this rulemaking on these portions of Wisconsin's Statewide SO_2 plan revision.

EFFECTIVE DATE: This rule will become effective on June 21, 1993.

ADDRESSES: Copies of these revisions to the Wisconsin SIP are available for inspection at : United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

Copies of SIP revisions, the public comments on the notice of the proposed rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Patrick D. Dolwick at (312) 886–6053 before visiting the Region V office) United States Environmental Protection Agency, Region V, Air Toxics and Radiation Branch (AT–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Patrick D. Dolwick, (312) 886–6053.

SUPPLEMENTARY INFORMATION: In the January 2, 1992, **Federal Register** (57 FR 24), USEPA proposed to approve the majority of Wisconsin's Statewide SO_2 rules, including Wisconsin rules:

NR 417.07(1), Applicability;
NR 417.07(3), Emission Limits for New (after February 1, 1985) Sources;
NR 417.07(4), More Restrictive Emission Limits;
NR 417.07(5), Alternate Emission Limits;
NR 417.07(6), Compliance Schedules;
NR 417.07(7), Compliance Demonstrations;
NR 417.07(8), Variance from Emission Limits; and
NR 417.04, Southeastern Wisconsin intrastate AQCR.

In addition, USEPA proposed to approve most of the source-specific emission limitations listed in Table 1 of the notice of proposed rulmaking (NPR); most of the negative declarations listed in Table 2 of the NPR; and the permit limitations listed in Section II(E) of that notice. USEPA is approving these rules in final in today's rulemaking.

The Wisconsin rule, NR 417.07(2), Emission Limits for Existing (before February 1, 1985) Sources, was proposed for partial approval in the NPR. USEPA proposed to approve the following subsections of the rule, subject to source-specific demonstrations of attainment:

NR 417.07(2)(a), Coal-fired units at facilities with combined coal-firing capacity greater than or equal to 250 million British Thermal Units per hour (MMBTU/hr);
NR 417.07(2)(b), Coal-fired units at facilities with combined coal-firing capacity less than or equal to 250 MMBTU/hr;
NR 417.07(2)(c), Residual oil-fired units at facilities with combined residual oil-firing greater than or equal to 250 MMBTU/hr; and
NR 417.07(2)(d), Residual oil-fired units at facilities with combined residual oil-firing capacity greater than or equal to 250 MMBTU/hr.

The remaining subsections of the rule were proposed to be disapproved in the NPR:

NR 417.07(2)(e), Kraft Mill (all process sources combined);
NR 417.07(2)(f), Sulfite Mill (all process sources combined); and
NR 417.07(2)(g), Petroleum Refinery.

The Wisconsin rules NR 417.07(2)(a–d) are being approved in today's final rulemaking. NR 417.07(2)(g) is being approved, as well, in today's notice based on comments received from WDNR during the public comment period. USEPA will take further action on NR 417.07(2) (e) and (f) in a future notice.

The outline for this notice of final rulemaking is as follows:

I. Background Information
II. Emission Limitations
A. NR 417.07: Statewide Sulfur Dioxide Emission Limitations
B. NR 417.04: Southeastern Wisconsin Intrastate AQCR
C. Site-Specific Emission Limitations
D. Negative Declarations
E. Stack Height Issues
III. Summary Information

I. Background Information

On April 26, 1984, USEPA notified the Governor of Wisconsin, pursuant to section 110(a)(2)(H) of the Clean Air Act, that the Wisconsin SO_2 SIP was inadequate to ensure the protection of the primary and secondary National Ambient Air Quality Standards (NAAQS). USEPA concluded that the SIP did not contain SO_2 emission limitations for many sources; nor did it contain schedules and timetables for compliance with such limitations, as required by section 110(a)(2)(B). The finding of SIP inadequacy applied statewide, except for (1) those sources regulated by source-specific New Source Performance Standards (NSPS) and (2) those sources regulated by a USEPA-approved part D SIP.

Wisconsin responded to the notice of SIP deficiency with multiple submittals to USEPA. The Statewide SO_2 emission limitations rule (NR 417.07) was submitted on June 5, 1985, and January 21, 1986. Numerous administrative orders and elective operating permits containing limits more stringent than those identified in the Statewide Rule were submitted between September 1985 and March 1988. Technical support (consisting of air quality modeling data) was submitted along with the emission limitations.

Below is a summary of the submitted State SO_2 plan. Readers should refer to the January 2, 1992, **Federal Register** for a more detailed discussion of the background information and technical support data.

II. Emission Limitations

A. NR 417.07: Statewide Sulfur Dioxide Emission Limitations

(1) Applicability (NR 417.07(1))

Content: This State regulation (NR 417.07) applies to all sources of SO_2 except: (1) Those subject to NR 417.04 (Southeastern Wisconsin intrastate AQCR), or NR 418 (Sulfur Emission Control in Specific Geographic Areas (within the corporate boundaries of Brokaw, Madison, Milwaukee, Green Bay, DePere, Peshtigo, Rhinelander, and Rothschild)); or (2) those subject to a limitation more stringent than in NR 417.07 (2) and/or (3).

Action: USEPA is approving the applicability rule.

(2) Emission Limits for Existing (Before February 1, 1985) Sources (NR 417.07(2))

Content: Establishes the following emission limits for sources constructed before February 1, 1985:

(a) Coal-fired units at facilities with combined coal-firing capacity greater than or equal to 250 MMBTU/HR—3.2 lbs/MMBTU

(b) Coal-fired units at facilities with combined coal-firing capacity less than 250 MMBTU/HR—5.5 lbs/MMBTU

(c) Residual oil-fired units at facilities with combined residual oil-firing capacity greater than or equal to 250 MMBTU/HR—1.5 lbs/MMBTU

(d) Residual oil-fired units at facilities with combined residual oil-firing

capacity less than 250 MMBTU/HR—3.0 lbs/MMBTU

(e) Kraft Mill (all process sources combined)—10.0 pounds of SO_2 per ton (lbs/ton) air dried pulp (ADP)

(f) Sulfite mill (all process sources combined)—20.0 lbs/ton ADP

(g) Petroleum refinery:

(1) Process heater firing residual oil—0.8 lbs/MMBTU

(2) Fuel burning equipment firing residual oil—0.8 lbs/MMBTU

(3) Claus sulfur recovery plant—6743 lbs of SO_2/24-hour, and 843 lbs of SO_2/3-hour

(4) All other process units—1035 lbs of SO_2/1-hour

Action: USEPA is approving subsections (a), (b), (c), and (d) above, subject to source-specific demonstrations of attainment (see Section II (C) and (D) of this notice).

In the NPR, USEPA proposed to disapprove (e) and (f), which apply to the following sources in the State of Wisconsin:

1. Consolidated Papers-Kraft
2. Mosinee Paper
3. Nekoosa Papers-Port Edwards
4. Thilmany Pulp and Paper
5. Nekoosa Papers-Nekoosa

USEPA's proposed disapproval of subsections (e) and (f) was based on the fact that the federally enforceable compliance technique, a stack test, would not be sufficient to determine compliance with the combined process emission limit for these sources. Several of these sources have developed approvable alternative (stack-specific) emission limits through either operating permits (Thilmany Pulp and Paper, Nekoosa Papers-Port Edwards) or the Prevention of Significant Deterioration (PSD) permit process (Consolidated Papers-Kraft). The site-specific plans for Nekoosa Papers-Nekoosa and Mosinee Paper, however, cannot be approved due to the lack of acceptable modeled attainment demonstrations.

During the public comment period, WDNR requested that USEPA provide additional time for the State to correct the deficiencies of those rules and source-specific plans that cannot be approved in today's final rulemaking. WDNR suggested that the final rulemaking on these revised rules and source-specific SIPs could then be completed at a later date. Based on the request by WDNR, USEPA is taking no action in today's rulemaking on the following rules and source-specific plans:

NR 417.07(2)(e)
NR 417.07(2)(f)
Nekoosa Papers-Nekoosa
Mosinee Paper
Greenwood Milk
Conslidated Paper-Wisconsin River Division
Menasha Electric and Water Utility
Northern States Power-Ashland
Plastics Engineering
American Milk Producers Institute-Blair Cheese
Ore-Ida
Allis-Chalmers
National Presto
Pope and Talbot-Eau Claire
Ansul Fire Protection
Kearney and Trecker
Koch Fuels
Allied Processors
Beatrice Grocery
Falls Dairy
Rexworks
Badger Army Ammunition Plant
Milwaukee County Department of Health and Human Services
Colt Industries

USEPA plans to publish in the near future a notice of proposed rulemaking that will complete action on these 22 site-specific plans and NR 417.07(2) (e) and (f).

In the January 2, 1992, NPR (57 FR 24), USEPA proposed to disapprove NR 417.07(2)(g), which applies to only one source (Murphy Oil), because the State had not yet submitted an attainment demonstration for this source. WDNR submitted an attainment demonstration for this source, modeled at the categorical limits, on October 17, 1991. USEPA has reviewed this modeling and determined it to be acceptable. Therefore, USEPA is approving 417.07(2)(g) and the site-specific SIP for Murphy Oil in today's rulemaking.

(3) Emission Limits for New (After February 1, 1985) Sources (NR 417.07(3))

Content: Establishes the following emission limits for sources constructed after February 1, 1985:

(a) Coal-fired units—3.2 lbs/MMBTU

(b) Residual oil-fired units—1.5 lbs/MMBTU

(c) Kraft Mill (all process sources combined)—10.0 lbs/ton ADP

(d) Sulfite mill (all process sources combined)—20.0 lbs/ton ADP

(e) Petroleum refinery:

(1) Process heater firing residual oil—1.5 lbs/MMBTU

(2) Fuel burning equipment firing residual oil—1.5 lbs/MMBTU

(3) Claus sulfur recovery plant—0.025% by volume SO_2 at 0.0% oxygen on a dry basis if emissions are controlled by a reduction control system followed by incineration; 0.030% by volume of reduced sulfur compounds and 0.0010% hydrogen sulfide if emissions are controlled by a reduction control system which is not followed by incineration.

Action: USEPA is approving this portion of the Wisconsin SO_2 rules. It should be noted that all new sources remain subject to applicable new source permitting requirements, including PSD, New Source Review (NSR) in nonattainment areas, and NSPS.

(4) More Restrictive Emission Limits (NR 417.07(4))

Content: Gives the State the authority to revise State rules to require more stringent emission limits if necessary to ensure no violations of the SO_2 NAAQS or PSD increment.

Action: USEPA is approving NR 417.07(4) in today's rulemaking. The State must have authority to revise its own rules if necessary to protect the public health or welfare. Of course, all more stringent State limits necessary to protect the NAAQS and PSD increments must still be submitted to USEPA as site-specific SIP revisions.

(5) Alternate Emission Limits and Variances (NR 417.07(5), (6), (8), (9))

Content: Establishes State procedures for sources to obtain alternate emission limitations and/or revised compliance schedules. More specifically, NR 417.07(5) provides State procedures for sources to obtain alternate State emission limitations (NR 417.07(6)(b) requires that requests for such alternate limits to be submitted on or before March 1, 1985). NR 417.07(8) establishes procedures for sources to obtain source-specific variances from emission limitations, and states that requests for variances must be submitted on or before December 31, 1985. NR 417.07(9) states that if a source does not request an alternate emission limit under subsection (5) on or before March 1, 1985, or a source-specific variance under subsection (8) on or before December 31, 1985, the source must comply with the rule's emission limits in subsection (2), and may not request an alternate emission limitation or variance prior to January 1, 1988.

In its January 2, 1992 action, USEPA proposed to approve subsections (5) and (8), but noted that all relaxed State limits had to be submitted to USEPA as site-specific SIP revisions. The notice of proposed rulemaking further noted that, by letter dated December 15, 1989, Wisconsin had withdrawn subsection (9) from further SIP review. USEPA thus did not propose action on that subsection and reiterated that "all State issued SO_2 variances must be submitted to USEPA in order to revise the federally approved SIP."

Action: Although USEPA is approving the procedures under subsections (5) and (8), the time periods for requesting alternate emission limits and variances have elapsed. As a practical matter,

however, the State may still submit such limits to USEPA for approval as revisions to the federal SIP, pursuant to section 110 of the CAA. Unless and until USEPA approves such submissions, however, all previous SIP limits remain enforceable.

(6) Compliance Demonstrations (NR 417.07(7))

(a) Content: Requires each source to submit a plan for demonstrating compliance based on one or more of the following methods: Stack tests, fuel sampling and analysis, continuous emission monitoring, or other methods approved by the State.

Action: USEPA proposes to approve Wisconsin's procedures for developing site-specific compliance methodologies. The individual compliance plans themselves must still be submitted to USEPA in order to revise the federally approved SIP. USEPA will then have the opportunity to approve or disapprove any methods approved by the State. Regardless of the specific compliance methodology chosen by a source, Wisconsin's SIP contains an independently enforceable stack test and that remains the primary Federal methodology for determining compliance, unless and until Wisconsin submits and USEPA approves any alternatives. Readers should refer to the January 2, 1992, **Federal Register** for a more detailed discussion of the enforcement issues pertaining to this notice.

(b) Content: Requires each source to maintain records of emissions data and calculations used to verify emissions data and to make records available upon request.

Action: USEPA is approving this requirement. However, this provision is being relied on to require recordkeeping and reporting for a number of sources subject to a restriction on boiler operation or operating load in the State's attainment demonstration. This information is therefore needed to determine compliance (or non-compliance) with the proposed emission limitations for these sources. Because the plan did not contain adequate recordkeeping requirements, USEPA proposed in the NPR to disapprove Wisconsin's plan for these sources: National Presto, Pope and Talbot-Eau Claire, Ansul Fire Protection, Kearney and Trecker, Koch Fuels, Allied Processors, Beatrice Grocery, Falls Dairy, Rexworks, Badger Army Ammunition Plant, Milwaukee County Department of Health and Human Services, Colt Industries, and Greenwood Milk. USEPA is taking no action in today's rulemaking on the 13 sources listed above, as requested by WDNR. The plans for these sources will be addressed in a future rulemaking notice.

B. NR 417.04: Southeastern Wisconsin Intrastate AQCR

Content: Installations in this region with coal-firing capacity less than 250 mmBTU/hour may not burn coal with a sulfur content exceeding 1.11 lbs SO_2/mmBTU. Significant sources affected by this regulation by county are: Racine County—Frank Pure; Kenosha County—American Motors Lakeside; Milwaukee County—Milwaukee House of Correction, Cudahy Tanning, Continental Can, and Falk (Boiler 20)).

Action: USEPA is approving this portion of the SIP, based on the source-specific or county-specific demonstrations of attainment submitted by WDNR.

C. Site-Specific Emission Limitations

WDNR performed dispersion modeling to verify the adequacy of the categorical emission limits (NR 417.07(2)) and also to establish more stringent or alternate (less stringent) limits in accordance with a modeling protocol approved by USEPA. These demonstrations followed the generic State-USEPA protocol and USEPA modeling guidelines, including block averaging for the 3-hour and 24-hour SO_2 NAAQS. Readers should refer to the January 2, 1992, **Federal Register** (57 FR 24), the technical support document for the proposed rulemaking notice, and the technical support document for today's notice for a more detailed discussion of the modeling issues associated with today's rulemaking.

The January 2, 1992, **Federal Register** notice proposed to approve the majority of the site-specific emission limits as contained in administrative orders in the Wisconsin's Statewide SO_2 rules because the State submitted verifiable attainment demonstrations for the regulated facilities. These approved emission limits are listed in Table 1.

The only alternate limits (higher than categorical) submitted by WDNR are for the following sources:

Consolidated Papers-Biron
Thilmany Pulp and Paper
Pope and Talbot-Eau Claire
Owens-Illinois
Dairyland Power-Genoa
Wisconsin Power and Light-Edgewater

Modeling to support the alternate limits was provided by WDNR. USEPA's review of this modeling is discussed in USEPA's Technical Support Document for the NPR. The modeling, performed in accordance with the applicable guidelines, demonstrates that the higher limits will still provide for attainment and maintenance of the SO_2 NAAQS. USEPA is, therefore, approving the limits for those six sources.

The following sources are covered by operating permits or PSD permits which have been submitted to USEPA and impose emission limitations that are more stringent than the general limits in NR 417.07:

District	County	Source (*=PSD permit)
Lake Michigan ..	Manitowoc	Manitowoc Company
North Central	Portage	Neenah Paper-Whiting (B01)
	Wood	Consolidated Papers-Kraft*
		Nekoosa Paper-Port Edwards
Northwest	Barron	Seneca Foods
	Douglas	Koppers (B22)
	Price	Flambeau Papers (Pulp Mill)*
Southeast	Milwaukee	Peter Cooper
	Racine	J.I. Case
	Sheboygan	Borden
Southern	Columbia ..	Wisconsin Power and Light-Columbia
West Central	Clark	Lynn Proteins (B21)
		Greenwood Milk
	Dunn	Allied Processors

Action: PSD permits have already been issued. With the exception of Allied Processors and Greenwood Milk, as discussed above in Section II(A)(6), WDNR has submitted acceptable demonstrations of attainment for these sources.

The following sources are subject to Federal New Source Performance Standards requirements:

Wisconsin Power and Light-Columbia (Unit 2),
Appleton Papers-Locks Papers-Locks Mill (new boiler),
Wisconsin Electric Power Company-Pleasant Prairie (Units 1 and 2),
Flambeau Papers (B24),
Wisconsin Power and Light-Edgewater (Unit 5), and
Wisconsin Power Service-Weston (Unit 3.)

Several source-specific SIPs were proposed for disapproval in the NPR because some of the necessary emission limits and/or operating restrictions were only included in compliance plans

rather than the SIP itself. WDNR requested during the public comment period that the compliance plans for five sources become official parts of Wisconsin's Statewide SO_2 SIP. These five sources are: Appleton Papers-Appleton, Outboard Marine Corporation-Evinrude, S.C. Johnson and Son, Southern Wisconsin Center, and the University of Wisconsin-Milwaukee.

In preparing the NPR, USEPA was aware that WDNR was in the process of reviewing the submitted site-specific SIP revisions. Because of this, the following language was inserted into the proposed notice to clarify how USEPA would treat the State's submittal of the material during the public comment period.

"USEPA is aware that WDNR is in the process of reviewing the submitted SIP revisions. Currently, 10 of the 28 proposed disapprovals contained within this notice are proposed to be disapproved because some of the necessary emission limits and/or operating restrictions are included only in compliance plans instead of the SIP itself. It is USEPA's understanding that WDNR plans to officially submit the compliance plans, which contain the appropriate emission limits and/or operating restrictions, as formal SIP revisions for these sources whose plans have been determined to be deficient in this respect before the end of the 30-day comment period. These new submittals should result in technically approvable limits, restrictions and/or methodologies being inserted into the SIP, thus USEPA is prepared to approve the SIP revisions in the final rulemaking" (57 FR 35).

Wisconsin's formal request for inclusion of the compliance plans into the SIP addresses USEPA comments in the NPR and allows for these five sources' SIPs to be approved in this notice of final rulemaking.

D. Negative Declarations

The States submitted "negative declarations" for certain sources with respect to NR 417.07. Negative declarations either impose fuel type restrictions (i.e., cannot burn residual oil or coal) on certain sources or identify sources as being shutdown or permanently closed. In the NPR, USEPA proposed to include these negative declarations into the SIP. In this notice, USEPA is taking final action to approve inclusion of the negative declarations for the sources listed in table 2.

WDNR notified USEPA during the public comment period that Richland Center Municipal Electric and American Motors-Main should be included with the negative declarations due to a permanent fuel switch and a facility shutdown, respectively. The Chrysler Corporation also advised USEPA in a letter dated February 6, 1992, that American Motors-Kenosha (Main) was no longer operational and is scheduled for demolition.

According to USEPA policy, sources that have been shutdown or have permanent and enforceable fuel type restrictions are eligible for negative declarations. Negative declarations must be incorporated into the SIP in order to become federally enforceable. After reviewing the additional information submitted, USEPA has concluded that the sources should be included with the State's negative declarations and, therefore, is making the appropriate changes in today's notice of final rulemaking.

E. Stack Height Issues

Readers should refer to the January 2, 1992, **Federal Register** for a detailed discussion of the history of the stack height issues pertaining to this notice. A comment was received during the public comment period that USEPA erroneously identified in the NPR the merged power boiler stack at Mosinee Paper Corporation as exceeding the 213-foot good engineering practice (GEP) formula height.

Stack height credit, for the purposes of establishing emission limitations, is restricted to the greater of 65 meters or the GEP formula height. However, credit for dispersion techniques (e.g., a merged stack) is generally prohibited, except for sources with plantwide allowable SO_2 emissions less than 5000 tons per year. In the NPR (57 FR 28), Mosinee Paper Corporation was identified as one of 27 sources in Wisconsin with a merged stack and plantwide allowable SO_2 emissions greater than 5000 tons per year. The source-specific SIP was, therefore, proposed for disapproval not because the stack exceeded GEP, but because the State's attainment demonstration inappropriately relied on merged stack credit. As mentioned earlier, USEPA will complete rulemaking on Mosinee Paper in a future notice.

The purpose of the Wisconsin Statewide SO_2 SIP revision was to ensure that all sources of SO_2 in the State were subject to whatever emission limitation was necessary to ensure attainment of the NAAQS. These limits are contained in categorical State rules, administrative orders, and permits. Table 1 documents all the SO_2 emission limitations for sources in Wisconsin. Table 2 lists those sources that have been included in the SIP revision as negative declarations due to a switch to a lower sulfur content fuel or to a permanent facility shutdown.

TABLE 1.—SOURCE SPECIFIC EMMISSION LIMITATIONS [1]

County and source	Emission limitation
Brown:	
Fort Howard	Subject to NR 418.05.
Green Bay Correctional Institute.	S10 (5.5).
Green Bay Packaging.	Subject to NR 418.05.
James River	Subject to NR 418.05.
Nicolet Paper	Subject to NR 418.05.
Procter and Gamble—East River.	Subject to NR 418.05.
Procter and Gamble—Fox River.	Subject to NR 418.05.
Saint Vincent Hospital.	B24/S10 (3.0).
Wisconsin Public Services—Pulliam.	Subject to NR 418.05.
Calumet: None.	
Door: None.	
Florence: None.	
Kewaunee: None.	
Manitowoc:	
Maintowoc Company.	B20, 21, 22, (249 tons per year, combined); B23/S15 (1.5% S); B20, 21, 22 (1.18 each); B20, 21, 22 (70 gallons Number 6 oil per hour).
Manitowoc Company—South Works.	B20, 21/S10 (3.38).
Manitowoc Public Utility.	B25, 26, 27 (3.2).
Marinette:	
Badger Papers	Subject to NR 418.06.
Niagara of Wisconsin.	B01, 02, 03/S11 (3.2); B4/S12 (3.2) raise stack to 58.3 meters.
Scott Paper	B05 (5.5).
Menominee: None.	
Oconto: Scott Paper	B26/S10 (5.5).
Outagamie:	
Appleton Papers—Appleton.	B22/S11 (4.23)
Appleton Papers—Locks Mill.	B07, 08, 09 (1.5); new Boiler (1.2).
Fox River Papers	B21 (1.19); B22 (3.0).
Kerwin Papers	B20 (5.5).
Midtec Paper	B21, 22 (3.2); B23 (1.5); B24 (1.5) raise stack to 120 feet.
Sanger Powers Correctional Center.	B01, 02/S01 (2.90).

TABLE 1.—SOURCE SPECIFIC EMMISSION LIMITATIONS [1]—Continued

County and source	Emission limitation
Thilmany Pulp and Paper.	B07/S07 (92.7 pounds per hour averaged over 24 hours); B08/S08, B10/S10 (466.3 pounds per hour averaged over 24 hours); B09/S09, B11/S09 (7.0 or 3,865.4 pounds per hour averaged over 24 hours—if stack height greater than or equal to 290 feet) (1.7 if stack height is between 175 and 290 feet).
Shawano: Shawano Papers.	S10, S12 (3.0).
Waupaca: FWD	B21/S11, B22/S12, B23/S13 (0.95) (residual fuel oil).
Waushara: None.	
Winnebago:	
Galloway	S01/S02 (3.0).
Gilbert Paper	B22, 23/S10 (3.2); B24 (3.0 stack height greater than 200 feet), B24 (2.0 if stack height between 80 and 200 feet); B25 (0.5).
Kimberly Clark—Lakeview.	S01 (3.0); S05 (3.0) merge into existing 46 foot stack.
Kimberly Clark—Neenah.	B21/S11, B22/S12 (0.35) raise stacks to 60 feet.
Neenah Foundry	B30, 31 (5.5) cannot operate simultaneously; B32, 78 (5.5) cannot operate simultaneously.
PH Glatfelter	B01, 02, 03, 04 (1.5) (Number 6 oil).
U.S. Paper Mills	B21/S10 (4.22).
University of Wisconsin—Oshkosh.	S10 (5.5).
Winnebago Mental Health.	S10 (5.5).

North Central District

Adams: None.	
Forest: None.	
Juneau: None.	
Langlade: None.	
Lincoln:	
Owens-Illinois	B24, 27, 28 (5.5); B25 (1.0% S) and 84.59 pounds per hour (oil firing restricted to 80 MMBTU per hour); B29 (1.0% S).
Ward Paper	B20, 21/S10 (5.5).
Marathon:	
Wausau Paper	Subject to NR 418.08.
Weyerhaeuser/Reed Lignin.	Subject to NR 418.08.
Wisconsin Power Service-Weston.	B20/S10, B21/S11 (3.2); B22/S12 (1.2).
Oneida:	
McNaughton Correctional Center.	B01 (3.0).
Rhinelander Papers.	Subject to NR 418.07.
Portage:	
American Potato	B01 (3.0).
Del Monte	B01, 02 (0.19).
Neenah Paper-Stevens Point.	B21/S10 (3.0); B01/S01 (55 pound per hour).
SNE-Stevens Point.	B20/S10 (5.5).
University of Wisconsin-Stevens Point.	B01, 02/S10 (5.5).
Vilas: None.	
Wood:	
Beatrice Cheese	B01 (3.0), new 83 foot stack.
Consolidated Papers-Biron.	B05 (1.2) operates with either B01, 02, 03, 04; B01, 02, 03, 04 (6.0).
Consolidated Papers-Kraft.	B30/S10 (40 parts per million dry volume (ppmdv), 6.9 pounds per hour)—new 65 meter stack; B38/S21 (24 ppmdv, 2.3 pounds per hour); number 1 recovery boiler (5 pounds per ton of air dried pulp (ADP))—to be vented to new 91.2 meter stack; number 2 recovery boiler (5 pounds per ton ADP); number 3 recovery boiler (158 ppmdv, 114.6 pounds per hour)—new 91.2 meter stack; numbers 1, 2 Smelt Discharge Tanks (0.1 pounds per ton ADP)—new 63.4 meter stack.
Nekoosa Papers-Port Edwards.	B20, 21, 24/S10 (3.0); B25/S13 (3.0), B30/S11 (1633 pounds per hour, 24-hour average); miscellaneous process sources (12.1 pounds per hour, 24-hour average).
St. Joseph Hospital.	B01, 02 (5.5); B03, 04 (3.0).

Northeastern District

Ashland: None.	
Barron:	
American Milk Producers Institute-Turtle Lake.	B20, 21 (3.0).
Morning Glory Farms.	B01, 02/S11 (5.5).
Seneca Foods	B10/S10 (1.5); B11/S11 (0.5% S); B20, 21, 22 to be shut down; record-keeping/reporting required; B10 can only burn oil from June to October (limited to 4575 gallons per day).
Bayfield: None.	
Burnett: Burnett General Hospital.	B20, 21, 22 (3.0).
Douglas:	
Koppers	B22/S11 (2.0% S); B21 (3.0).
Middle River Health Facility.	B20, 21 (5.5).
Murphy Oil	B07, 08, 09, 10 (0.8); Sulfur plant incinerator (6743 pounds of SO_2 per 24 hours, 843 pounds of SO_2 per 3 hours).
Parkland Health Facility.	B21, 22 (5.5).
Superior Wisconsin Light and Power.	B20, 21 (1.5).
University of Wisconsin-Superior.	B20, 21 (5.5).
Iron: None.	
Polk: Wisconsin Dairies.	B20/S10, B21/S11, B22/S12 (1.21).
Price:	
Flambeau Papers	B20, B22, B23 (1.5); B24 (1.2); Pulp Mill (65.4 pounds per hours).
Lionite Hardboard	B20/S10 (1.13).
Rusk: Norco Windows	B20, 21 (5.5).
Sawyer: None.	
Taylor: None.	
Washburn: None.	

Southeastern District

Kenosha:	
American Brass	B20, 21, 22, 23 3.0).
American Motors—Lakeside.	B20, 21, 22 (2.22).
University of Wisconsin—Parkside.	B20, 21, 22, 23/S10 (0.57).
Wisconsin Electric Power Company—Pleasant Prairie.	B20, 21 (1.2).
Milwaukee:	
A.O. Smith	S13 (1.72).

TABLE 1.—SOURCE SPECIFIC EMMISSION LIMITATIONS [1]—Continued

County and source	Emission limitation
Acme Galvanizing.	B30/S12, B31/S13 (3.0).
Aldrich	B20, 23/S10 (0.57).
Allen Bradely	B20/S10 (3.0).
American Can	B20/S19, B21/S20, B22/S18 (1.32).
American Motors—Milwaukee.	B20/S10, B22/S10 (0.79) 24-hour average, (3.0) 3-hour average; B23/S22, B24/S23 (1.33) 24-hour average, (3.0) 3-hour average.
Continental Can	B22 (2.22).
Cudahy Tanning	B20, B21, (2.22).
Eaton/Cutler	B20, 21, 22/S10 (1.51).
Falk	B20 (2.22); B21, 22 (3.0).
General Electric	B20, 21, 22/S11 (3.0).
JC Penney	B20, 21 (3.0).
Ladish	B20, 21/S10; B22, 23/S14 (3.0).
Miller Brewing	S10 (1.5).
Milwaukee County Institution.	B21/S11, B22/S12, B23/S13 (1.85) in combination; B21/S11, B22/S12 (2.73) in combination; B22/S12, B23/S13 (2.73) in combination; B21/S11, B23/S13 (2.73) in combination.
Outboard Marine Corporation—Evinrude Foundry Numbers 2 and 5.	B20/S50, B21/S51, B22/S52 (1.50) each boiler limited to 40% load on Number 6 oil.
Pabst	S10 (1.5).
Patrick Cudahy	B20/S10, B22/S11, B24/S14 (2.78).
Peter Cooper	B22, B23 (1.9) restricted to 86 MMBTU per hour and recordkeeping required.
Pfister and Vogel	B20/S10 (3.0).
Safeway Steel	B20/S10 (3.0).
Unit Drop Forge	B20/S10, B21/S11 (3.0).
Universal Food (Red Star Yeast).	B20, 21, 22/S10 (3.0).
University of Wisconsin—Milwaukee.	B20a, b, c/S10, B21/S11 (0.55).
Vilter Manufacturing.	B20/S10, B21/S11 (1.28).
Wisconsin Electric Power Company—Oak Creek.	S11, S12, S13, S14 (3.2).
Wisconsin Electric Power Company—Valley.	Subject to NR 418.04.
Wisconsin Paperboard.	B20/S10 (3.0).

TABLE 1.—SOURCE SPECIFIC EMMISSION LIMITATIONS [1]—Continued

County and source	Emission limitation
Ozaukee: Wisconsin Electric Power Company—Port Washington.	B21, 22, 23/S17, B24, 25/S16 (3.2).
Racine:	
Frank Pure	B20 (2.22).
JI Case	B21/S11, B22/S19 (0.9% S).
S.C. Johnson	B20/S10, B21/S11, B22/S12, B23/S13 (1.22) maximum heat input 160 MMBTU per hour.
Southern Wisconsin Center.	B20/S10, B21/S11, B22/S12, B23/S13 (0.43).
Western Publishing.	B20a, 20b/S10, B21/S11 (2.18).
Sheboygan:	
Borden	B20/S10, B21/S11 (1.75% S) cannot operate boilers simultaneously on oil; recordkeeping required.
Kohler	B20, 22, 23 (3.0).
Wisconsin Power and Light—Edgewater.	B23, 24 (6.6) 24-hour average, (4.07) 30-day average; B25 (1.2).
Walworth: None.	
Waukesha: None.	
Washington: Carbon Engineering.	B20 (5.5).

Southern District

Columbia:	
Davis Construction.	Burner (3.0).
Northeast Asphalt 52.	Burner (3.0).
Wisconsin Power and Light—Columbia.	Unit 1 (3.2); Unit 2 (1.2), [Also, combined emissions are restricted to 12,500 pounds per hour (24-hour average) and 15,200 pounds per hour (3-hour average)].
Dane:	
Capitol Heating Plant.	Subject to NR 418.03.
Consolidated Paving.	Burner (3.0).
Delltown Chemurgic.	B21, B22, B23/S11 (3.0).
DRS Services	Burner (3.0).
Hillfarm Heating Plant.	Subject to NR 418.03.
Madison Gas and Electric—Blount Street.	Subject to NR 418.03.
Mendota Mental Health.	Subject to NR 418.03.

TABLE 1.—SOURCE SPECIFIC EMMISSION LIMITATIONS [1]—Continued

County and source	Emission limitation
Oscar Mayer	Subject to NR 418.03, July 22, 1986, administrative order, and 47 FR 15783.
Payne and Dolan 6—De Forest.	Burner (3.0).
Payne and Dolan 32—Verona.	Burner (3.0).
University of Wisconsin—Madison (Charter Street).	(3.18).
University of Wisconsin—Madison (Walnut Street).	Subject to NR 418.03.
Webcrafters	B20/S12 (3.0).
Dodge:	
Universal Foods	B22/S10 (1.5); B21/S11 (0.5).
John Deere	Boiler 01, 02, 03 (1.33).
Northeast Asphalt—Horicon.	Burner (3.0).
Waupun Correctional Institute.	B21, 22, 23/S10 (5.5).
Fond du Lac:	
Northeast Asphalt—Eden.	Burner (3.0).
Northeast Asphalt—Ripon.	Burner (3.0).
Taycheedah Correctional Institution.	B20/S10 (1.6).
Grant:	
Dairyland Power—Stoneman.	B21, 22/S11 (2.81).
Iverson Numbers 4 and 5.	Burner (3.0), Burner (3.0).
University of Wisconsin—Platteville.	B22, 23 (5.5).
Wisconsin Power and Light—Dewey.	B21, 22/S11 (3.2).
Green: Iroquois Foundry.	B31/S11 (0.75).
Green Lake:	
Berlin Foundry	B31/S10 (1.19).
Berlin Tanning	B10/S10 (2.28).
Iowa: Stokely—Cobb	B21, 22, 23/S10 (5.5).
Jefferson:	
Carnation—Pet Food and Cereal Division.	B21/S11, B22/S12 (0.58).
Lake Mills Blacktop.	Burner (3.0).
Stoppenbach	B21/S11 (5.5).
University of Wisconsin—Whitewater.	B20, 21/S10 (5.5).
Lafayette: None.	
Marquette: None.	
Richland: None.	
Rock:	
Beloit Corporation.	B20, 21, 22/S10 (3.0).
Frank Brothers	Burner (1.42).

TABLE 1.—SOURCE SPECIFIC EMMISSION LIMITATIONS [1]—Continued

County and source	Emission limitation
General Motors ..	B21, 22, 23, 24, 25/S12 (3.0).
Hormel	B20/S10, B21/S11, B22/S12 (0.65).
Rock Road Construction.	B01/S01 (0.348).
Wisconsin Power and Light—Blackhawk.	B23, 24/S10 (3.2).
Wisconsin Power and Light—Rock River.	B21/S10, B21/S11 (3.2).
Sauk: Grede Foundries.	Furnace (5.5).
West Central District	
Buffalo: None.	
Chippewa:	
Genstar	B21, 22 (3.0).
Leinenkugel's	B20/S10 (3.61).
North Wisconsin Center for Developmentally Disabled.	B20, 21, 22/S10 (4.2); B23/S10 (3.0).
Clark:	
Greenwood Milk .	B20, 21 (2% S)
Lynn Proteins	B20 (3.0); B21 (1.5% S).
Crawford: Iverson Number 6.	Burner (3.0).
Dunn:	
Knapp Creamery	B20 (3.0).
University of Wisconsin—Stout.	B21, 22 (5.5).
Eau Claire:	
Bush Brothers	B20, 21 (3.0) stack raised to 75 feet.
Eau Claire Asphalt.	B01 (3.0).
Luther Hospital ...	B23, 24 (3.0).
Uniroyal	B20, 21, 22/S10 (2.25).
University of Wisconsin—Eau Claire.	B20, 21/S18 (4.5); B22/S18 (3.0).
Waste Research and Reclamation.	B20/S18 (2.3); B21/S19 (2.3), stacks merged to new 60 foot stack.
Jackson: South Alma Cheese.	B22, 23 (3.0).
LaCrosse:	
G. Heileman	B20, 21, 24, 25 (2.15).
Saint Rose Convent.	S10 (3.0).
Trane 2–5, 7	B21/S52 (cannot burn coal); B22/S53, B23/S54, B24/S55 (4.36), B20/S10 (1.5) or (1.78 if load restricted to 29 MMBTU per hour, record-keeping required).
Trane 6	B20/S10 (5.5); B21/S11, B22/S12 (0.6) or (1.75) if restricted to combined 12 MMBTU per hour record-keeping required.
Saint Rose Convent.	S10 (3.0).
University of Wisconsin—La-Crosse.	B20, 21 [(3.65 coal, (1.99) oil].
Webster Industries.	B24, (3.0).
Monroe:	
Fort McCoy	B01, 02, 03 (3.2).
Golden Guernsey	B22/S13 (1.73).
Pepin: None.	
Pierce: University of Wisconsin—River Falls.	B20, 21 (5.5).
St. Croix:	
Domain	B20, 21 (3.0).
Friday Canning ..	B20 (3.0).
Trempealeau: None.	
Vernon: Dairyland Power—Genoa.	B20/S10 [(5.6) 24-hour average, (5.5) 30-day average].

[1] Emission limits are in parentheses. The units for emission limitations, unless otherwise noted, are pounds of SO_2 per million British Thermal Units. For example, (3.0) represents an emission limit of 3.0 pounds of SO_2 per million British Thermal Units. Specific boilers are referred to by their State identification number, e.g., boiler number 20 at a given facility is referred to as B20 here.

TABLE 2.—NEGATIVE DECLARATIONS

County and source	Emission limitation
Lake Michigan District	
Brown:	
C. Reiss	Permanent shutdown.
University of Wisconsin—Green Bay.	Not allowed to burn coal or residual oil.
Kewaunee: Algoma Hardwoods.	Not allowed to burn coal or residual oil.
Manitowoc: Manitowoc Public Utility.	Two Diesel engines.
Marinette: Rodman Industries.	Wood, waste, natural gas.
Oconto: Scott Paper ..	Natural gas/Number 2 oil.
Outagamie:	
Consolidated Papers—Appleton.	Not allowed to burn coal or residual oil.
Midtec Paper Dryers.	Number 2 oil.
Roloff	Permanent shutdown.
Stokley-Appleton	Not allowed to burn coal or residual oil.
Waupaca: Wisconsin Veteran Home.	Not allowed to burn coal or residual oil.

TABLE 2.—NEGATIVE DECLARATIONS—Continued

County and source	Emission limitation
Winnebago:	
American Can-Menashana.	No oil firing capabilities.
American Can-Neenah.	Not allowed to burn coal or residual oil.
Eggers Industrial	Wood waste/Natural gas.
James River-Canal.	Not allowed to burn coal or residual oil.
Wisconsin Tissue Mills.	Not allowed to burn coal or residual oil.
North Central District	
Marathon:	
Conner Forest Industries.	Permanent shutdown.
Edelweiss Cheese.	Wood waste/natural gas.
Portage: University of Wisconsin—Stevens Point.	B03/S10, B04/S11 natural gas/Number 2 oil.
Wood:	
Marshfield Electric.	Permanent shutdown.
Rollohome	Permanent shutdown.
Weyerhaeuser	Natural gas.
Northwest District	
Ashland:	
Ashland Timbers (boilers).	Permanent shutdown.
Louisiana Pacific Mellen.	Number 2 oil.
James River	Number 2 oil.
Barron: Knetter Cheese.	Permanent shutdown.
Douglas: Superior Wisconsin Light and Power.	Number 2 oil.
Polk: Land-O-Lakes ..	Number 2 oil/natural gas.
Rusk: Pope and Talbot.	Number 2 oil.
Southeast District	
Kenosha: American Motors—Kenosha (Main Plant).	Permanent shutdown.
Milwaukee:	
AC Spark Plug ...	Number 2 oil.
Alton Packaging .	Natural gas.
American Linen and Supply.	Natural gas.
Harley Davidson .	Permanent shutdown.
Inryco	Number 2 oil.
Ladish	B24, B25, not allowed to burn coal or residual oil.
Master Lock	Not allowed to burn coal or residual oil.
Milwaukee Forge (Boilers).	Permanent shutdown.
P and V Atlas	Permanent shutdown.
Peter Cooper	B20, 21, 24 (natural gas).
Steiner	Number 2 oil.
Teledyne	Natural gas.

TABLE 2.—NEGATIVE DECLARATIONS—Continued

County and source	Emission limitation
Wisconsin Electric Power Company—Lakeside.	Permanent shutdown.
Wisconsin Paperboard.	B21/S11, B22/S10, Number 2 oil and natural gas.
Racine:	
Webster Electric .	Number 2 oil.
Western Publishing.	B22 shutdown.
Sheboygan:	
General Box	Not allowed to burn coal or residual oil.
Kohler	B29 shutdown.
Vollrath	Number 2 oil.
Waukesha:	
Muskego Rendering (Boiler).	Permanent shutdown.
Navistar	Natural gas.
Waukesha Foundry.	Permanent shutdown.
Southern District	
Beloit: Beloit Corporation (Foundry).	Permanent shutdown.
Columbia: Stokley USA.	Number 2 oil.
Dane:	
DL Gasser Number 101 (Mathy Construction).	Number 2 oil.
Wisconsin Porcelain.	Permanent shutdown (coal-fired boiler).
Wolf Paving	Number 2 oil.
Dodge:	
Baker Canning ...	Permanent shutdown.
Kraft-Beaver Dam.	Number 2 oil.
M&M Grey Iron Foundry.	Permanent shutdown.
Royer Brands	Permanent shutdown.
Waupun Correctional Institute.	B24/S10, Number 2 oil/natural gas.
Western Lime and Cement—Knowles.	Permanent shutdown.
Fond du Lac:	
Fond du Lac County Highway.	Number 2 oil.
Galloway West ...	Number 2 oil/natural gas.
Ram Construction.	Permanent shutdown.
Western Lime and Cement—Eden.	Permanent shutdown.
Wisconsin State-Taycheedah.	B21,S11, B22/S12, natural gas/Number 2 oil.
Grant: University of Wisconsin—Platteville.	B21, natural gas.
Jefferson: University of Wisconsin—Whitewater.	B24/S11, B22/S10, Number 2 oil/natural gas; B23/S10 natural gas only.
Richland: Richland Center Municipal Electric.	S11, S12, natural gas/Number 2 oil.
Rock: Baker Manufacturing.	Permanent shutdown (coal-fired boiler).
West Central District	
Chippewa:	
Dairyman (coal boiler).	Permanent shutdown.
Mid-American	Permanent shutdown.
National Presto ..	B20, 21, 24, 25, natural gas.
Dunn: University of Wisconsin—Stout.	B20, 23, natural gas/Number 2 oil.
Eau Claire:	
Armour	Number 2 oil.
Eau Claire Foundry.	Permanent shutdown.
Hibernia Brewing	Not allowed to burn coal or residual oil.
LaCrosse:	
G. Heilman	B26, natural gas/Number 2 oil.
G. Heilman Malting.	Permanent shutdown.
Paper Calmenson.	Number 2 oil.
Trane Number 2–5.	B21, Number 2 oil.
University of Wisconsin—La-Crosse.	B22, natural gas/Number 2 oil.
Webster Wood Preserving.	Number 2 oil.
Pierce: University of Wisconsin-River Falls.	B22, natural gas/Number 2 oil.
St. Croix:	
Friday Canning ..	B20, natural gas/Number 2 oil.
St. Croix Health Center.	Not allowed to burn coal or residual oil.
Trempealeau:	
A.G. Coop Creamery.	Number 2 oil.
American Milk Producers Institute—Blair Whey.	Natural gas.
Whitehall Foods .	Permanent shutdown.

III. Summary Information

USEPA is approving the following portions of Wisconsin's Statewide SO_2 Rules in today's final action.

NR 417.07(1), Applicability.

NR 417.07(2)(a), Emission limits for existing (before February 1, 1985) coal-fired units at facilities with combined coal-firing capacity greater than or equal to 250 MMBTU/hr.

NR 417.07(2)(b), Emission limits for existing (before February 1, 1985) coal-fired units at facilities with combined coal-firing capacity less than or equal to 250 MMBTU/hr.

NR 417.07(2)(c), Emission limits for existing (before February 1, 1985) residual oil-fired units at facilities with combined residual oil-firing capacity greater than or equal to 250 MMBTU/hr.

NR 417.07(2)(d), Emission limits for existing (before February 1, 1985) residual oil-fired units at facilities with combined residual oil-firing capacity greater than or equal to 250 MMBTU/hr.

NR 417.07(2)(g), Emission limits for existing (before February 1, 1985) petroleum refineries.

NR 417.07(3), Emission limits for new (after February 1, 1985) sources.

NR 417.07(4), More restrictive emission limits.

NR 417.07(5), Alternate emission limits.

NR 417.07(6), Compliance schedules.

NR 417.07(7), Compliance demonstrations.

NR 417.07(8) Variance from emission limits.

The source-specific emission limitations in Table 1.

The negative declarations in Table 2.

The Agency has reviewed these portions of the revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The Agency has determined that these parts of this action conform with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Today's action makes final parts of the action proposed at January 2, 1992, (57 FR 24). As noted elsewhere in this notice, USEPA received no adverse public comment on the parts of the proposed action undergoing final rulemaking in today's notice. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989.

This action has been classified as a Table 2 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 Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 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 or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 2, 1993.

David A. Ullrich,

Acting Regional Administrator.

40 CFR part 52, 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 YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(63) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(63) Revisions to the sulfur dioxide attainment plan were submitted by the State of Wisconsin between June 5, 1985, and January 27, 1992. The revised plan consists of: Natural Resources 417.07, Natural Resources 417.04, several operating permits, numerous administrative rules, numerous negative declarations, and some compliance plans.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, Natural Resources (NR) 417.07, Statewide Sulfur Dioxide Emission Limitations: Subsections 1 (Applicability); 2a, 2b, 2c, 2d, 2g (Emission Limits for Existing Sources); 3 (Emission Limits for New Sources); 4 (More Restrictive Emission Limits); 5 (Alternate Emission Limits); 6 (Compliance Schedules); 7 (Compliance Determinations); 8 (Variance from Emission Limits); as published in the (Wisconsin) Register, September, 1990, Number 417 at page 86, effective October 1, 1986.

(B) Wisconsin Administrative Code, NR 417.04, Southeastern Wisconsin Intrastate AQCR, as published in the (Wisconsin) Register, September, 1990, Number 417 at page 85, effective October 1, 1986.

(C) An Air Pollution Control Permit (MIA–10–DFS–82–36–101), dated and effective December 22, 1982, issued by the Wisconsin Department of Natural Resources to The Manitowoc Company, Inc., limiting the emissions and operation of Boiler #23 at the facility in Manitowoc, Manitowoc County, Wisconsin.

(D) An Air Pollution Control Permit (EOP–10–DFS–82–36–102), dated and effective January 12, 1983, and amended on August 7, 1987, issued by the Wisconsin Department of Natural Resources to the Manitowoc Company, Inc., limiting the emissions and operation of Boilers #20, 21, and 22 at the facility in Manitowoc, Manitowoc County, Wisconsin.

(E) An Administrative Order (86–436041870–J01), dated and effective November 25, 1986, issued by the Wisconsin Department of Natural Resources to the Manitowoc Company, Inc., South Works Facility, limiting the emissions and operation of Boilers #20 and 21 at the facility in Manitowoc, Manitowoc County, Wisconsin.

(F) An Administrative Order (86–445038550–J01), dated and effective October 27, 1986, issued by the Wisconsin Department of Natural Resources to Appleton Papers, Inc., limiting the emissions and operation of Boiler #22 at the facility in Appleton, Outagamie County, Wisconsin.

(G) A letter from Andrew Stewart to Dennis Hultgren, dated and effective on October 9, 1986, that details the conditions of the compliance plan for Appleton Papers at the facility in Appleton, Outagamie County, Wisconsin.

(H) An Administrative Order (86–445039100–J01), dated and effective December 23, 1986, issued by the Wisconsin Department of Natural Resources to the Fox River Paper Company, limiting the emissions and operation of Boiler #21 at the facility in Appleton, Outagamie County, Wisconsin.

(I) An Administrative Order (87–445009950–N01), dated and effective May 7, 1987, issued by the Wisconsin Department of Natural Resources to the Sanger B. Powers Correctional Center, limiting the emissions and operation of Boilers #1 and 2 at the facility in Oneida, Outagamie County, Wisconsin.

(J) An Air Pollution Control Permit (86–SJK–072), dated and effective July 28, 1987, issued by the Wisconsin Department of Natural Resources to the Thilmany Pulp and Paper Company, limiting the emissions and operation of Boilers #07, 08, 09, 10, and 11 at the facility in Kaukauna, Outagamie County, Wisconsin.

(K) An Administrative Order (87–469034390–J01), dated and effective January 22, 1987, issued by the Wisconsin Department of Natural Resources to the FWD Corporation, limiting the emissions and operation of Boilers #21, 22, and 23 at the facility in Clintonville, Waupaca County, Wisconsin.

(L) An Administrative Order (86–471030560–J01), dated and effective October 29, 1986, issued by the Wisconsin Department of Natural Resources to the Gilbert Paper Company, limiting the emissions and operation of Boilers #22, 23, 24, and 25 at the facility in Menasha, Winnebago County, Wisconsin.

(M) An Administrative Order (86–471031000–J01), dated and effective November 25, 1986, issued by the Wisconsin Department of Natural Resources to Kimberly Clark-Neenah Paper and Badger Globe Division, limiting the emissions and operation of Boilers #21 and 22 at the facility in Neenah, Winnebago County, Wisconsin.

(N) An Administrative Order (86–471031220–J01), dated and effective October 27, 1986, issued by the Wisconsin Department of Natural Resources to the U.S. Paper Mills Corporation-Menasha Mill Division, limiting the emissions and operation of Boiler #21 at the facility in Menasha, Winnebago County, Wisconsin.

(O) A Mandatory Operating Permit (735008010–J01), dated and effective June 16, 1987, issued by the Wisconsin Department of Natural Resources to Owens-Illinois Tomahawk and Timber STS, Inc., limiting the emissions and operation of Boilers #24, 25, 27, 28, and 29 at the facility in Tomahawk, Lincoln County, Wisconsin.

(P) An Administrative Order (86–750011350–J01), dated and effective September 16, 1986, issued by the Wisconsin Department of Natural Resources to the Del Monte Corporation, limiting the emissions and operation of Boilers #01 and 02 at the facility in Plover, Portage County, Wisconsin.

(Q) An Air Pollution Control Permit (85–RV–013), dated and effective July 17, 1985, issued by the Wisconsin Department of Natural Resources to the Neenah Paper Company, limiting the emissions and operation of Boiler #01 at the facility in Stevens Point, Portage County, Wisconsin.

(R) An Elective Operating Permit (87–NEB–701), dated and effective December 23, 1987, issued by the Wisconsin Department of Natural Resources to Nekoosa Papers, Incorporated-Port Edwards Mill, Inc., limiting the emissions and operation of Boilers #20, 21, 24, and 25; as well as the sulfite recovery furnace at the facility in Port Edwards, Wood County, Wisconsin.

(S) An Air Pollution Control Permit (603007790–N01), dated and effective June 12, 1987, issued by the Wisconsin

Department of Natural Resources to the Seneca Foods Corporation, limiting the emissions and operation of Boilers #10 and 11 at the facility in Cumberland, Barron County, Wisconsin.

(T) An Air Pollution Control Permit (MIA–10–KJC–83–16–044), dated and effective July 7, 1983, issued by the Wisconsin Department of Natural Resources to the Koppers Company, limiting the emissions and operation of Boiler #1 at the facility in Superior, Douglas County, Wisconsin.

(U) An Administrative Order (86–649028490–N01), dated and effective September 30, 1986, issued by the Wisconsin Department of Natural Resources to the Wisconsin Dairies Cooperative, limiting the emissions and operation of Boilers #20, 21, and 22 at the facility in Clayton, Polk County, Wisconsin.

(V) An Administrative Order (86–851009940–J01), dated and effective September 30, 1986, issued by the Wisconsin Department of Natural Resources to Lionite Hardboard, limiting the emissions and operation of Boiler #20 at the facility in Phillips, Price County, Wisconsin.

(W) An Administrative Order (86–230008570–N01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to the University of Wisconsin-Parkside Heating Plant, limiting the emissions and operation of Boilers #20, 21, 22, and 23 at the facility in Kenosha, Kenosha County, Wisconsin.

(X) An Administrative Order (86–241012970–J01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to the A.O. Smith/ Automotive Products Company, limiting the emissions and operation of the fuel burning equipment at the facility in Milwaukee, Milwaukee County, Wisconsin.

(Y) An Administrative Order (86–241014730–J01), dated and effective September 30, 1986, issued by the Wisconsin Department of Natural Resources to the American Can Company, limiting the emissions and operation of Boilers #20, 21, and 22 at the facility in Milwaukee, Milwaukee County, Wisconsin.

(Z) An Administrative Order (87–241007360–J01), dated and effective October 28, 1987, issued by the Wisconsin Department of Natural Resources to the American Motors Corporation, Milwaukee Manufacturing Plant, limiting the emissions and operation of Boilers #20, 21, 22, 23, and 24 at the facility in Milwaukee, Milwaukee County, Wisconsin.

(AA) An Administrative Order (86–241016710–J01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to the Eaton Corporation/ Specific Industry Control Division, limiting the emissions and operation of Boilers #20, 21, 22, at the facility in Milwaukee, Milwaukee County, Wisconsin.

(BB) An Administrative Order (86–241027050–J01), dated and effective September 18, 1986, issued by the Wisconsin Department of Natural Resources to the Milwaukee County Department of Health and Human Services, limiting the emissions and operation of Boilers #20, 21, 22, and 23, at the facility in Milwaukee, Milwaukee County, Wisconsin.

(CC) An Administrative Order (86–241084690–J01), dated and effective September 30, 1986, issued by the Wisconsin Department of Natural Resources to OMC Evinrude, limiting the emissions and operation of Boilers #20, 21, and 22, at the facility in Milwaukee, Milwaukee County, Wisconsin.

(DD) A letter from Bill Haas to Steve Otto, dated and effective on September 24, 1986, that details the conditions of the compliance plan for OMC-Evinrude at the facility in Milwaukee, Milwaukee County, Wisconsin.

(EE) An Administrative Order (86–241009670–N01), dated and effective September 30, 1986, issued by the Wisconsin Department of Natural Resources to Patrick Cudahy, Incorporated, limiting the emissions and operation of Boilers #20, 22, and 24, at the facility in Cudahy, Milwaukee County, Wisconsin.

(FF) An Elective Operating Permit (86–MJT–037), dated and effective September 23, 1986, issued by the Wisconsin Department of Natural Resources to the Peter Cooper Corporation, limiting the emissions and operation of Boilers #20, 21, 22,23, and 24 at the facility in Oak Creek, Milwaukee County, Wisconsin.

(GG) An Administrative Order (86–241099910–J01), dated and effective October 5, 1986, issued by the Wisconsin Department of Natural Resources to the University of Wisconsin at Milwaukee, Central Heating Plant, limiting the emissions and operation of Boilers #20A, 20B, 20C, and 21 at the facility in Milwaukee, Milwaukee County, Wisconsin.

(HH) A letter from Donald F. Theiler to William H. Rowe, dated and effective on October 2, 1986, that details the conditions of the compliance plan for the University of Wisconsin at Milwaukee at the facility in Milwaukee, Milwaukee County, Wisconsin.

(II) An Administrative Order (86–241025840–J01), dated and effective September 30, 1986, issued by the Wisconsin Department of Natural Resources to the Vilter Manufacturing Corporation, limiting the emissions and operation of Boilers #20, and 21, at the facility in Milwaukee, Milwaukee County, Wisconsin.

(JJ) An Air Pollution Control Permit (EOP–10–DLJ–82–52–073), dated and effective January 18, 1983, issued by the Wisconsin Department of Natural Resources to J.I. Case, limiting the emissions and operation of Boilers #21 and 22 at the facility in Racine, Racine County, Wisconsin.

(KK) An Administrative Order (86–252006370–J01), dated and effective October 13, 1986, issued by the Wisconsin Department of Natural Resources to S.C. Johnson and Son, Inc., limiting the emissions and operation of Boilers #20, 21, 22, and 23 at the facility in Sturtevant, Racine County, Wisconsin.

(LL) A letter from Donald F. Theiler to Thomas T. Stocksdale, dated and effective on October 13, 1986, that details the conditions of the compliance plan for S.C. Johnson and Son at the facility in Sturtenant, Racine County, Wisconsin.

(MM) An Administrative Order (86–252012530–J01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to Southern Wisconsin Center, limiting the emissions and operation of Boilers #20, 21, 22 and 23 at the facility in Union Grove, Racine County, Wisconsin.

(NN) A letter from Donald F. Theiler to George Wade, dated and effective on September 24, 1986, that details the conditions of the compliance plan for Southern Wisconsin Center at the facility in Union Grove, Racine County, Wisconsin.

(OO) An Administrative Order (86–252005050–J01), dated and effective September 30, 1986, issued by the Wisconsin Department of Natural Resources to Western Publishing Company, limiting the emissions and operation of Boilers #20A, 20B, and 21 at the facility in Racine, Racine County, Wisconsin.

(PP) An Air Pollution Control Permit (MIA–12–DAA–83–60–208), dated and effective November 2, 1983, issued by the Wisconsin Department of Natural Resources to Borden Chemical, limiting the emissions and operation of Boiler #20 at the facility in Sheboygan, Sheboygan County, Wisconsin.

(QQ) An Elective Operative Permit (86–SJK–71A), dated and effective May 25, 1988, issued by the Wisconsin Department of Natural Resources to the Wisconsin Power and Light Company, limiting the emissions and operation of Boilers #23, and 24 at the facility in Sheboygan, Sheboygan County, Wisconsin.

(RR) An Air Pollution Control Permit (86–LMW–406), dated and effective September 18, 1986 issued by the Wisconsin Department of Natural Resources to the Wisconsin Power and Light Company, limiting the emissions and operation of Unit 2 at the facility in Portage, Columbia County, Wisconsin.

(SS) An Administrative Order, dated and effective August 1, 1986, issued by the Wisconsin Department of Natural Resources to Oscar Mayer Foods Corporation, limiting the emissions from all sources at the facility in Madison, Dane County, Wisconsin.

(TT) An Administrative Order, dated and effective August 6, 1986, issued by the Wisconsin Department of Natural Resources to the University of Wisconsin, Charter Street Heating Plant, limiting the emissions from all sources at the facility in Madison, Dane County, Wisconsin.

(UU) An Administrative Order (86–114004770–N01), dated and effective September 23, 1986, issued by the Wisconsin Department of Natural Resources to the Universal Foods Corporation, limiting the emissions and operation of Boilers #21 and 22 at the facility in Juneau, Dodge County, Wisconsin.

(VV) An Administrative Order (86–114003340–N01), dated and effective September 23, 1986, issued by the Wisconsin Department of Natural Resources to John Deere Horicon Works, limiting the emissions and operation of fuel burning equipment at the facility in Horicon, Dodge County, Wisconsin.

(WW) An Administrative Order (86–420044680–N01), dated and effective September 30, 1986, issued by the Wisconsin Department of Natural Resources to the Taycheedah Correctional Institute, limiting the emissions and operation of Boiler #20 at the facility in Taycheedah, Fond du Lac County, Wisconsin.

(XX) An Administrative Order (86–122003640–J01), dated and effective September 30, 1986, issued by the Wisconsin Department of Natural Resources to the Dairyland Power Cooperative, limiting the emissions and operation of Boilers #20 and 21 at the facility in Cassville, Grant County, Wisconsin.

(YY) An Administrative Order (86–123002440–N01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to the Iroquois Foundry Company, limiting the emissions and operation of fuel burning equipment at the facility in Browntown, Green County, Wisconsin.

(ZZ) An Administrative Order (86–424017550–J02), dated and effective March 2, 1987, issued by the Wisconsin Department of Natural Resources to the Berlin Foundry Company, limiting the emissions and operation of fuel burning equipment at the facility in Berlin, Green Lake County, Wisconsin.

(AAA) An Administrative Order (86–424021180–N01), dated and effective er 30, 1986, issued by the Wisconsin Department of Natural Resources to the Berlin Tanning and Manufacturing Company, limiting the emissions and operation of fuel burning equipment at the facility in Berlin, Green Lake County, Wisconsin.

(BBB) An Administrative Order (86–128003700–N01), dated and effective September 23, 1986, issued by the Wisconsin Department of Natural Resources to the Carnation Company-Pet Food and Cereal Division, limiting the emissions and operation of Boilers #21 and 22 at the facility in Jefferson, Jefferson County, Wisconsin.

(CCC) An Administrative Order (86–154008030–J01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to Frank Brothers, Incorporated, limiting the emissions and operation of fuel burning equipment at the facility in Milton, Rock County, Wisconsin.

(DDD) An Administrative Order (86–154002860–J01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to the General Motors Corporation, limiting the emissions and operation of Boilers #21, 22, 23, 24, and 25 at the facility in Janesville, Rock County, Wisconsin.

(EEE) An Administrative Order (86–154004290–N01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to George Hormel and Company, limiting the emissions and operation of Boilers #20, 21 and 22 at the facility in Beloit, Rock County, Wisconsin.

(FFF) An Administrative Order (86–999019320–J01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to Rock Road of Wisconsin, limiting the emissions and operation of fuel burning equipment at the facility in Janesville, Rock County, Wisconsin.

(GGG) An Administrative Order (86–609037440–N01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to the Jacob Leinenkugel Brewing Company, limiting the emissions and operation of Boiler #20 at the facility in Chippewa Falls, Chippewa County, Wisconsin.

(HHH) An Administrative Order (86–609037660–J01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to the Northern Wisconsin Center for the Developmentally Disabled, limiting the emissions and operation of Boilers #20, 21, 22, and 23 at the facility in Chippewa Falls, Chippewa County, Wisconsin.

(III) An Air Pollution Control Permit (MIN–04–80–10–028), dated and effective June 19, 1981, issued by the Wisconsin Department of Natural Resources to Lynn Protein, limiting the operation of Boiler #21 at the facility in Clark County, Wisconsin.

(JJJ) A letter from Thomas Woletz to Dale Sleiter, dated and effective on September 9, 1986, that details the conditions of the compliance plan for the Lynn Protein facility in Clark County, Wisconsin.

(KKK) An Administrative Order (86–618022350–J01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to Uniroyal Tire Company, Incorporated, limiting the emissions and operation of Boilers #20, 21, and 22 at the facility in Eau Claire, Chippewa County, Wisconsin.

(LLL) An Administrative Order (86–618027080–J01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to the University of Wisconsin Eau Claire Heating Plant, limiting the emissions and operation of Boilers #20 and 21 at the facility in Eau Claire, Chippewa County, Wisconsin.

(MMM) An Administrative Order (86–618026530–N01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to the Waste Research and Reclamation Company, limiting the emissions and operation of Boilers #20 and 21 at the facility in Eau Claire, Chippewa County, Wisconsin.

(NNN) An Administrative Order (86–632028430–J01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to the G. Heileman Brewing Company, limiting the emissions and operation of Boilers #20, 21, 24, and 25 at the facility in LaCrosse, LaCrosse County, Wisconsin.

(OOO) An Administrative Order (86–632028210–J01), dated and effective November 26, 1986, issued by the Wisconsin Department of Natural Resources to the Trane Company-Main Complex, limiting the emissions and operation of Boilers #20, 21, 22, 23, and 24 at the facility in LaCrosse, LaCrosse County, Wisconsin.

(PPP) An Administrative Order (86–632023590–J01), dated and effective November 26, 1986, issued by the Wisconsin Department of Natural Resources to the Trane Company-Plant 6, limiting the emissions and operation of Boilers #20, 21, and 22 at the facility in LaCrosse, LaCrosse County, Wisconsin.

(QQQ) An Administrative Order (86–632028100–J01), dated and effective September 29, 1986, issued by the Wisconsin Department of Natural Resources to the University of Wisconsin-LaCrosse, limiting the emissions and operation of fuel burning equipment at the facility in LaCrosse, LaCrosse County, Wisconsin.

(RRR) An Administrative Order (86–642028860–N01), dated and effective December 23, 1986, issued by the Wisconsin Department of Natural Resources to the Golden Guernsey Dairy, limiting the emissions and operation of fuel burning equipment at the facility in Sparta, Monroe County, Wisconsin.

(SSS) An Elective Operating Permit (87–JBG–079), dated and effective March 9, 1988, issued by the Wisconsin Department of Natural Resources to the Dairyland Power Cooperative, limiting the emissions and operation of Boiler #20 at the facility in Genoa, Vernon County, Wisconsin.

* * * * *

[FR Doc. 93–11697 Filed 5–20–93; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 180

[PP 9F3758/R2000; FRL–4587–9]

RIN 2070–AB78

Pesticide Tolerances for 1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-yl]Methyl]-1H-1,2,4-Triazole and its Metabolites Determined as 2,4-Dichlorobenzoic Acid and Expressed as Parent Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for a regional registration for the State of Minnesota for residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on wild rice at 0.5 part per million (ppm). This document also establishes a tolerance for this fungicide for apricots, peaches, plums, fresh prunes, and nectarines at 1.0 ppm. This regulation was requested by Ciba-Geigy Corp. in a petition and would establish the maximum permissible levels for residues of propiconazole in or on the above-listed commodities.

EFFECTIVE DATE: This regulation becomes effective May 17, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3758/R2000], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 29, 1989 (54 FR 27422), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a tolerance petition (PP 9F3758) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), propose to amend 40 CFR 180.434 by establishing tolerances for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on wild rice at 0.5 ppm (tolerance for a regional registration) and in or on apricots, peaches, plums, fresh prunes, and nectarines at 1.0 ppm.

There were no comments received in response to the notice of filing.

The toxicological data considered in support of the tolerances include the following:

1. Plant and animal metabolism studies.

2. Residue data for crop and livestock commodities.

3. Two enforcement methodologies and a multiresidue method of analysis.

4. A rat oral lethal dose (LD_{50}) of 1,517 milligrams/kilogram (mg/kg) of body weight.

5. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 12 mg/kg/day.

6. A 90-day dog feeding study with a NOEL of 1.25 mg/kg/day.

7. A rabbit developmental toxicity study with a maternal NOEL of 100 mg/kg/day and a developmental toxicity greater than 400 mg/kg/day (highest dose tested (HDT)).

8. A rat teratology study with a maternal toxicity NOEL of 30 mg/kg/day and a developmental toxicity NOEL of 30 mg/kg/day.

9. A two-generation rat reproduction study with a reproductive NOEL of 125 mg/kg/day (HDT) and a developmental NOEL of 25 mg/kg/day.

10. A 1-year dog feeding study with a NOEL of 1.25 mg/kg/day.

11. A 2-year rat chronic feeding/carcinogenicity study with a NOEL of 5 mg/kg/day with no carcinogenic potential under the conditions of the study up to and including approximately 125 mg/kg, the highest dose tested.

12. A 2-year mouse chronic feeding/carcinogenicity study with a NOEL of 15 mg/kg/day and with a statistically significant increase in combined adenomas and carcinomas of the liver in male mice at approximately 375 mg/kg/day, the highest dose tested.

13. Ames test with and without activation, negative.

14. A mouse dominant-lethal assay, negative.

15. Chinese hamster nucleus anomaly, negative.

16. Cell transformation assay, negative.

As part of EPA's evaluation of potential human health risks, propiconazole has been the subject of five Peer Reviews and one Scientific Advisory Panel (SAP) meeting.

Propiconazole was originally evaluated by the Peer Review Committee on January 15, 1987, and classified as a Group C (possible human) carcinogen with a recommendation made for the quantification of estimated potential human risk using a linearized low-dose extrapolation. The method resulted in the establishment of a Q^* of 7.9×10^{-2} $(mg/kg/day)^{-1}$.

The Peer Review Committee's decision was presented to the FIFRA Scientific Advisory Committee on March 2, 1988. The Panel did not concur with the Committee's overall assessment of the weight-of-evidence on the carcinogenicity of propiconazole. The Panel recommended placing the chemical in Group D, indicating that the Group C classification was based on minimal evidence. The Panel's determination that EPA's Group C

classification was based on minimal evidence was due to the fact that the incidence of liver tumors in male mice only occurred when the mice were given an excessive chemical dose.

In the second, third, and fourth Peer Reviews that followed, the Peer Review group considered recommendations of the SAP as well as rebuttals by the registrant. Its conclusion, however, that propiconazole should be classified as a Group C carcinogen with a quantification of potential human risk remained unchanged.

As part of a fifth Peer Review, EPA considered additional information provided by the registrant in support of the registrant's argument that the high dose was excessively toxic in the mouse carcinogenicity study. It further argued that the data from the high dose (2,500 ppm) should not be included in the evaluation of carcinogenic potential of propiconazole. In support of these arguments, the registrant provided two subchronic oral toxicity studies in mice. Ciba-Geigy also provided a reread of the pathology slides from a mouse oncogenicity study which it felt indicated sufficient concurrent liver toxicity at 2,500 ppm to document that this dose was excessive. These findings were not present in the original pathology report. Owing to the inconsistency in Ciba-Geigy's report and the original report, the Agency requested that an independent (third) evaluation of the pathology slides be made to determine if the pathology reported could be confirmed. The results of this (third) pathology evaluation were used in the fifth Peer Review in place of data resulting from the earlier evaluations provided by Ciba-Geigy.

The Peer Review Committee considered the following facts regarding the toxicology data on propiconazole in a weight-of-evidence determination of carcinogenic potential:

1. Increased numbers of adenomas (increased trend and pairwise comparison) were found in the livers of male CD1 mice given 2,500 ppm of propiconazole in the diet.

2. The treated animals had earlier fatalities than the controls.

3. The numbers of carcinomas were increased (trend only) in male mice only at the 2,500-ppm dose level. Tumors were not significantly increased at the 500-ppm dose level. Adenomas observed in the treated animals were larger and more numerous than those in controls; however, the tumor type (adenoma) was the same.

4. No excessive number of tumors was found in female mice.

5. In a rat study conducted with acceptable doses of propiconazole, no excessive numbers of tumors were found.

The Peer Review Committee determined, based on the additional information submitted by Ciba-Geigy from two 90 day-subchronic studies in mice that: The 2,500-ppm dose used in the 2-year chronic study exceeded the maximum tolerated dose (MTD) based on the endpoint of hepatic necrosis, and the 500-ppm dose used in the chronic study was inadequate to assess the carcinogenicity of propiconazole. Based on the third pathology evaluation of the chronic study, the Peer Review Committee disagreed with Ciba-Geigy's argument that the study showed excessive toxicity at the 2,500-ppm dose. However, the Peer Review Committee concluded that the 90-day subchronic studies are a better measure of what would be an MTD.

Based upon these findings, the Peer Review Committee agreed that the classification for propiconazole should remain a Group C (possible human) carcinogen. For the purpose of risk characterization the Peer Review Committee recommended that the reference dose (RfD) approach should be used for quantification of human risk. This decision was based on the disqualification of the high dose (2,500 ppm), making the data inappropriate for the calculation of Q^*. Because the middle dose (500 ppm) was not considered sufficiently high enough for assessing the carcinogenetic potential of propiconazole, EPA has requested an additional mouse study at intermediate dose levels in male mice only. EPA does not expect that these data will significantly change the above cancer assessment.

The reference dose (RfD) for propiconazole is 0.013 mg/kg/day, based on a no-observed-effect level (NOEL) of 1.25 mg/kg/day and an uncertainty factor of 100. The NOEL is taken from a 1-year feeding study in dogs which demonstrated as an effect irritation of the stomach in males. The Peer Review Committee changed the classification of propiconazole from a Group C_q to a Group C (possible human) carcinogen and recommended against the use of the previously used Q^* (viz. 0.079) for risk assessment purposes. Propiconazole and its metabolite, 2,4-dichlorobenzoic acid expressed as the parent compound, are to be considered for risk analyses. Data gaps currently exist concerning dosing in the mouse carcinogenicity study. These data have been requested under reregistration.

A dietary risk chronic exposure analysis was performed using tolerance level residues and 100 percent crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 population subgroups. The use of anticipated residues and percent crop treated information to further refine the exposure estimates was used for some commodities to calculate the Anticpated Residue Contribution (ARC) for those same population subgroups.

The ARC for the general population from all published tolerances is 3.2 X 10^{-4} mg/kg body weight (bwt)/day, representing 3 percent of the RfD. The tolerance proposed for wild rice contributes 2.0 X 10^{-7} mg/kg bwt/day, or 0.002 percent of the RfD. The fruits (apricots, nectarines, peaches, plums, and fresh prunes) contribute an additional 3.3 X 10^{-4} mg/kg bwt/day, or 2.5 percent of the RfD. The residue contribution for the proposed tolerances, assuming residues at tolerance values and 100 percent crop treated, is 3.302 X 10^{-4} mg/kg bwt/day, representing 2.5 percent of the RfD. If proposed tolerances are granted for this chemical the resulting ARC will be 6.5 X 10^{-4} mg/kg/day, occupying 6 percent of the RfD.

The most highly exposed subpopulations are nursing and nonnursing infants less than 1 year old. A commodity contribution revealed that the consumption of the commodity peaches caused the greatest exposure for these subgroups. Exposure due to wild rice consumption was not calculated because age-specific consumption values are not available. The proposed new tolerances for fruits result in ARCs of 2.0 X 10^{-3} mg/kg/day for nursing infants and 3.1 X 10^{-3} mg/kg/day for nonnursing infants, representing 13 percent and 24 percent of the RfDs. Total exposure from all published and proposed new uses (excluding wild rice) is estimated to be 14 percent and 25 percent for these groups.

The Agency considers the dietary risk from propiconazole use on wild rice and apricots, nectarines, peaches, plums, and fresh prunes to be of minimal concern. Also, considering that the potential exposure for the proposed uses was assessed assuming residues at tolerance levels and 100 percent crop treated, there is likely overestimation of exposure. Exposure to the proposed commodities alone represents only 3 percent of the RfD for the U.S. general population. The dietary risk from the proposed uses for propiconazole is minimal.

The nature of the residue is adequately understood, and an adequate analytical method (gas chromatography)

is available for enforcement purposes. Because of the long lead time for establishing these tolerances and food additive regulations to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The pesticide is considered useful for the purpose for which the tolerances are being sought. Based on the information and data considered, the Agency concludes that the amendment of the tolerance for wild rice grown in Minnesota and for apricots, peaches, plums, fresh prunes, and nectarines will protect the public health.

Based on the above information the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, take into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 17, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.434, to read as follows:

§ 180.434 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

(a) Tolerances are established for residues of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
Apricots	1.0	
Bananas	0.2	
Barley, grain	0.1	
Barley, straw	1.5	
Cattle, fat	0.1	
Cattle, kidney	2.0	06/21/93
Cattle, liver	2.0	06/21/93
Cattle, meat	0.1	
Cattle, mbyp (except kidney and liver)	0.1	
Celery	5.0	
Eggs	0.1	
Goats, fat	0.1	
Goats, kidney	2.0	06/21/93
Goats, liver	2.0	06/21/93
Goats, meat	0.1	
Goats, mbyp (except kidney and liver)	0.1	
Grass, forage	0.5	06/21/93
Grass, hay	5.0	06/21/93
Grass, seed screenings	10.0	06/21/93
Hogs, fat	0.1	
Hogs, kidney	2.0	06/21/93
Hogs, liver	2.0	06/21/93
Hogs, meat	0.1	
Hogs, mbyp (except kidney and liver)	0.1	
Horses, fat	0.1	
Horses, kidney	2.0	06/21/93
Horses, liver	2.0	06/21/93
Horses, meat	0.1	
Horses, mbyp (except kidney and liver)	0.1	
Milk	0.05	
Nectarines	1.0	
Peaches	1.0	
Pecans	0.1	
Plums	1.0	
Poultry, fat	0.1	
Poultry, kidney	0.2	
Poultry, liver	0.2	
Poultry, meat	0.1	
Poultry, mbyp (except kidney and liver)	0.1	
Prunes, fresh	1.0	
Rice, grain	0.1	
Rice, straw	3.0	
Rye, grain	0.1	
Rye, straw	1.5	
Sheep, fat	0.1	
Sheep, kidney	2.0	06/21/93
Sheep, liver	2.0	06/21/93
Sheep, meat	0.1	
Sheep, mbyp (except kidney and liver)	0.1	
Wheat, grain	0.1	
Wheat, straw	1.5	

(b) A tolerance with regional registration, as defined in § 180.1(n), is established for residues of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the following raw agricultural commodity:

Commodity	Parts per million
Wild rice	0.5

[FR Doc. 93–12130 Filed 5–20–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 90–132; FCC 93–258]

Competition in the Interstate Interexchange Marketplace

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This order grants in substantial part AT&T's petition to amend part 61 of the Commission's rules. Now that 800 numbers are portable, the 800 services market is substantially competitive. The increase in competition warrants further streamlining of AT&T's 800 services. Part 61 is amended by eliminating price cap regulation for most of AT&T's Basket 2 services and by further streamlining regulation of AT&T's 800 services.

EFFECTIVE DATE: May 21, 1993.

FOR FURTHER INFORMATION CONTACT: Gary L. Phillips, (202) 632–4048 or John S. Morabito, (202) 632–1290, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposals have been analyzed with respect to the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501–20, and found to impose no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements; and will not increase burden hours imposed on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by that Act.

Background

Common Carrier Docket 90–132: Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880 (1991) (56 FR 55235 (10/25/91)), *recon.*, 6 FCC Rcd 7569 (1991) (56 FR 66602 (12/24/91)), *further recon.*, 7 FCC Rcd 2677 (1992) (57 FR 20206 (5/12/92)).

Summary

1. This is a summary of the Second Report and Order adopted in Common Carrier Docket 90–132: Competition in the Interstate Interexchange Marketplace, Adopted May 13, 1993 and Released May 14, 1993. The full texts of Commission decisions are available for inspection and copying, Monday through Friday, 9:00 a.m.–4:30 p.m., in the FCC Reference Room (Room 239), 1919 M Street NW., Washington, DC 20554. The complete text of this Order may also be purchased from the Commission's copy contractor, International Transportation Service, Inc. (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

2. On February 17, 1993, AT&T filed a petition asking the Commission to modify part 61 of the Commission's rules to eliminate price cap regulation and apply streamlined regulation to AT&T's Basket 2 services as of the date number portability for 800 services becomes available. In support of its petition, AT&T argues that the Commission has already streamlined most of AT&T's business services and that with the implementation of number portability, streamlined regulation should be extended to AT&T's 800 services. AT&T also argues that the Commission committed to streamlining AT&T's 800 services when number portability is generally available.

3. In this Second Report and Order, we conclude that with the implementation of 800 number portability, further streamlined regulation of AT&T's 800 services is in the public interest. In the Interexchange Proceeding, 55 FR 18007 (4/30/90), the Commission undertook a comprehensive analysis of the state of competition in the long distance market generally, and in the 800 services market specifically. As part of its analysis, the Commission sought comment on whether to streamline its regulation of AT&T's 800 services if and when 800 numbers became portable.

4. In the Interexchange Order, 56 FR 55235 (10/25/91), the Commission found that the 800 services market was not substantially competitive because of the lack of 800 number portability. At the same time, however, the Commission concluded that no party had identified any other significant barriers to 800 services competition, and it stated its intention to implement further streamlined regulation for AT&T's 800 services when 800 number portability became generally available. Now that 800 numbers are portable, we conclude that, consistent with the Interexchange Order, AT&T 800 services should be subject to further streamlining. None of the arguments advanced by opponents of AT&T's petition convinces us otherwise.

5. We will allow AT&T to file its streamlined 800 service tariffs on 14 days notice. In light of the competitiveness of 800 services, such tariffs shall be presumed lawful for the purposes of advance tariff review. Accordingly, AT&T need not file cost support with these tariffs, and price cap ceilings, bands, and rate floors will no longer apply.

6. We do not streamline regulation of AT&T's 800 Directory Assistance service. Because 800 Directory Assistance is not affected by number portability and because it will continue to be a monopoly service, we retain price cap regulation for AT&T's 800 Directory Assistance.

7. We deny a petition filed by Sprint Communications Company L.P. requesting that we clarify that the 800 bundling restrictions imposed on AT&T would not automatically expire with the advent of number portability. We deny this petition because prior Commission orders clearly state that the 800 bundling restrictions expire with the general availability of number portability.

8. We find good cause for making the rule amendments effective on less than 30 days notice. With the advent of number portability on May 1, 1993, 800 services have become substantially competitive. Making this order effective on less than 30 days notice will enable the public to reap the benefits of this competition at the earliest possible date, while eliminating unnecessary regulatory constraints and delays. *See* 5 U.S.C. 553(d)(3).

Ordering Clause

9. *It is ordered that,* pursuant to the authority contained in sections 1, 4, and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 201–205, AT&T's Petition IS GRANTED IN PART, to the extent discussed herein, amending section 61.42 of the Commission's rules, 47 CFR 61.42.

10. *It is further ordered that,* Sprint's petition is denied.

List of Subjects in 47 CFR Part 61

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Final Rule Changes

Part 61 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.42 is amended by revising paragraphs (b)(2) and (c)(12), redesignating (c)(13) as (c)(17), and adding new paragraphs (c)(13), (c)(14), (c)(15), and (c)(16), to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(b)(1) * * *

(2) The 800 service basket shall contain 800 Directory Assistance.

* * * * *

(c) * * *
(12) Custom tariff services;
(13) Readyline 800 service;
(14) AT&T 800 service;
(15) Megacom 800 service;
(16) Other 800 services; and
* * * * *

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 93–12020 Filed 5–20–93; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 92–266, FCC 93–264]

Cable TV Act of 1992—Cable Rate Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for limited stay.

SUMMARY: The Commission has denied a Petition for Limited Stay of Effective Date of its cable rate regulation rules and a Petition in Support for Limited Stay of Effective Date. However, the Commission has preempted any state or local requirements that cable operators give notice, prior to June 21, 1993 (the effective date of the rules) of rate changes intended to effectuate compliance with our rate regulations. The Commission has also clarified that rates and rate structures will be deemed to be "in effect" if subscribers have been given at least some notification of such adjustments by June 21, 1993, and if subsequent billing properly credits subscribers in a timely manner for rates adjusted as of June 21.

EFFECTIVE DATE: May 14, 1993.

FOR FURTHER INFORMATION CONTACT: Gina Harrison, (202) 632–7792; or Karen Kosar, (202) 632–7586.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in MM Docket No. 92–266; FCC 93–264, adopted and released May 14, 1993.

The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center FCC Dockets Branch, 1919 M Street, NW., Washington, DC., and also may be purchased from the Commission's copy contractor, International Transcription Service (ITS), at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC. 20037.

Synopsis of Order

1. This Order denies petitions for a "limited stay" of the June 21, 1993, effective date of our cable rate regulation rules, promulgated pursuant to the Cable Television Consumers Protection and Competition Act of 1992, Public Law No. 102–385, sections 3, 9, 14, 106 Stat. 1460 (1992), amending sections 623, 612 and 622(c) of the Communications Act, as codified at 47 U.S.C. sections 543, 532 and 542(c) (Cable Act). The petitions requested a limited stay of the effective date until the end of the rate freeze on August 3, 1993. (See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Order, MM Docket No. 92–266, 58 FR 17530, April 5, 1993; revised Erratum, 58 FR 19626, April 15, 1993.) Petitioners argued that more time was needed to absorb the Commission's large and complex rate regulation order (see Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92–266, appearing elsewhere in this **Federal Register**), and to assemble the requisite information and apply the formulas accordingly. Because the Commission does not wish to delay extending the Act's benefits to consumers, and because the request would have the effect to delaying the full implementation of the rate provisions of the Act for an additional six weeks, the Commission denies the request.

2. However, in order to avoid imposing a potentially unworkable implementation schedule, the Commission believes that some relief is in order. In particular, the Commission is concerned that local franchise notice requirements may at this juncture make it practically impossible for operators to meet local notice obligations while at the same time implementing rate adjustments responsive to the federal rules by the June 21 effective date. The Commission will therefore preempt any local franchise agreements or other state or local law or regulation to the extent that it requires an operator to give notice prior to June 21 of any rate change intended to comply with the Commission's rate regulations.

3. The Commission emphasizes that this preemption is of limited duration and that such local or state notice requirements are not preempted to the extent they apply after the June 21, 1993, effective date. Operators will still have to comply with the Commission's customer service requirements, including the obligation to give subscribers 30 days notice of rate increases, which requirements become effective as of July 1, 1993.

4. The Commission is also concerned that cable operators and subscribers may be disadvantaged if logistical obstacles prevent operators from providing prompt, formal notification of rate and service changes. Thus, the Commission clarifies that rates and rate structures will be deemed to be "in effect" if subscribers have been given at least some notification of such adjustments by that date, and if subsequent billing properly credits subscribers in a timely manner for the rates adjusted as of June 21. Operators are encouraged to notify subscribers of their rate adjustments as soon as possible by any practicable means. In order to be in compliance with the effective date, however, this notice must be given no later than June 21, 1993.

5. Accordingly, *it is ordered*, Pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j) and 47 CFR 1.45(e), that the Petition for Limited Stay of Effective Date by NCTA and the Petition in Support for Limited Stay of Effective Date by Dow, Lohnes, & Albertson are denied.

6. *It is further ordered*, That any state or local requirements that cable operators give notice, prior to June 21, 1993, of rate changes intended to effectuate compliance with our rate regulations are hereby preempted.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 93–12080 Filed 5–20–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 601

[Docket No. 930346–3046]

Regional Fishery Management Councils

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a final rule that revises the date after which completed terms will be counted when determining the number of consecutive terms served by certain voting members of each Regional Fishery Management Council (Council). This is a technical

regulatory action to implement an amendment of paragraph 302(b)(3) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and to change the date after which consecutive terms will be counted from January 1, 1986, to December 31, 1987.

EFFECTIVE DATE: This rule is effective May 20, 1993.

FOR FURTHER INFORMATION CONTACT: Loretta E. Williams, (301) 713–2337.

SUPPLEMENTARY INFORMATION: Section 302(b)(3) of the Magnuson Act specifies the length of a term of appointment to a Council and the number of consecutive terms that may be served by voting members of each Council appointed by the Secretary of Commerce under provisions of section 302(b)(2) of the Magnuson Act. The number of consecutive terms that may be served is restricted to three.

Prior to its amendment by section 403 of the High Seas Driftnet Fisheries Enforcement Act (the Driftnet Act), enacted on November 2, 1992, as Public Law 102–582, section 302(b)(2) of the Magnuson Act specified that any term completed prior to January 1, 1986, should not be counted toward the completion of three successive terms. Section 403 of the Driftnet Act changed that date to December 31, 1987, and thereby provided a 1-year window during which individuals who have been members of the Councils since 1984 could be considered for reappointment in 1993, if nominated for such reappointment by their respective State Governors.

Regulations governing the terms of the voting Council members appointed by the Secretary are contained at 50 CFR 601.32. This section is revised by this technical amendment to implement the new provisions of section 302(b)(2) of the Magnuson Act.

Classification

This final rule, technical amendment, is issued under 50 CFR part 601. Because this rule simply conforms existing regulations to a nondiscretionary statutory amendment, it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment, and there is good cause under 5 U.S.C. 553(d) not to delay for 30 days its effective date.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

This rule makes a minor technical change to a rule that has been determined not to be a major rule under E.O. 12291, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. There is no change in the regulatory impacts previously reviewed and analyzed.

List of Subjects in 50 CFR Part 601

Administrative practice and procedure, Fisheries, Fishing.

Dated: May 17, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 601 is amended to read as follows:

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

1. The authority citation for part 601 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 601.32 is revised to read as follows:

§ 601.32 Terms of Council members.

Voting members (other than principal State officials, the Regional Directors, or their designees) are appointed for a term of 3 years and may be reappointed. An individual appointed to fill a vacancy occurring prior to the expiration of any term of office will be appointed for the remainder of that term. The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than the normal 3 years if necessary to provide for balanced expiration of terms of office. No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term completed prior to December 31, 1987, shall not be counted in determining the number of consecutive terms served by any Council member.

[FR Doc. 93–12114 Filed 5–20–93; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Parts 638, 641, 642, and 658

[Docket No. 9305–12–3112]

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; and Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: NMFS issues this technical amendment to clarify that closures of certain commercial fisheries, adjustments of the dates of the Texas closure of the commercial shrimp fishery, and adjustments to prevent gear conflicts in the fishery for coastal migratory pelagic resources, which are implemented in accordance with the procedures specified in the regulations for those fisheries, will be effective based on the date that the notice is filed with the Office of the Federal Register (OFR), rather than on the date the notice is published. While effectiveness of a closure is usually on a date after the date the notice is filed with the OFR, this rule clarifies that a closure or adjustment may be effective as early as the date such notice is filed, unless a delay in effectiveness is required by the closure or adjustment regulations. The intended effect of this rule is to clarify the current practice regarding closures and adjustments in the specified fisheries.

EFFECTIVE DATE: May 21, 1993.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, 813–893–3722.

SUPPLEMENTARY INFORMATION: The fisheries covered by this rule are managed under their respective fishery management plans and implementing regulations under the authority of the Magnuson Fishery Conservation and Management Act. This final rule, technical amendment, standardizes the language of the implementing regulations pertaining to notices of closures of commercial fisheries.

The regulations governing the fisheries for octocoral, reef fish, and coastal migratory pelagic resources require that the commercial fisheries be closed when allocations or quotas are reached, or are projected to be reached. Similarly, the dates of the seasonal closure of the commercial shrimp fishery off Texas may be adjusted based on prescribed conditions. The factors to consider when a closure or adjustment should be effected are numerous and unpredictable. In addition, the harvesting capacity in these fisheries is generally sufficient to exceed greatly an allocation or quota in a short period of time. Accordingly, NMFS has had to close commercial fisheries and adjust the Texas closure with limited advance notice to fishermen. Of the 47 closure and closure adjustment notices filed with the OFR by NMFS for fisheries in its Southeast Region, six have been effective on the date of filing, 33 have been effective from 1 to 4 days after

filing, and eight have been effective 5 or more days after filing. Generally, only those notices that are effective 5 or more days after filing will be effective on or after the date of publication in the Federal Register.

To standardize the language regarding closures and closure adjustments, this final rule, technical amendment, removes language relating to "publication" of notices in the Federal Register, and otherwise clarifies the regulations.

Filing a notice with the OFR and subsequent publishing in the Federal Register are not the sole means by which NMFS advises interested persons of closures and adjustments. Important notices of unanticipated regulatory actions are broadcast on NOAA Weather Radio; dealers, appropriate state agencies, and fisheries associations are advised by phone; and news releases are broadly distributed, specifically including the owners of all affected permitted vessels. Acceptable procedures for providing "public notice" of adjustments to the opening and closing dates of the Texas closure are specified in the regulations. These practices will remain in effect. Consequently, this final rule changes neither the current practice regarding closures nor the operation of any fishery.

Classification

This technical amendment is issued as a final rule under 50 CFR parts 638, 641, 642, and 658 and complies with E.O. 12291.

Because this rule (1) makes non-substantive clarifications to the regulations and (2) does not change operating practices in the coral, reef fish, coastal migratory pelagic, or shrimp fisheries, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), under section 553 (b)(B) and (d) of the Administrative Procedure Act (5 U.S.C. 553) for good cause finds that it is unnecessary and contrary to the public interest to provide notice and public comment on this rule or to delay for 30 days its effective date.

This rule is minor and technical and, therefore, is not a "major rule" under E.O. 12291. There is no change in the regulatory impacts that were previously reviewed and analyzed.

Because this rule is being issued without prior public comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

Because this rule makes no changes that were not analyzed in the environmental assessment documents previously prepared to comply with the National Environmental Policy Act, this rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Parts 638, 641, 642, and 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 17, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 638, 641, 642, and 658 are amended as follows:

1. The authority citations for parts 638, 641, 642, and 658 continue to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

2. Section 638.25 is revised to read as follows:

§ 638.25 Closure.

When the quota specified in § 638.24 is reached, or is projected to be reached, the Assistant Administrator will file a notice to that effect with the Office of the Federal Register. On and after the effective date of such notice, for the remainder of the fishing year, the harvest of allowable octocoral from the EEZ is prohibited.

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

3. Section 641.26 is revised to read as follows:

§ 641.26 Closures.

When a commercial quota specified in § 641.25 is reached, or is projected to be reached, the Assistant Administrator will file a notice to that effect with the Office of the Federal Register. On and after the effective date of such notice, for the remainder of the fishing year, the bag limit will apply to all harvest in the EEZ of the indicated species, and the purchase, barter, trade, and sale of the indicated species taken from the EEZ is prohibited. This prohibition does not apply to trade in the indicated species that were harvested, landed, and bartered, traded, or sold prior to the effective date of the notice in the Federal Register and were held in cold storage by a dealer or processor.

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

4. In § 642.26, the first sentence of paragraph (a), and paragraph (b) introductory text, are revised to read as follows:

§ 642.26 Closures.

(a) *Notice of closure.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will close the commercial fishery in the EEZ for king mackerel from a particular migratory group or zone, and for Spanish mackerel from the Gulf migratory group, when the allocation or quota under § 642.25(a) or (b)(1) for that migratory group or zone has been reached or is projected to be reached.

* * *

(b) *Fishing after a closure.* On and after the effective date of a closure invoked under paragraph (a) of this section, for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a)—

* * * * *

5. In § 642.27, the last sentence of paragraph (b) is revised to read as follows:

§ 642.27 Commercial trip limits for Atlantic group Spanish mackerel.

* * * * *

(b) * * * The Assistant Administrator, by filing a notice within the Office of the Federal Register, will announce when 80 percent and 100 percent of the adjusted allocation is reached or is projected to be reached.

* * * * *

6. In § 642.28, the last sentence is revised to read as follows:

§ 642.28 Prevention of gear conflicts.

* * * Necessary prohibitions or restrictions will be filed with the Office of the Federal Register.

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

7. In § 658.25, paragraphs (b)(2), (b)(3), and (b)(4) introductory text are revised to read as follows:

§ 658.25 Texas closure.

* * * * *

(b) * * *

(2) The Assistant Administrator, after consulting with the TPWD, may adjust the closing or opening date by filing a notice to that effect with the Office of the Federal Register. The notice will specify the adjusted date(s) and the reasons for the adjustment.

(3) An adjustment that advances the closing date or delays the opening date may not be effective earlier than 72 hours after public notice of such adjustment. An adjustment that delays the closing date or advances the opening date may not be effective earlier than 24 hours after public notice of such adjustment.

(4) Public notice of an adjustment may be made by any of the following methods:

* * * * *

[FR Doc. 93–12125 Filed 5–20–93; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Part 641

[Docket No. 910512–1180]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has projected that the annual commercial quota for red snapper will be reached on May 21, 1993. This closure is necessary to protect the red snapper resource.

EFFECTIVE DATES: Closure is effective May 21, 1993, 12:01 a.m., local time, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico was developed by the Gulf of Mexico Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and is implemented by regulations at 50 CFR part 641. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 3.06 million pounds (1.39 million kg) for the current fishing year, January 1–December 31, 1993.

Under 50 CFR 641.26, NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by publishing a notice in the **Federal Register**. Based on current statistics, NMFS has projected that the commercial quota of 3.06 million pounds (1.39 million kg) for red snapper will be reached on May 21, 1993. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper is closed effective 12:01 a.m., local time, May 21, 1993, through December 31, 1993, the end of the fishing year. A vessel with a valid reef fish permit having aboard red snapper must land and barter, trade, or sell such red snapper prior to 12:01 a.m., local time, May 21, 1993.

During the closure, the bag limit applies to all harvests of red snapper from the EEZ in the Gulf of Mexico. The daily bag limit for red snapper is seven per person. From 12:01 a.m., local time, May 21, 1993, through December 31, 1993, the purchase, barter, trade or sale of red snapper taken from the EEZ is prohibited. This prohibition does not apply to trade in red snapper that were harvested, landed, and bartered, traded, or sold prior to 12:01 a.m., local time, May 21, 1993, and were held in cold storage by a dealer or processor.

Classification

This action is required by 50 CFR 641.26 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 18, 1993.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–12127 Filed 5–20–93; 8:45 am]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 97
Friday, May 21, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 102, and 161

[Docket No. 90N–361M]

RIN 0905–AD08

Food Labeling; Declaration of Ingredients—Common or Usual Name Declaration for Protein Hydrolysates and Vegetable Broth in Canned Tuna; "and/or" Labeling for Soft Drinks; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration is providing additional information to support and clarify a proposal that appeared in the Federal Register of January 6, 1993 (58 FR 2950), that, among other things, would amend the standard of identity for canned tuna to require the term "(includes soybeans)" as part of the name used to declare the ingredient vegetable broth when soybeans are one of the vegetable extractives used to make that ingredient. Further, this document is granting a request by the National Soft Drink Association (NSDA) to extend the comment period for an additional 45 days to ensure that interested parties have adequate time to review any relevant information and to submit comments.

DATES: Written comments by July 6, 1993. The agency proposes that any final rule that may issue based on this proposal become effective May 8, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5229.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of January 6, 1993 (58 FR 2950), FDA published a proposed rule entitled "Food Labeling; Declaration of Ingredients—Common or Usual Name Declaration for Protein Hydrolysates and Vegetable Broth in Canned Tuna; 'and/or' Labeling for Soft Drinks" (hereinafter referred to as "the 1993 ingredient labeling proposal"). This proposal responded to new issues that had been raised in comments on the proposed rule on ingredient labeling that FDA published in the Federal Register of June 21, 1991 (56 FR 28592) (hereinafter referred to as "the 1991 ingredient labeling proposal"). Specifically, in the 1993 ingredient labeling proposal, the agency proposed to: (1) Amend the standard of identity for canned tuna (§ 161.190 (21 CFR 161.190)) to require the term "(includes soybeans)" as part of the name used to declare the ingredient vegetable broth when soybeans are one of the vegetable extractives used to make the vegetable broth; (2) amend the common or usual name regulations for protein hydrolysates (new § 102.22) to require the term "contains glutamate" as a part of the common or usual name of autolyzed yeast extracts and certain hydrolyzed proteins; and (3) amend the food labeling regulations in § 101.4 (21 CFR 101.4) to allow "and/or" labeling for the declaration of sweeteners in soft drinks.

With regard to the declaration of vegetable broth used as an ingredient in canned tuna, comments to the 1991 ingredient labeling proposal questioned whether the individual vegetable extractives used to make the vegetable broth in canned tuna had to be individually declared either in parentheses after the term "vegetable broth," or interspersed by predominance by weight, as part of the ingredient list. After reviewing the information provided in those comments, as well as other information available to the agency, FDA responded that the listing of each vegetable extractive in the vegetable broth was not necessary. The standard of identity for canned tuna § 161.190 has traditionally permitted the ingredient vegetable broth to be listed simply as "vegetable broth" without any listing of its components. Although the agency encourages, where practicable, the full disclosure of all ingredients on the labels of food products and believes that listing of the components of vegetable broth would be informative and useful to consumers, the agency agreed with the comments that the listing of each vegetable extractive on the label could be lengthy and cumbersome. Hence, the agency did not propose, in the 1993 ingredient labeling proposal (58 FR 2950), to require that each of the vegetable extractives comprising the vegetable broth be declared in the ingredient list.

However, the agency did note that § 161.190(a)(6)(v), which permits the use of "beans" as one of the vegetable extractives in making the vegetable broth, has been interpreted to permit the use of soybeans. The agency stated that soybeans are not generally classified as "vegetables," and that it would be unlikely that "vegetable broth" would be understood by consumers to be a product that has been made from soybeans. Furthermore, the agency cited one reference that discussed food sensitivities to soy proteins (58 FR 2950 at 2951).

Based on these factors, the agency tentatively concluded that consumers should be informed about the presence of soybeans in the vegetable broth and proposed to amend the standard of identity for canned tuna in § 161.190(a)(8)(vi) to require that when soybeans are used in vegetable broth, the term "(includes soybeans)" be declared following the listing of "vegetable broth." The agency also pointed out that if the vegetable broth serves as a flavor and has no flavor enhancing function in the food, the vegetable broth containing soybean extractives can be declared under the proposal as "flavoring (includes soybeans)." As fully explained in the final rule "Food Labeling; Declaration of Ingredients" (58 FR 2850 at 2854), FDA permits vegetable broth in canned tuna to be declared in the ingredient statement as "flavoring" when the vegetable broth serves no flavor enhancing function.

Additionally, in the 1993 ingredient labeling proposal, FDA proposed to add § 101.4(b)(21) to permit the use of "and/or" labeling for sweeteners in soft drinks. The tentative decision to permit "and/or" labeling for sweeteners in soft

drinks was in response to a request by the NSDA which stated that a constant pattern of use of sweeteners does not exist among soft drink bottlers, and that, therefore, soft drink manufacturers need the flexibility of "and/or" labeling. In its tentative decision to permit "and/or" labeling, the agency stated that the final decision on this issue will be based largely on the comments that it receives. The agency further stated that industry will have to produce data to demonstrate that it is in fact impracticable to produce the very limited number of versions of a label that would be necessary if the agency did not permit "and/or" labeling.

In response to the 1993 proposal, NSDA requested that the comment period be extended for 45 days in order to compile the data necessary to support its position. The agency is responding to that request in this document.

II. Additional Information to Support the Proposal

In proposing to require the declaration of soybeans when used as a component of vegetable broth in canned tuna, the agency has tentatively concluded that U.S. consumers would generally not expect soybeans, or their extractives, to be included as a component in an ingredient that is called "vegetable broth."

The standard of identity for canned tuna (§ 161.190(a)(6)(v) (58 FR 2850 at 2884)), permits two or more of the following extractives to be included in "vegetable broth": Beans, cabbage, carrots, celery, garlic, onions, parsley, peas, potatoes, green bell peppers, red bell peppers, spinach, and tomatoes. The inclusion of "beans" in this list has served as a basis for some to use soybeans in this ingredient. The question raised, however, is whether consumers understand that "vegetable broth" may include soybeans.

As explained in the 1993 ingredient labeling proposal, soybeans generally are not classified as "vegetables" but as grains and belong to the general category of oilseeds (58 FR 2950 at 2951). Further, soybeans are not marketed in the United States in the same manner as conventional vegetables (i.e., fresh, frozen, or canned) and are not likely to be included in a product sold as "vegetables" or "mixed vegetables." Rather, soybeans have traditionally been used by industry as ingredients in processed meat and fish products, dairy product analogs, bakery products, infant formulas, protein supplements, meat analogs, foaming agents, and snack foods (Refs. 1 through 7). Based on these facts, the agency tentatively concludes that consumers have not traditionally considered soybeans to be vegetables, and thus that they would not expect soybeans to be included as ingredients in a food designated as "vegetable broth" (Ref. 8).

Thus, the parenthetical "(contains soybeans)" appears to be a necessary part of the common or usual name of a vegetable broth ingredient that contains soybeans or their extractives as a component. It serves, in accordance with long established principles, to help identify or describe the basic nature of the food. (See 21 CFR 102.5.)

One purpose served by fully disclosing the identity of a food ingredient is to assist consumers who may be sensitive or allergic to the ingredient to avoid it. While FDA has not received reports of allergic reactions to soybean-containing vegetable broths used in canned tuna, food allergy to soy protein is well documented in the literature. Reports dating back to 1934 have implicated soybeans as important sources of food allergy (Ref. 9). Allergic responses to soybeans include gastrointestinal reaction, dermatologic reaction, bronchial asthma, and anaphylaxis (Refs. 10 through 14).

While any protein-containing food could be a food allergen, a report of a national meeting of the American Chemical Society on Food Allergies listed legumes (particularly peanuts and soybeans) as one of the most common allergenic foods among infants and adults in the United States (Ref. 15). The agency notes that soybean oil has not been associated with allergic responses and would not be expected to cause an allergic response because the allergenic soy protein components are not present in the oil (Ref. 6). Even though other members of the legume family, e.g., green peas and green beans, have been implicated as possible food allergens, information available to the agency demonstrates that the incidence of allergy to these foods among U.S. consumers is considerably lower than the incidence of allergy to peanuts and soybeans (Refs. 15 and 16).

While FDA recognizes that all of the vegetable extractives permitted to be included in the vegetable broth may be potential food allergens, information available to the agency shows that, with the exception of soybeans, those extractives, and the vegetables from which they are drawn, are rarely implicated as food allergens, and that when they are, they usually cause less severe reactions than soybeans and their extractives (especially in the cooked form that occurs with vegetable broth) (Ref. 17). More importantly, these extractives (other than soybean) are commonly understood by consumers to be "vegetables" such that the term "vegetable broth" will adequately convey to the consumer that one or more of these other ingredients may be included in the vegetable broth. Consequently, consumers who need to avoid one or more of these vegetable extractives would have the necessary information to do so when the term "vegetable broth" is listed in the ingredient statement.

Therefore, given the agency's belief that the term "vegetable broth" is likely not to disclose to consumers the presence of soybeans, and that soybean food allergy is one of the more common food allergies in the United States, FDA was prompted to publish the 1993 ingredient labeling proposal to require the parenthetical declaration "(includes soybeans)" when soybeans are a component of vegetable broth in canned tuna.

FDA is not aware of other potential allergenic food ingredients that may be included in vegetable broth in canned tuna and whose presence is not implied by the ingredient label declaration "vegetable broth." The agency solicits comments as to whether there are any such substances. The agency also requests comments on its tentative determination that the name "vegetable broth" will inform consumers of the presence of vegetable extracts with some history of causing an allergic response (e.g., peas, green beans), and thus, that it is not necessary to require the listing of these vegetables. If comments provide a substantial basis for FDA to conclude that the presence of an allergenic ingredient in vegetable broth is not adequately conveyed to the consumer by the term "vegetable broth," the agency may require in any final rule based on the 1993 ingredient labeling proposal that the ingredient be parenthetically identified following the term "vegetable broth" in the ingredient statement.

Interested persons were given until March 8, 1993, to respond to the proposal published in the Federal Register of January 6, 1993 (58 FR 2950). The agency is reopening the comment period for 45 days to allow interested parties adequate time to review this additional information and to prepare comments.

III. Correction of 1993 Ingredient Labeling Proposal

In the 1993 ingredient labeling proposal that published in the Federal Register of January 6, 1993 (58 FR 2950), the agency stated that the proposed requirement to list soybeans as a constituent of vegetable broth is consistent with FDA's policy regarding

the listing of soybeans on canned tuna labels. In support of this position, the agency cited a letter to Protein Technologies International that advised the company to identify the presence of soybeans in the ingredient statement when they are included in the ingredient "vegetable broth." The agency inadvertently indicated that the cited letter stated that the reason that the agency required manufacturers to declare soybeans was because of allergic responses.

Although at the time the letter was drafted, the agency was aware of the information in the literature identifying soybeans as a common food allergen, that issue was not addressed in the cited letter. The letter only clarified that the ingredient "soybean flakes" should be declared when included as an extractive in vegetable broth when used in canned tuna.

The agency's intent in citing this letter in the 1993 ingredient labeling proposal was not to address the agency's rationale in its letter to Protein Technologies International requiring the declaration of soybeans. It was instead to show that the agency had previously considered the issue of label declaration of soybeans when included as an ingredient in vegetable broth for use in canned tuna, and that its earlier policy on label declaration of soybeans in vegetable broth was consistent with the proposal to amend the standard of identity to include the requirement for soybean declaration.

The agency's reference to the Protein Technologies International letter may have implied that FDA had some particular concern about the allergenicity of that company's vegetable broth product. This is not the case.

For these reasons, in the Federal Register of Thursday, April 1, 1993 (58 FR 17171), FDA corrected its error.

IV. Request for Extension of Comment Period by the NSDA

In response to the 1993 proposal, NSDA established a special ad hoc task force to collect and assemble data to support its position. In a comment submitted to the agency on the 1993 ingredient labeling proposal, NSDA stated that its members believe that the impact of not permitting "and/or" labeling for sweeteners would be even greater for the soft drink industry than it had originally suggested. Further, the comment stated that the implications extend to other industries including labeling and packaging suppliers. Thus, in order to obtain a more accurate assessment of the situation and to compile the data necessary to satisfy FDA's "impracticability" requirement, the task force determined it would be necessary for NSDA to conduct a member survey and to interview suppliers for details of the impact on their businesses if the agency does not permit "and/or" labeling for sweeteners in soft drinks. As indicated in the comment, this survey will take several weeks to conduct and then additional time to analyze and organize the results for presentation to FDA. Thus, NSDA has requested that the agency extend the comment period 45 days to permit it time to collect, compile, and submit these data.

The agency has considered the information presented in this request and finds that reopening the comment period for 45 days would not unduly delay the rulemaking process, would not jeopardize consumer health, and would provide the necessary time for NSDA to complete its survey and to prepare its comments to the agency. While in other circumstances the agency would have only granted a 30-day extension in response to NSDA's request, because this matter is part of the same rulemaking as the soybean issue discussed above, the agency sees no reason not to make the two extensions coextensive. Thus, the agency is granting the NSDA request and reopening the comment period for 45 days.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Fischer, R. W., "Future of Soy Protein Foods in the Marketplace," *Journal of American Oil Chemists' Society*, 51:178A–180A, 1974.

2. Cotton, Robert H., "Soy Products in Bakery Goods," *Journal of American Oil Chemists' Society*, 51:117A–119A, 1974.

3. Levinson, Arthur A., and John R. Lemancik, "Soy Protein Products in Other Foods," *Journal of American Oil Chemists' Society*, 51:135A–137A, 1974.

4. Waggle, D. H., and C. W. Kolar, "Types of Soy Protein Products," In Soy Protein and Human Nutrition, ed. Harold Wilcke, Daniel T. Hopkins, and Doyle H. Waggle, Academic Press, New York, pp. 40–49, 1979.

5. Wolf, W. J., and J. C. Cowan, *Soybeans as a Food Source*, CRC Press, Cleveland, OH, pp. 60–69.

6. Hui, Y. H., Encyclopedia of Food Science and Technology, vol. 4, John Wiley and Sons, New York, pp. 2393–2395, 1992.

7. Considine, Douglas M., and Glenn D. Considine, Foods and Food Production Encyclopedia, Van Nostrand Reinhold Co., Inc., New York, pp. 1870–1874, 1982.

8. Satchell, F. B., FDA memorandum, March 8, 1993.

9. Duke, W. W., "Soy Bean as a Possible Important Source of Allergy," *Journal of Allergy*, 5:300–302, 1934.

10. Taylor, Steve L., "Food Allergies," *Food Technology*, 39:98–105, 1985.

11. Sampson, Hugh, A., and Dean D. Metcalfe, "Food Allergies," *Journal of American Medical Association*, vol. 268, No. 20, pp. 2840–2844, 1992.

12. Peters, Gustavus A., "Bronchial Asthma Due to Soybean Allergy: Report of a Case With Audiovisual Documentation," *Annals of Allergy*, 23:270–272, 1965.

13. Cook, Charles D., "Probable Gastrointestinal Reaction to Soybean," *New England Journal of Medicine*, vol. 263, No. 21, pp. 1076–1077, 1960.

14. Mortimer, Edna Z., "Anaphylaxis Following Ingestion of Soybean," *Journal of Pediatrics*, vol. 58, No. 1, pp. 90–92, 1961.

15. Taylor, Steve L., Julie A. Nordlee, and Robert K. Bush, "Food Allergies," ACS Symposium Series—Food Safety Assessment, ed. Finley, et al., pp. 316–329, 1992.

16. Memorandum of telephone Conversation between Linda Tollefson, FDA, and Dr. Hugh Sampson, Johns Hopkins University School of Medicine, and between Linda Tollefson, FDA, and Ms. Anne Munoz-Furlong, Food Allergy Network, December 4, 1992.

17. Perlman, F., "Allergens," in Toxic Constituents of Plant Foodstuffs, 2d ed., Irvin Liener (editor), Academic Press, New York, pp. 318–319, 1980.

VI. Effective Date

The proposed effective date of any final rule based on the 1993 ingredient labeling proposal, including the provisions discussed in this document, is May 8, 1994. FDA intends to publish a final rule based on the 1993 ingredient labeling proposal as soon as possible after the comment period closes to ensure that any labeling changes necessitated by the final rule can be accomplished by the proposed effective date.

VII. Comments

Interested persons may, on or before July 6, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–12018 Filed 5–20–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[GL–238–88]

RIN 1545–AL49

Preparer Penalties—Manual Signature Requirement; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (GL–238–88), which was published in the **Federal Register** for Thursday, April 22, 1993 (58 FR 21548). The proposed regulatory amendment provides that persons who prepare U.S. fiduciary income tax returns for compensation may, under certain conditions, satisfy the manual signature requirements by using a facsimile signature.

FOR FURTHER INFORMATION CONTACT: Susan B. Watson, (202) 622–3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction relates to section 6695 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations contain an error which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (GL–238–88), which was the subject of FR Doc. 93–9349, is corrected as follows:

On page 21550, column 2, § 1.6695–1(c)(1), lines 13 and 14, the language "imposed with respect to each filing period, unless it is shown that the" is corrected to read "imposed with respect to each calendar year, unless it is shown that the".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–12034 Filed 5–20–93; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 301

[GL–719–88]

RIN 1545–AM64

Place for Filing Lien on Personal Property; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (GL–719–88), which was published in the **Federal Register** Thursday, April 22, 1993 (58 FR 21550). The proposed regulations relate to amendments regarding the place for filing a notice of tax lien against personal property to implement sections 1015(s)(1) (A) and (B) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

FOR FURTHER INFORMATION CONTACT: Susan B. Watson, (202) 622–3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction amend the Procedure and Administration Regulations (26 CFR part 301) under section 6323 of the Internal Revenue Code.

Need for Correction

As published, GL–719–88 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (GL–719–88), which was the subject of FR Doc. 93–9350, is corrected as follows:

On page 21551, column 2, in the preamble under the heading "Proposed Effective Date", last line, the language "filed or refiled April 21, 1993." is corrected to read "filed or refiled after April 21, 1993.".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–12035 Filed 5–20–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Permitting

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions to a previously proposed amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In accordance with 30 CFR 732.17(h), OSM is reopening the comment period to allow the public sufficient time to consider and comment on modifications submitted by Maryland on April 26, 1993 (Administrative Record Number MD 562.11), to an amendment initially submitted by the State on February 5, 1993, (Administrative Record Number MD 562.00). The modifications are in response to OSM's concerns about permit notification inconsistencies. The amendment consists of proposed modifications to the permit approval notification procedure.

This document sets forth the times and locations that the Maryland program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on June 21, 1993 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on June 15, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 7, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, at the address listed below. Copies of the Maryland program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed

below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101. Telephone: (717) 782–4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532. Telephone (301) 689–4136.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania, or at some other location in the area of interested parties.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland program are in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Amendment

The Maryland Bureau of Mines (Bureau) submitted by letter dated April 26, 1993 (Administrative Record Number MD 562.11), modifications to a proposed amendment which was originally submitted on February 5, 1993 (Administrative Record Number MD–562.00). The resubmission contains the following changes to the February 5, 1993, submission.

1. Regulation COMAR 08.13.09.04J(1) is revised to require that the Bureau notify each person who filed written comments or objections to the permit application, and each party to a hearing when the Bureau approves the permit application.

2. Regulation COMAR 08.13.09.04J(4) is revised to delete the requirement that the Bureau notify each person who filed written comments or objections to the permit application, and each party to a hearing when the permit has been issued.

3. Regulation COMAR 08.13.09.04L is revised by deleting the word "final" as a modifier of the word "decision."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on June 7, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 13, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–12037 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 93–025]

Safety Zone Regulations: Boys Harbor Fireworks, East Hampton, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in Three Mile Harbor, 1 mile south of Sammy's Beach, East Hampton, NY from 9 p.m. to 10 p.m. on July 17, 1993. This safety zone will be needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Long Island Sound.

DATES: Comments must be received on or before July 6, 1993.

ADDRESSES: Comments may be mailed to the Captain of the Port, 120 Woodward Avenue, New Haven, CT 06512 or may be delivered to the Port Operations office at the above address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (203) 468–4464.

The Captain of the Port maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the Port Operations office at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D.D. Skewes, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

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 name and address, identify this rulemaking (CGD1 93–025) and the specific section

of this proposal to which each comment applies, and give a reason for each comment. 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. 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 Project Manager at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are LCDR D.D. Skewes, Project Manager, Captain of the Port, Long Island Sound, and LCDR J. Stieb, Project Counsel, First Coast Guard District, Legal office.

Background and Purpose

On March 30, 1993 the sponsor, Boys Harbor Inc., New York, NY, requested that a fireworks display be permitted in the vicinity of Sammy's Beach, East Hampton, NY from 9 p.m. to 10 p.m. on July 17, 1993.

Discussion of Proposed Amendments

The Coast Guard proposes to establish a safety zone within a 1200 foot radius of the Barges FBG 1 and FBG 2, which will be located 1 mile south of Sammy's Beach, in Three Mile Harbor, East Hampton, NY. This zone is required to protect the maritime community from the dangers and potential hazards to navigation associated with this fireworks display which is occurring over Long Island Sound, a navigable waterway. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port or his on scene representative.

Regulatory Evaluation

This proposal 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). Due to the limited duration of the fireworks display, the small size of the safety zone and low level or nonexistent commercial vessel traffic expected in the area during the effective time of the zone, the Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. Marine safety advisories will be broadcast during the day of the event.

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).

For the reasons addressed in the regulatory evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, 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 raise 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, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary section 165.T01025 is added to read as follows:

§ 165.T01025 Boys Harbor Fireworks, East Hampton, NY

(a) *Location.* The following area has been declared a safety zone: All waters of the Three Mile Harbor within a 1200 foot radius of the barges FBG 1 and FBG 2, the fireworks launching platforms, which will be located approximately 1 mile South of Sammy's Beach in Three Mile Harbor, East Hampton, NY in approximate position 41°01′07″ N 072°11′43″ W.

(b) *Effective date.* This regulation becomes effective at 9 p.m. July 17, 1993. It terminates at 10 p.m. July 17, 1993 unless terminated sooner by the Captain of the Port. The rain date for this project is July 18, 1993 at the same times.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port or his on scene representative.

Dated: May 11, 1993.

Phillip J. Heyl,

Lieutenant Commander, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 93–12024 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

CGD1 93–026

Safety Zone: Bristol Harbor, Bristol, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in Bristol Harbor, specifically in the vicinity of Bristol Harbor Middle Ground Buoy (light list no. 18175) during Bristol's celebration of the 4th of July. This safety zone is needed to protect vessels in the vicinity of the display as well as personnel onboard these vessels from the potential hazards associated with fireworks displays.

DATES: Comments must be received on or before July 6, 1993.

ADDRESSES: Comments should be mailed to, USCG Marine Safety Field Office, New Bedford c/o USN Reserve Tracen, Ft. Rodman, Rodney French Blvd., New Bedford, MA 02744 or may be delivered at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (508) 999–0072. The Marine Safety Field Office maintains the public docket for this

rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: LT Tina Burke, supervisor, Marine Safety Office New Bedford, at (508) 999–0072.

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 name and address, identify this rulemaking (CGD1 93–026) and the specific section of this proposal to which each comment applies, and give a reason for each comment. 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. 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 Marine Safety Field Office New Bedford at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this regulation are Lieutenant Tina Burke, Project Manager for the Coast Guard Captain of the Port Providence, and Lieutenant Commander J. Stieb, Project Counsel for the First Coast Guard District Legal Office.

Background and Purpose:

On July 5, 1993, the city of Bristol is sponsoring a fireworks display in celebration of the 4th of July. The fireworks will be launched from a barge anchored in the vicinity of the Bristol Harbor Middle Ground Buoy (light list no. 18175) approximately one half mile north of Hog Island, beginning at 9:30 p.m. The fireworks display will last for approximately one half hour. The rain date for the event is scheduled for July 6, 1993.

Discussion of Proposed Amendments

The purpose of this proposal is to establish a safety zone to prohibit vessels from transiting or anchoring in the area of Bristol Harbor over which the fireworks will be launched, in order to protect these vessels and the persons onboard from potential damage, fire, or personal injury due to sparks and falling debris. This safety zone will be established within a 350 yard radius around the fireworks barge. The barge will be anchored 200 yards north of the Bristol Harbor Middle Ground Buoy (light list no. 18175). This safety zone will be in effect between the hours of 9 p.m. and 10 p.m. on July 5, 1993 and will close the primary and secondary channel leading into Bristol Harbor in the vicinity of the Bristol Harbor Middle Ground Buoy (light list no. 18175) to all traffic during this period.

Regulatory Evaluation

This proposal 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 proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact to be minimal on all entities. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water, small fishing vessels, and the Bristol to Prudence Island passenger ferry. Spectator vessels will be able to view the fireworks from the water but will be required to do so at a distance more than 350 yards from the barge, which will not cause them undue hardship. Fishing vessels will be prohibited from transiting through the area while the zone is in effect. This will not have a significant economic impact on them because of the short duration of the zone and advance notice which will be provided. In addition, most of the fisherman who work out of the Bristol area are shell fisherman who work generally only during daylight hours. The Prudence Island passenger ferry has been notified and has no objection to the proposed safety zone. Thus the proposed safety zone will not cause undue hardship to any entity.

Small Entities

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of this proposal to be minimal on all entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*,) that this proposal does 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 had determined that this proposal did not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under section 2.B.2.C of Commandant Instruction M16475.1B, it is an action under the Coast Guard statutory authority to protect public safety and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[Amended]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 USC 191; 49 CFR 1.46; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.2.

2. A temporary section 165.T01026 is added to read as follows:

§ 165.T01026 Safety Zone: Bristol Harbor, RI.

(A) Location: The following area is a safety zone: A 350 yard radius around the fireworks barge anchored in Bristol Harbor, RI, in the vicinity of the Bristol Harbor Middle Ground Buoy (LL18175).

(b) Effective Date: This regulation is effective on July 5, 1993, between the hours of 9 p.m. and 10 p.m., unless terminated sooner by the Captain of the Port. The rain date is July 6, 1993.

(c) Regulations: The general regulations governing safety zones contained in § 165.23 of this part apply.

Dated: May 10, 1993.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 93–12025 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 672 and 675

[Docket No. 921185–3021]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1993. Publication of these bycatch rate standards is necessary for purposes of the vessel incentive program. This action is necessary to implement the bycatch rate standards under the incentive program that must be met by individual trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 a.m., Alaska local time (A.l.t.), July 1, 1993, through 12 midnight, A.l.t., December 31, 1993. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 30, 1993.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, P.O. Box 21668, Juneau, Alaska 99802–1668, Attn: Lori Gravel, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Area (BSAI) and Gulf of Alaska (GOA) are managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI and the FMP for Groundfish of the GOA. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Manguson Act). The FMPs are implemented by regulations for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

Regulations at §§ 672.26 and 675.26 implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must comply with Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators must also comply with red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 675.2). The fisheries included under the incentive program are defined in regulations at §§ 672.26(b) and 675.26(b).

Regulations at §§ 672.26(c) and 675.26(c) require that halibut and red crab bycatch rate standards for each fishery monitored under the incentive program be published in the **Federal Register**. Any vessel operator whose monthly bycatch rate exceeds the bycatch rate standard is in violation of the regulations implementing the incentive program. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, the time periods specified as 1993 fishing months were published in the **Federal Register** on January 6, 1993 (58 FR 504).

Halibut and red king crab bycatch rate standards for the first half of 1993 also were published in the **Federal Register** on January 6, 1993. At its April 21–23, 1993, meeting, the Council recommended bycatch rate standards for second half of 1993. These standards are set forth in Table 1. As required by §§ 672.26(c) and 675.26(c), the Council's recommended bycatch rate standards for July 1 through December 31 are based on the following information and considerations:

(A) Previous years' average observed bycatch rate;

(B) Immediately preceding season's average observed bycatch rate;

(C) The bycatch allowances and associated fishery closures specified under §§ 672.20(f) and 675.21;

(D) Anticipated groundfish harvests;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Director of the Alaska Region, NMFS (Regional Director).

Bycatch Rate Standards for Pacific Halibut

The Council's Pacific halibut bycatch rate standards for the BSAI and GOA trawl fisheries are based largely on anticipated seasonal fishing effort for groundfish species and 1991–1993 halibut bycatch rates observed in specified trawl fisheries. Council deliberations on seasonal bycatch rate standards assumed that directed fishing for Pacific cod would be closed prior to July 1 (58 FR 28522, May 14, 1993). Council deliberations also assumed that the 1993 Bering Sea pollock 'B' season would be delayed from June 1 to August 15 (58 FR 17200, April 1, 1993).

The recommended halibut bycatch rate standards for the BSAI yellowfin sole and "bottom pollock" fisheries approximate the average annual rates observed on trawl vessels participating in these fisheries during the past 2 years (5 kilogram (kg) halibut/metric ton (mt) of groundfish).

The halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at §§ 672.20(f)(1)(i) and 675.21(c)(1) prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

The Council's recommended halibut bycatch rate standards for the GOA and BSAI "other trawl" fisheries (50 kg halibut/mt of groundfish and 30 kg halibut/mt groundfish, respectively) are unchanged from 1992. These standards are based on Council intent to simplify the GOA and BSAI incentive program by specifying a single bycatch rate standard for the aggregate trawl fisheries that are not assigned fishery specific bycatch rate standards under the incentive program, yet maintain the Council's objective of reducing overall halibut bycatch rates in the Alaska groundfish trawl fisheries. Observer data collected from the 1992 GOA "other trawl" fishery show third and fourth quarter halibut bycatch rates of 24 and 27 kg halibut/mt of groundfish, respectively. The first quarter rate from 1993 was higher at 32 kg halibut/mt of groundfish. Observer data collected from the 1992 BSAI "other trawl" fishery show third and fourth quarter halibut bycatch rates of 5 and 1 kg halibut/mt of groundfish, respectively. The average first quarter rate from the

1993 BSAI "other trawl" fishery was 9 kg halibut/mt groundfish. The average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries are lower than the Council's recommended bycatch rate standards for these fisheries. However, the Council determined that its recommended halibut bycatch rate standards for the "other trawl" fisheries would continue to provide an incentive to vessel operators to avoid unusually high bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries.

Bycatch Rate Standards for Red King Crab

The Council's recommended red king crab bycatch rate standard for the yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 1993. This standard is the same as that recommended for 1992 and for the first half of 1993. The justification for this standard is discussed in the January 6, 1993, publication of bycatch rate standards for the first half of 1993.

The total 1993 bycatch of red king crab by vessels participating in the Zone 1 trawl fisheries is estimated at about 178,000 crab through mid May, or about 89 percent of the 200,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. Recognizing that fishery closures have been implemented to restrict fishery specific red king crab bycatch amounts to specified levels, the Council maintained the 2.5 red king crab/mt of groundfish bycatch rate standard to support yellowfin sole fishermen who may choose to operate in Zone 1 in an attempt to lower halibut bycatch rates relative to other fishing grounds outside of Zone 1.

Vessels are not anticipated to participate in the "other trawl" fisheries in Zone 1 for the remainder of 1993 because directed fishing for groundfish species included in the "other trawl" fishery (defined at § 675.26(b)(4)) is prohibited in Zone 1 because of total allowable catch constraints (Pacific cod—58 FR 28522, May 14, 1993) or red king crab bycatch restrictions (rock sole and other flatfish—58 FR 9129, February 19, 1993; rockfish, Greenland turbot, sablefish, arrowtooth flounder—58 FR 8703, February 17, 1993). Nonetheless, NMFS is publishing a red king crab bycatch rate standard for the "other trawl" fishery in Zone 1 consistent with regulations at § 675.26(c).

The Regional Director has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under §§ 672.26(c) and 675.26(c). Therefore, the Regional Director concurs with the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the second half of 1993 as set forth in Table 1. These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Director pending his consideration of the information set forth at §§ 672.26(c)(2)(V) and 675.26(c)(2)(V).

Classification

This action is taken under 50 CFR 672.26 and 675.26 and complies with E.O. 12291.

To avoid a lapse in vessel accountability under the vessel incentive program, this action must be effective by July 1, 1993, when the bycatch rate standards specified for the first half of 1993 expire. Without this accountability, prohibited species bycatch rates will increase in the groundfish trawl fisheries, prohibited species bycatch allowances will be reached sooner, specified groundfish trawl fisheries will be closed prematurely, and owners and operators of groundfish trawl vessel w9ll incur additional foregone revenues. Comments on the bycatch rate standards will be accepted through 4:30 p.m., A.l. t., June 30, 1993, and should be sent to the address noted above.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*)

Dated: May 18, 1993.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY, FOR THE SECOND HALF OF 1993 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

Fishery	1993 bycatch rate standard during the period of July 1 through December 31
Halibut bycatch as kg of halibut/mt of allocated groundfish catch:	
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	50.0
Zone 1 red king crab bycatch reates (number of crab/mt of allocated groundfish):	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

[FR Doc. 93–12126 Filed 5–20–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 97
Friday, May 21, 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

Forest Service

Suitability Study for 19 Streams or Portions of Streams Being Considered for National Wild and Scenic River Status, Inyo National Forest, Madera, Mono, Inyo, and Tulare Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a legislative environmental impact statement.

SUMMARY: The Forest Service, Department of Agriculture, will prepare a legislative environmental impact statement (EIS) and wild and scenic river study report to determine the suitability or non-suitability of approximately 155 miles of 19 eligible streams for inclusion in the National Wild and Scenic Rivers System, Inyo National Forest, Madera, Mono, Inyo, and Tulare Counties, California. In addition, the agency gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by June 30, 1993.

ADDRESSES: Send written comments concerning the suitability of the streams to Dennis Martin, Forest Supervisor, Inyo National Forest, 873 N. Main, Bishop, California 93514.

FOR FURTHER INFORMATION CONTACT: Direct questions about this proposed study and environmental impact statement to Richard Warren, Wild and Scenic River Study Team Leader, (619) 873–2400.

SUPPLEMENTARY INFORMATION: The Inyo National Forest determined the eligibility of the approximately 155 miles of the streams located within the Inyo National Forest boundaries. All or portions of the following streams are eligible.

1. Convict Creek
2. McGee Creek
3. Laurel Creek
4. South Fork Bishop Creek
5. Lone Pine Creek
6. Cottonwood Creek—Sierras
7. Golden Trout Creek
8. Cottonwood Creek—White Mtns.
9. Glass Creek
10. Lower Deadman
11. Upper Owens River
12. Mill Creek (Lundy Canyon)
13. South Fork Mill Creek (Lake Canyon)
14. Walker Creek (Bloody Canyon)
15. Hot Creek
16. Rock Creek
17. Big Pine Creek
18. Lee Vining Creek
19. Upper Parker Creek

The suitability study and EIS will consider approximately 155 miles of the 19 eligible streams. The area of consideration for each stream is a minimum of ¼-mile from each bank for the entire length of the eligible portion of the stream within the Inyo National Forest.

The planned environmental document and suitability study completes considering these streams for inclusion in the Wild and Scenic Rivers System. A suitability study is the last administrative step before a recommendation is made to Congress for designation.

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, 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.

Mailings will provide information about the streams and the study process. Workshops and open houses, if held, will be announced locally. Federal, State, and local agencies, user groups, and other organizations who would be interested in the study will be invited to participate in scoping the issues that should be considered.

The draft Environmental Impact Statement is scheduled to be completed by October 1993. The comment period on this draft environmental impact statement will be 90 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the suitability of the streams for inclusion in the National Wild and Scenic Rivers System participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements 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, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement 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. Suppl. 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 environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers 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 environmental impact statement. The Secretary of Agriculture will consider the comments, responses, and 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 streams for inclusion in the National Wild and Scenic Rivers System. The decision on inclusion of a stream in the National Wild and Scenic Rivers System rests with the United States Congress through legislative designation.

Dennis Martin, Forest Supervisor, Inyo National Forest, 873 N. Main, Bishop, California 93514, 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.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 31, 1993. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

Dated: May 14, 1993.

Mark A. Reimers,

Deputy Chief, Programs and Legislation.

[FR Doc. 93–12051 Filed 5–20–93; 8:45 am]

BILLING CODE 3410–11–M

Environmental Impact Statement for Oil and Gas leasing on Lands Administered by the Targhee National Forest; Bonneville, Butte, Clark, Fremont, Jefferson, Lemhi, Madison, Teton Counties, ID; Lincoln Teton Counties, WY

AGENCY: Forest Service, USDA, is the lead agency. Bureau of Land Management, USDA, is a cooperating agency.

ACTION: Notice of intent to prepare Environmental Impact Statement (EIS).

SUMMARY: The Forest Service (Targhee National Forest) proposes to make most of the National Forest System lands, except for the Island Park Caldera and west slope of the Tetons, available for oil and gas leasing and to authorize the Bureau of Land Management (BLM) to offer certain lands for leasing.

The Forest Service and BLM will conduct an environmental analysis with the intent of identifying and assessing potentially significant environmental impacts; identifying measures to mitigate impacts, i.e. stipulations to uses or restrictions to surface occupancy; and addressing issues associated with oil and gas activities. The EIS is scheduled for completion in early 1995.

DATES: Comments concerning the scope of the analysis should be received in writing by July 2, 1993.

ADDRESSES: Send written comments to James L. Caswell, Forest Supervisor, Targhee National Forest, 420 N. Bridge St., St. Anthony, ID 83445.

FOR FURTHER INFORMATION CONTACT: John Pruess, Interdisciplinary Team Leader, (208) 624–3151.

SUPPLEMENTARY INFORMATION: The preparation of an EIS is needed to comply with the National Environmental Policy Act in making the decision as to which lands are administratively available for leasing and the leasing decision for specific lands. The Forest Plan will be amended to incorporate the availability decision once it is made.

With the passage of the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA), the Forest Service, in authorizing the Bureau of Land Management to offer National Forest System lands for oil and gas leasing, was given the authority to object or not object to leasing and to prescribe lease stipulations to mitigate potential resource impacts and reduce conflicts with other National Forest uses.

The decision to be made involve the leasing of federal minerals within the National Forest administrative boundary. Reasonably foreseeable oil and gas activities within the area will provide the basis for the evaluation of environmental consequences. The decisions made as a result of the analysis will not result directly in ground-disturbing activities. Such activities as exploration, drilling, and field development will require further environmental analysis prior to approval.

The leading decisions made based on the analysis in the EIS are subject to appeal under Forest Service Regulations 36 CFR part 217. Issues to be addressed in the EIS will be determined through public scoping. For this purpose, the Forest is requesting written comments. Additionally, public meetings will be held in Driggs and Idaho Falls, Idaho. The Driggs meeting will be held at the Teton County High School, 481 N. Main, June 16, 1993 at 7 p.m. The Idaho Falls meeting will be held at the Westbank Inn by the Falls, 475 River Parkway, on June 17, 1993 at 7 p.m.

James L. Caswell, Forest Supervisor of the Targhee National Forest is the responsible official. The Bureau of Land Management has been identified as a cooperating agency. The Forest Service anticipates release of the Draft EIS for public comment by September 30, 1994, and completion of the Final EIS by February 15, 1995.

Preliminary issues for this project include: The effects of oil and gas leading and potential subsequent exploration and development on: (1) Wildlife, fish and rare plants, (2) Unstable soils, (3) Water quality, (4) Recreation management, (5) Visual resources, (6) Cultural resources, (7) Access management, (8) Socio-economics, and (9) Roadless area management.

Preliminary alternatives to be considered in the analysis include: (1) No Action/No Lease, (2) Current Forest Plan direction, and (3) Leasing with standard lease terms (no special stipulations).

The comment period on the draft EIS will be 45 days from the date the notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice 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 have been raised at the draft stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, (9th Circuit, 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 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider then 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 statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and

discussed in the statement. (Reviewers 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.)

Dated: May 14, 1993.

Robert G. Williams,

Acting Forest Supervisor, Targhee National Forest.

[FR Doc. 93–12026 Filed 5–20–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–814, A–580–815, A–580–816, A–580–817, A–201–808]]

Certain Steel Products from Korea and Certain Steel Products from Mexico; Notice of Changes in Times for Public Hearings

EFFECTIVE DATE: May 21, 1993.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

Public Comment: The scheduled times of the public hearings in these investigations, originally published in the **Federal Register** on March 9, 1993 (58 FR 13056) have been changed. The public hearing on certain steel products from Mexico is now scheduled for 9 a.m. and the hearing on certain steel products from Korea is scheduled for 12:30 p.m. on May 24, 1993 in room 1851.

This notice is published pursuant to section 774(b) of the Tariff Act of 1930, as amended, and 19 CFR 353.38(f) (1992).

Dated: May 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–12269 Filed 5–20–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals; Receipt of Application To Modify Permit No. 798 (P517)

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

SUMMARY: Notice is hereby given that Dr. Kathryn A. Ono, Assistant Research Marine Biologist, Biology Board of Studies and Institute of Marine Sciences, University of California, Santa Cruz, CA 95064, has requested a modification of Permit No. 798 issued on (57 FR 44736), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 798 authorizes the Holder to: Capture, tag with Reise tags (skin plugs may be saved for use in genetic analysis), weigh, measure and release up to 40 Steller sea lion (*Eumetopias jubatus*) pups; unintentionally kill up to 2 annually during capture and tagging activities; unintentionally disturb up to 70 during the course of the research activities; and remotely mark with hair dye up to 20 post-partum females annually for 3 years. The Permit also authorizes the incidental harassment of up to 2,000 California sea lions (*Zalophus californianus*) annually while conducting studies on *Emetopias* and during periodic censuses and collection of scat samples from both species on Año Nuevo Island; and the remote marking with hair dye of an additional 20 *Zalophus*.

The Permit Holder requests authorization to: capture by net, weigh, measure, mark, tag with green Reise tags, and release up to 40 California sea lion pups (*Zalophus californianus*) annually; retain the skin plugs taken when pups are tagged for genetic analysis; and unintentionally kill up to 2 California sea lions annually during research activities.

ADDRESSES: Comments, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Documents submitted in connection with this modification request are available for review by writing to or by appointment in the Permits Division, Office of Protected Resources, NOAA, NMFS, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

Dated: May 14, 1993.

Herbert W. Kaufman,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–12060 Filed 5–20–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Receipt of Application for Permit (P545)

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

SUMMARY: Notice is hereby given that Dr. James R. Gilbert, Professor, Wildlife Department, University of Maine, Orono, ME 04469–5755, has applied for a Permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) to conduct aerial surveys on harbor seals (*Phoca vitulina*) in Maine from May 1993 through March 1994. The surveys will be of all coastal ledges from Isle of Shoals north to the Canadian border. Surveys will be flown at altitudes of 100m to 150m.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, MD 20910, within 30 days of the publication of this notice.

Documents submitted in connection with the above application are available for review by writing to or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Dated: May 14, 1993.

Herbert W. Kaufman,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–12061 Filed 5–20–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 21, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agency employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action does not appear to have a severe adverse impact on current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. It is proposed to add the following commodity and service to the Procurement List for production by the nonprofit agency listed:

Commodity

Case, Medical Instrument and Supply Set, 6545–00–912–9890, Nonprofit Agency: Georgia Industries for the Blind, Atlanta, Georgia.

Service

Janitorial/Custodial, Social Security Administration Building, 612 N. Church Street, Rockford, Illinois. Nonprofit Agency: Omni Business Services, Inc., Rockford, Illinois.

G. John Heyer,

General Counsel.

[FR Doc. 93–12139 Filed 5–20–93; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity and services previously furnished by such agencies.

EFFECTIVE DATE: June 21, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: On October 2, November 30, 1992, January 29, March 12 and April 2, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (57 FR 46508, 56570, 58 FR 6477, 13586 and 17385) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Binder, Looseleaf
7510–01–203–4708
Towel, Machinery Wiping
7920–01–370–1365
Trousers, Cold Weather
8415–01–099–7853
8415–01–099–7854
8415–01–099–7855
8415–01–099–7856
8415–01–099–7857
8415–01–099–7858
8415–01–099–7859
8415–01–099–7860
8415–01–099–7861
8415–01–099–7862
8415–01–100–0977
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8415–00–782–2959
8415–00–782–2960
8415–00–782–2961

Service

Janitorial/Custodial, Federal Justice Building, 99 N.E. 4th Street, Miami, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following commodity and services are hereby deleted from the Procurement List:

Commodity

Gown, Hospital Personnel
6532–01–045–5381

Services

Commissary Shelf Stocking, Custodial and Warehousing, George Air Force Base, California
Janitorial/Custodial, Social Security Administration Building, 3116 St. Claude Avenue, New Orleans, Louisiana
Janitorial/Custodial, Armed Forces Examining Station and Bureau of Mines Building, Amarillo, Texas

G. John Heyer,

General Counsel.

[FR Doc. 93–12140 Filed 5–20–93; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 21, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agency employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity has been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Disk, Flexible
7045–01–251–7527
Nonprofit Agency: North Central Sight Services, Inc., Williamsport, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–12192 Filed 5–20–93; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 21, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and service to the Procurement List for production by the nonprofit agency listed:

Commodity

Parts Kit, Transmission Oil Filter
2520–01–211–6702
Nonprofit Agency: Goodwill Industries—Knoxville, Inc., Knoxville, Tennessee

Service

Janitorial/Custodial for the following locations: Naval Station, San Diego, California
Naval Station/Naval Training Center, San Diego, California
Naval Outlying Landing Field, Imperial Beach, California
Naval Air Station, San Diego, California
Naval Air Station, Miramar, San Diego, California, Nonprofit Agency Mental

Health Systems, Inc., San Diego, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–12191 Filed 5–20–93; 8:45 am]

BILLING CODE 6353–01–P

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 92–1–90 CD]

Prehearing Conference in the 1990 Cable Royalty Distribution Proceeding

AGENCY: Coopyright Royalty Tribunal.

ACTION: Notice scheduling a prehearing conference.

SUMMARY: The Copyright Royalty Tribunal announces that it will hold a prehearing conference on May 27, 1993.

EFFECTIVE DATE: A prehearing conference is scheduled for May 27, 1993, at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009. (202) 606–4400.

SUPPLEMENTARY INFORMATION: By letter of May 14, 1993, counsel for Major League Baseball stated that counsel for Motion Picture Association of America (MPAA) had advised him that "all of the 1990 diaries, which are the subject of Joint Sports Claimants' pending discovery motion, have been destroyed by the A.C. Nielsen Company." The Tribunal notes that nothing has been filed by MPAA regarding the destruction of the diaries or the circumstances surrounding this occurrence.

The destruction of the diaries, if that has actually occurred, potentially changes the focus of stage one of the proceeding. Therefore, the Tribunal believes that a conference to permit all of the parties, especially MPAA, to brief the Tribunal on the status of the diaries, is warranted.

Specifically, MPAA should be prepared to discuss fully the status of the diaries and the underlying data, including, but not limited to, the following:

(a) Whether in fact the diaries have been destroyed;

(b) The circumstances surrounding their destruction;

(c) Whether any data from the diaries has been preserved or incorporated into Nielsen's data base;

(d) What effect, if any, the destruction of the diaries will have on MPAA's direct case (e.g. whether MPAA is still planning to base its direct case on the Nielsen data);

(e) What effect, if any, the destruction of the diaries has on the Nielsen data access issue.

Accordingly, the Tribunal will hold a conference on May 27, 1993, at 10 a.m.

Dated: May 18, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–12133 Filed 5–20–93; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: Wednesday and Thursday, 23–24 June 1993 (9 a.m. to 5 p.m.).

ADDRESSES: Wednesday, 23 June 1993, DIAC Bolling AFB, Washington, DC.

Thursday, 24 June 1993, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328, (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(I), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: May 17, 1993.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 93–12019 Filed 5–20–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Defense Conversion will meet on June 3 and 4, 1993. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The first session will commence at 8:30 a.m. and terminate at 5 p.m. on June 3; the second session will commence at 8:30 a.m. and terminate at 1 p.m. on June 4, 1993. All sessions of the meeting will be open to the public.

The purpose of the meeting is to provide the Department of the Navy with an assessment of the current capability of the defense industry to economically move into the commercial sector, and assess the actions necessary on the part of the Department of the Navy and industry to carry out the provisions of the Defense Conversion, Reinvestment, and Transition Act of 1992.

The meeting will include briefings and discussions relating to Congressional national policy perspectives on defense conversion, technology deployment, Department of Commerce initiatives, and Department of Defense perspectives and execution.

For further information concerning this meeting contact: Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (703) 696–4870.

Dated: May 18, 1993.

Michael P. Rummel,

Lieutenant Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–12149 Filed 5–20–93; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.159]

Special Studies Program; Inviting Applications for New Awards for State Agency—Federal Evaluation Studies Projects Under the Special Studies Program for Fiscal Year (FY) 1993

Purpose: On September 15, 1992, the Office of Special Education and Rehabilitative Services (OSERS) published a notice in the **Federal Register** inviting applications for new awards under two competitions for fiscal year 1993 (57 FR 42562). The closing date was January 15, 1993 for the transmittal of applications to either competition. However, due to the lack of response to the September 15 notice, OSERS is announcing a second competition for both priorities. This notice announces a second competition for both priorities and a new deadline

date for applications. Any applicant wishing to apply or reapply should request a new application package.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 327.

Priorities: The priorities for this program, published in the **Federal Register** on September 15, 1992, at 57 FR 42562, apply to these competitions.

SPECIAL STUDIES PROGRAM

[Application notices for fiscal year 1993]

Title and CFDA No.	Applications available	Deadline for transmittal of applications	Available funds	Estimated size of awards	Estimated number of awards	Project period in months
State agency/Federal Evaluation Studies Projects (84.159A3).	5/24/93	7/09/93	$320,000	$80,000 per year[1]	4	Up to 24.
State agency/Federal Evaluation Studies Projects (84.159F3).	5/24/93	7/09/93	150,000	50,000[2]	3	Up to 12.

[1] Estimate for first 12-month period. Award amount for period beyond the first year are likely to be at the same annual rate unless there are increases in costs attributable to significant changes in activity level.

[2] Estimated average award for the *entire* project period (up to 12 months).

Note: The Department is not bound by any estimates in this notice.

For Applications or Information Contact: Susan Sanchez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3519, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8998. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1418.

Dated: May 17, 1993.

William L. Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–12054 Filed 5–20–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Noncompetitive Financial Assistance Award to the State of Nebraska, Governors' Ethanol Coalition

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy, Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to make a noncompetitive financial assistance award to the Governors' Ethanol Coalition, State of Nebraska Energy Office (Administrator), to support the Research, Development and Demonstration of Ethanol-powered transportation systems. The coalition activities are jointly funded by DOE and the nineteen cooperating states.

SUPPLEMENTARY INFORMATION: The Nebraska Energy Office (NEO) administers the program plan and grant for the Governors' Ethanol Coalition (GEC) consisting of nineteen states (IL, AR, NE, CO, HI, IN, IA, KS, KY, MI, MN, MO, MT, NM, ND, OH, SD, TX, WN). The GEC has requested funding support for several informational, educational, research and demonstration activities including (1) Demonstration of Ethanol as an Aviation Fuel; (2) Informational Surveys; (3) Educational Programs; and (4) Research Programs.

This award recognizes the need to assist states in adopting alternative fuels in transportation markets and accelerating the implementation of EPACT '92 activities. The results from the activities accomplished will be shared with the participating GEC states and DOE for replication in other states and projects. Due to their prior experience the Governors' Ethanol Coalition is uniquely qualified to continue the efforts associated with their assigned tasks. The grant application is being accepted because DOE knows of no other opportunity to conduct such a program by any other organization or entity.

The project period for the grant award is 24 months and is expected to begin in June 1993. DOE plans to provide funding in the amount of $100,000 for this effort.

FOR FURTHER INFORMATION CONTACT:

John Stacy, Director, Technology Marketing Division, U.S. Department of Energy, Kansas City Support Office, 911 Walnut St., Kansas City, MO 64106. (816) 426–5182.

Issued in Chicago, Illinois on May 6, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–12135 Filed 5–20–93; 8:45 am]

BILLING CODE 6450–01–M

Noncompetitive Award of Financial Assistance; Minnesota Department of Public Service; Minnesota Wind Energy Assessment Grant

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Operations Office, Chicago, through the DOE Chicago Support Office (CSO), announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to award a grant to the Minnesota Department of Public Service to support a renewable energy resource assessment program by expanding data collection and analysis of potential wind energy in the southwestern part of Minnesota.

SUPPLEMENTARY INFORMATION: The Minnesota Department of Public Service (DPS) is the designated State Energy Office (SEO), conducting activities under the Energy Extension Service and State Energy Conservation Programs. DPS has been extensively involved in efforts to facilitate the use of renewable energy electricity generation, which is an initiative encouraged by DOE's Office of Energy Efficiency and Renewable Energy. This award will further the aim of renewable energy electricity generation by expanding the number of sites in southwestern Minnesota where wind energy data is being gathered. This

will permit a more accurate way to determine the energy potential that large numbers of wind electric conversion systems (WECS) may have on the present electricity supply in Minnesota. This work is being conducted in cooperation with Northern States Power Company, which presently has WECS installed and operating in the region. Therefore, the grant application is being accepted because DOE knows of no other organization that is conducting or planning to conduct this type of effort. The project period for the grant award is 12 months, expected to begin May 1993. DOE plans to provide funding in the amount of $15,000 for this project period.

FOR FURTHER INFORMATION CONTACT: Mark Burger, U.S. Department of Energy, Chicago Support Office, 9800 South Cass Avenue, Argonne, IL 60439 (708) 252–2193.

Issued in Chicago, Illinois on May 4, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–12136 Filed 5–20–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award Cooperative Agreement Amendment to Virginia Polytechnic Institute and State University

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5) it is making a discretionary financial assistance renewal award based on the criterion set forth at § 600.7(b)(2)(i)(A) under Cooperative Agreement Number DE–FC01–89CE15996 to Virginia Poytechnic Institute and State University. This cooperative agreement was awarded on November 17, 1989 to develop and implement Inventions and Innovation Division (IID) educational programs which include Commercialization Planning Workshops (CPWs), National Innovation Workshops (NIWs), and the Innovative Concepts (InnCon) Program Fair. This proposed renewal award would continue those activities for an additional six months. Funding in the amount of $154,563 is to be provided for this cooperative agreement amendment by the Department of Energy (DOE).

The application for renewal was deemed meritorious based on its success to date in increasing the probability for commercial success of energy related technologies which will impact the nation's consumption of energy.

The Department of Energy has determined that the proposed renewal award meets the criterion set forth at 10 CFR 600.7(b)(2)(i)(A), in that the activity to be funded is a renewal of an activity presently being funded by DOE and for which the delays occasioned by the time required for competition would have a significant adverse effect on the continuity of the inventor education program.

The proposed award would extend the term of the existing cooperative agreement to four years.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR–322.2, 1000 Independence Ave., SW., Washington, DC 20584.

Issued in Washington, DC on May 14, 1993.

Scott Sheffield,

Acting Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–12134 Filed 5–20–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP93–340–000]

CNG Transmission Corp.; Application

May 17, 1993.

Take notice that on May 12, 1993, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP93–340–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain compressors, pipelines, and associated measurement and regulating facilities, used in the transmission of purchased gas to gathering and transmission facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

CNGT proposes to abandon by sale to CNG Producing Company (CNG Producing) its interest in nine compressors at six sites (a total of 11,125 horsepower), seven short pipelines (24-inch, 20-inch, 16-inch, and 12-inch pipe, totalling 24.77 miles), and related metering facilities, all of which are located offshore. More specifically, it is stated that the facilities are located in Ship Shoal Blocks 246 "A/E," 247 "F," 248 "D," Vermilion Block 313 "B," and High Island Blocks A–350, and A–571 "B." CNGT states that it no longer needs the facilities because it would no longer be a merchant under its Order No. 636 reorganization. It is stated that the facilities would be sold at net book value, $1,851,917.

CNGT advises that CNG Producing intends to use the facilities for gathering and marketing natural gas, including its own production. Relative to this application, CNGT states that, since it still purchases natural gas under a contract that is due to terminate on November 30, 1993, CNG Producing has agreed to permit free use of the compressor, attributable to the interest to be acquired by it, located on the Vermilion 313 "B" platform to move that gas, in the event abandonment authorization is granted prior to that date.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 7, 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 be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party of 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 CNGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–12041 Filed 5–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92-60-000]

El Paso Natural Gas Co.; Technical Conference

May 17, 1993.

In the Commission's order issued on April 30, 1993, in the above-captioned proceeding, the Commission held that a technical conference should be convened to discuss the operating issues set for further discussion in that order. In addition, the parties should be prepared to discuss El Paso's scheduling procedures and the operating issues relating to the provision of capacity release in upstream and downstream transportation zones. The conference to address the issues has been scheduled for Thursday, June 3, 1993, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93-12043 Filed 5-20-93; 8:45 am]

BILLING CODE 6717-01-M

[RS93-1-000]

Granite State Gas Transmission, Inc., Telephone Technical Conference

May 17, 1993.

Take notice that a telephone conference will be held beginning at 2 p.m., eastern standard time on Monday, May 24, 1993. The issues to be discussed at the conference involve the restructuring filing of Granite State Gas Transmission, Inc. Parties wishing to participate in the call should contact Al Lovinger at (202) 208-2274 or Nils Nichols at (202) 208-2272.

Lois D. Cashell,

Secretary.

[FR Doc. 93-12138 Filed 5-20-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-52-000]

InterAmerican Energy Leasing Co.; Application for Commission Determination of Exempt Wholesale Generator Status

May 17, 1993.

On May 10, 1993, InterAmerican Energy Leasing Company ("InterAmerican") located at 2001 L Street, NW., suite 500, Washington, DC 20036, filed with the Federal Energy Regulatory Commission an Application For Determination Of Status As An Exempt Wholesale Generator pursuant to part 365 of the Commission's regulations.

InterAmerican will develop and own an electric generating facility, and appurtenant interconnecting transmission facilities, to be located in Mamonal, near Cartagena, Colombia. The electric generating facility will consist of two natural gas-fired combustion turbines with accompanying steam injection systems, all with an estimated generating capacity of 100 MW.

Any person desiring to be heard concerning the Application For Determination Of Status As An Exempt Wholesale Generator should file a Motion to Intervene or Comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the Application. All such Motions and Comments should be filed on or before June 1, 1993 and must be served on the applicant. Any person wishing to become a party must file a Motion To Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-12042 Filed 5-20-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4657-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

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. It also announces our request for emergency processing under 5 CFR 1320.18. EPA believes that emergency review and approval is appropriate because the information is required to establish production and consumption levels for newly listed ozone-depleting chemicals in time for the 1994 control period. This data must be collected and analyzed in time to publish a final regulation and to provide producers and users of these substances sufficient time to accommodate to the phaseout. The ICR must be cleared by OMB by June 1, 1993 in order for EPA to prepare the baseline data for these chemicals in time for publication in the final regulation.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

DATES: EPA requests that OMB act on the ICR by June 1, 1993.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: EPA ICR 1432.13; OMB 2060-0170.

Abstract: This information collection seeks to gather information necessary to establish the baselines for the production and consumption of certain ozone-depleting chemicals. These chemicals, Hydrochlorofluorocarbons and Hydrobromofluorocarbons, are proposed to be listed as controlled substances under a separate proposed rule (58 F.R. 15013), and information on the production, imports, and exports of these chemicals and of CFCs in 1989 are required to establish the baselines. The baselines are used to establish national and company specific production and consumption totals.

Case for Emergency Clearance: EPA considers the acquisition of information on the production and consumption of newly listed ozone-depleting chemicals essential to its mission to protect the stratospheric ozone layer. The substances to be controlled are hydrobromofluorocarbons and hydrochlorofluorocarbons. Regulations requiring these control are expected to become effective on January 1, 1994.

In order to publish these final regulations, EPA must collect and analyze production, import, and export data on these substances. On the basis of this data and the analyses, EPA will issue production and consumption limits to the companies producing and importing these substances, and will also establish United States production and consumption totals. The totals will form the United States production caps under the Montreal protocol. EPA must act quickly to collect this information in order to meet the publication schedule for the final regulations implementing the listing of these chemicals as controlled substances. Hence, our request for emergency processing and approval for June 1, 1993.

Burden Statement: Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, reaching existing data sources, gathering and maintaining the

data needed, and completing the collection of information.

Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to: Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., Washington, DC 20460; and to Paperwork Reduction Project (OMB #1432–0170), Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Respondents: Respondents to this information collection are producers, importers and exporters of the newly listed chemicals.

Estimated Number of Respondents: 45.

Estimated Total Burden on Respondents: 360 hours.

Dated: May 13, 1993.

David Lee,

Chief, Program Implementation Branch, Stratospheric Protection Division.

Information Collection Request

SF–8 Supporting Statement

Environmental Protection Agency

Stratospheric Ozone Protection

A. Justification

1. Identification of the Information Collection

(a) Title

Baseline Request on the Production, Transformation, Import, and Export of Hydrochlorofluorocarbons (HCFC), Chlorofluorocarbons (CFC), and Hydrobromofluorocarbons (HBFC).

Number: 1432

(b) Short Characterization

EPA has promulgated a notice of proposed rulemaking which would add methyl bromide and HBFCs to the list of ozone-depleting substances under the Clean Air Act Amendments of 1990. In addition, EPA is proposed a phaseout schedule for HCFCs, and well as for methyl bromide and HBFCs. The information requested through this ICR for HCFCs, HBFCs and CFCs is needed to set the baseline for EPA regulations of the production and consumption of these newly controlled substances. An ICR for methyl bromide has already been reviewed and approved by OMB. The information requested here is the same as that requested for some of the other controlled substances in a **Federal Register** notice published on November 26, 1990.

2. Need for and Use of the Collection

(a) Authority for the Collection

This information collection is required by Section 114 of the Clean Air Act Amendments of 1990.

(b) Use/Users of the Data

Section 604 of the Clean Air Act places limits on the production and consumption of class I substances, and, as appropriate, class II substances. Section 606 of the Act requires the Agency to promulgate regulations which establish a schedule accelerating the phaseout of the production and consumption of class I and class II substances if the Administrator determines that: (1) A more stringent schedule may be necessary, (2) a more stringent schedule is possible, or, (3) the Montreal Protocol is modified to accelerate the phaseout schedule. The Agency is currently reviewing comments on proposed regulations which add methyl bromide and HBFCs to the list of class I substances, and which propose to implement the phaseout of HCFCs as well as these substances.

In order to establish the baseline production and consumption allowances for these chemicals to limit each company's production and consumption of the substances, EPA is requesting information from the companies on their activities. These requirements are very similar to those promulgated in the **Federal Register** on November 26, 1990, (55 FR 49116) requesting the same information for another set of newly listed class I substances.

The primary users of the information gathered through this ICR are the Stratospheric Protection Division within the Office of Air and Radiation.

3. The Respondents and the Information Requested

(a) Respondents/SIC Codes

Respondents include producers, feedstock users, importers, and exporters in the SIC category 28 "Chemicals and Allied Products. There are expected to be fewer than 45 respondents, comprising 7 producers, 17 or fewer importers, 17 or fewer exporters, and fewer than 4 transformers.

(b) Information Requested

(i) Data Items

EPA is requiring that each affected entity provide data on the quantity of each of the newly listed chemicals that is produced, imported, exported, or transformed. Companies must also submit documentation of these activities.

EPA is also requiring that each entity that conducted activities in class I, group I chemicals in 1989 provide this information in order to establish the baseline for HCFC production and consumption.

The information to be provided is to be for calendar year 1989 for HCFCs, 1989 and 1991 for HBFCs, and calendar year 1989 for CFCs.

(ii) Respondent Activities

—Assemble data
—Submit data to EPA

4. The Information Collected—Agency Activities, Collection Methodology, and Information Management

(a) Agency Activities

—Collect industry reports
—Check reported quantities against submitted documentation
—Calculate baseline production and consumption allowances for each chemical and company

(b) Collection Methodology and Management

This is a one-time reporting requirement of information that companies normally keep on their business activities. This information collection is required by the Clean Air Act. Companies may report in any format they wish.

Data quality will be checked by means of checking the background documentation against the reported quantities.

Data will be stored in compliance with CBI procedures and thus not be available to the public unless the information collected is published as a part of a rulemaking, or unless a determination is made by the Office of General Counsel that it is not CBI and may be released.

(c) Small Entity Flexibility

This one-time information collection is required by statute. Thus, it is not possible to reduce the burden on small entities. However, most respondents are expected to be large companies and this has not been a problem in past information collections of this type.

(d) Collection Schedule

This is a one-time collection. Information must be submitted within 60 days of the publication of the notice.

5. Non-duplication, Consultation, and Other Collection Criteria

(a) Non-Duplication

The specific information requested by this notice is not currently collected by

EPA nor by any other government agency. The reporting efforts by respondents focus primarily on the production and consumption activities of importers and producers. Since this information will be used by EPA for establishing production and consumption limits through a rulemaking, direct reporting by producers and importers to EPA is necessary.

(b) Consultations

EPA has extensive and ongoing contact with members of the industries producing these chemicals.

(c) Effects of Less Frequent Collection

This collection is a one-time only request and thus a less frequent collection is not possible.

(d) General Guidelines

This rule does not exceed any of the guidelines.

(e) Confidentiality and Sensitive Questions

(i) Confidentiality: The Agency will inform respondents that they may assert claims of business confidentiality for any of the information that they submit. However, the Clean Air Act compels the public disclosure of certain data when it establishes a regulatory limit, such as a baseline for a newly listed substance under Title VI of the Act. Since such baselines are a reflection of companies' production and consumption and since baselines for individual companies will be published in the **Federal Register**, it is likely that information that may otherwise be considered confidential will be released. Congress specified that allowances be based on companies' individual production and consumption levels. Therefore, upon promulgation of a rule listing these substances, the Agency believes that this information clearly is not entitled to treatment as confidential business information.

(ii) Sensitive Questions: This section is not applicable because this ICR does not involve matters of a sensitive nature.

6. Estimating the Burden and Cost of Collection

(a) Estimating Respondent Burden and Estimating Respondent Costs

RESPONDENT BURDEN/COST ESTIMATE

Respondent activity	Number of respondents	Hours per activity	Total hours	Hourly cost	Total cost
Assemble Data	45	6	270	$50	$13,500
Submit Data	45	2	90	50	4,500
Total	45	8	360	50	18,000

(b) Estimating Agency Burden and Cost

Agency activities	EPA hours	Hourly cost	Total cost
Collect Reports	24	$31	$744
Check Reports	120	61	7,320
Calculate Baseline	24	61	1,464
Total	168	57	9,528

There are two EPA hourly costs included in this estimate. Data collection is valued at $31, which is the pay of a grade 10, step 7 government employee plus an indirect rate of 110%. The analysis portion of the work is valued at $61 which represents a grade 13, step 10 employee plus 110% indirect costs.

(c) Burden Statement

Industry reporting burden for this collection is estimated to involve 6 hours per response to assemble data, and 2 hours per response to make the submission to EPA. This will result in a total burden of 8 hours per response from industry.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestion for reducing the burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Paperwork Reduction Project (OMB #2060–0170), Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 93–11997 Filed 5–20–93; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4620–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 3, 1993 through May 7, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1993 (58 FR 18392).

Draft EISs

ERP No. D–FHW–E40748–TN Rating EC2, TN–69 Highway Improvements, TN–15/US 64 to TN–202 south of Decaturville, Funding, Possible COE Section 404, TVA Section 26a and US Coast Guard Bridge Permits, Decatur, Hardin and Wayne Counties, TN.

Summary: EPA expressed concerns regarding the proposed channelization of area streams and loss of forested upland habitat due to construction of the "developmental" highway. EPA urged alignment shifts to avoid streams and the use of as much of existing roads as possible.

ERP No. D–GSA–E81035–GA Rating LO, Atlanta Federal Center Consolidation for the housing of several Federal Agencies, Site Specific, Rich's Department Store, Martin Luther King, Jr. Drive, Atlanta, GA.

Summary: EPA had no objections to this project.

ERP No. D–IBR–K39047–CA Rating EO2, Reclamation Reform Act of 1982 Implementation in the Central Valley Project, CA.

Summary: EPA raised many objections to this DEIS including the stress it may place on ground and surface water resources and the short time frame between release of the draft and final EISs. Chief defects of the DEIS

were: An incomplete characterization of alternatives, a review of the relative isolation to other major actions underway in the Central Valley Project, a lack of a cumulative impacts analysis, and the large degree to which impact analyses are largely inconclusive and speculative. There was no provision in the DEIS for monitoring environmental impacts or for mitigation for adverse impacts.

ERP No. D–NOA–E91007–00 Rating EC1, Shrimp Fishery Management Plan, Implementation, Exclusive Economic Zone (EEZ), South Atlantic Region, NC, SC, FL and GA.

Summary: EPA requested more research on the impacts of exotic species introduction. EPA supported closing white shrimp fishing, after a severe freeze, if the closure included both commercial and recreational shrimping.

ERP No. D–UAF–L11017–AK Rating LO, Ionospheric Research Facility for the High Frequency Active Auroral Research Program, Construction and Operation, Site Selection, COE Section 404 Permit and NPDES Permit, AK.

Summary: EPA had no objections to the project as proposed.

ERP No. D–USN–D11022–00 Rating EC2, Dahlgren Division, Naval Surface Warfare Center Base Realignment, New Construction and Renovation, Westmoreland, Stafford, Spotsylvania and King George Counties, VA and Charles County, MD.

Summary: EPA expressed environmental concern regarding the cumulative impacts associated with electromagnetic field exposures (EMFs). In particular EPA had concerns regarding the location of all facilities generating EMFs, human/biological health risks, and specific safety measures to be taken.

ERP No. DA–COE–E30032–FL Rating EC2, Palm Beach County Beach Erosion Project, Updated Information, Shore Protection Project, Jupiter/ Carlin Segment from Martin Co., Line to Lake Worth Inlet and from South Lake Worth Inlet to Broward General Design Plan, Implementation, Martin and Broward Counties, FL.

Summary: EPA had environmental concerns regarding the project's contribution to the cumulative impacts of other similar beach nourishment projects planned for the county's shoreline. These concerns will be addressed with information from mitigation and monitoring plans.

Final EISs

ERP No. F–AFS–E65039–MS, W.W. Ashe Nursery Integrated Pests Management Plan, Implementation, DeSoto National Forest, Forest County, MS.

Summary: EPA had no objections to the preferred alternative with the inclusion of rigorous monitoring and mitigation measures.

Dated: May 17, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–12097 Filed 5–20–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4620–8]

Tampa Electric Co., Polk Power Station; Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: EPA Notice of Intent (NOI) to prepare an EIS to assess and document the projected environmental impacts of the proposed 1,150 MW Tampa Electric Polk Power Station and associated transmission lines proposed for southwestern Polk County, near Tampa, FL. The proposed power station includes a 260 MW Integrated Coal Gasification Combined Cycle Unit, being considered for cost-shared financial assistance by DOE under the Clean Coal Technology (CCT) Demonstration Program.

In the matter of Intent to Prepare an Environmental Impact Statement (EIS) Assessing the Environmental Impacts of the Proposed 1,150 MW Tampa Electric Company (Tampa Electric) Polk Power Station, and to Announce that the U.S. Environmental Protection Agency Assumes from the U.S. Department of Energy (DOE) the Federal Lead Agency Role for the EIS, and that DOE and the U.S. Army Corps of Engineers Become Cooperating Agencies.

This EPA NOI supplements the DOE NOI published at 57 FR 33331 (July 28, 1992) in which it was proposed that DOE would assume the role of the federal-Lead Agency and EPA be a Cooperating Agency to DOE. Because the EIS will address the environmental effects of the full 1,150 MW build-out, it was determined that EPA is the appropriate Lead Agency. Therefore, EPA will assume the Lead Agency role in the preparation of an EIS that will evaluate the Tampa Electric-proposed full project build-out to an 1,150 MW power plant, including the DOE 260 MW CCT demonstration project as Unit 1. Both DOE and the U.S. Army Corps of Engineers (COE) are Cooperating Agencies to EPA for this EIS.

SUMMARY: This EPA NOI incorporates by reference background project information presented in the DOE July 28, 1992 NOI. It supplements and does not replace the DOE NOI; certain areas such as project scope, agency roles, and alternatives analysis are updated as appropriate.

EPA development of the EIS is made pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and EPA's responsibilities under the Clean Water Act (CWA) relative to the proposed project requiring a new-source National Pollutant Discharge Elimination System (NPDES) permit. (Tampa Electric has applied to EPA for a new-source NPDES permit for the proposed power plant because the plant would discharge pollutants to waters of the United States. Tampa Electric has also applied to EPA for a Clean Air Act Prevention of Significant Deterioration (PSD) permit.)

DOE will be a Cooperating Agency for this EPA EIS and proposes, as part of DOE's CCT Demonstration Program, to provide substantial cost-shared financial assistance for a 260 MW portion (Unit 1) of the 1,150 MW full project build-out, i.e., a new nominal 260 MW electric IGCC demonstration project. Unless the demonstration is unsuccessful, Tampa Electric intends to continue operating the plant commercially for power generation after the anticipated federally-assisted demonstration period of operation (24-months). In addition to the initial 260 MW CCT demonstration project, Tampa Electric also intends to phase-in additional electric generation capacity until a full project build-out of 1,150 MW is achieved. Consequently, the EPA EIS will address a full power plant build-out to 1,150 MW.

ROLE OF PUBLIC, DATES AND ADDRESSES: Scoping comments are solicited on this proposed action. However, because DOE has held an announced public scoping meeting on August 12, 1992, at 7 p.m. at the Fort Meade Community Center in Fort Meade, FL, no additional meeting is planned at this time unless there is significant public demand for an additional scoping meeting or important issues are raised which were not addressed in the previous scoping meeting. Written scoping comments should be provided within 30 days and addressed to: Mr. Christian M. Hoberg; Project Monitor; U.S. Environmental Protection Agency; Region IV; Environmental Policy Section (FAB–4); 345 Courtland Street, NE., Atlanta, GA 30365. A copy of any official scoping comments received by EPA would be available for review in the EPA, Region IV office at the above address and in the Tampa Electric office in Mulberry, FL referenced below.

Verbal scoping comments made at the DOE scoping meeting or written follow-up comments included: Transmission line electromagnetic field (EMF) effects, coal sources and sulfur quantity, power plant air emission effects on vegetation, rail and highway transportation, land use, aviation impacts, mercury emissions, and various EPA environmental considerations/concerns. As indicated in the above-referenced DOE NOI, a complete transcript of the DOE scoping meeting will be available for review in the DOE Headquarters offices in Washington, DC and in the DOE Morgantown Energy Technology Center (METC) in Morgantown, WV; in the Tampa Hillsborough Public Library in Tampa, FL; and in the Tampa Electric office in Mulberry, FL. EPA attended the DOE scoping meeting and also inspected the Tampa Electric-proposed site with DOE and Tampa Electric at that time.

ALTERNATIVES AND ENVIRONMENTAL IMPACTS: Reasonable alternatives to the Tampa Electric-proposed action that are expected to be considered by EPA in the EIS are the no-action alternative, EPA action alternatives (approve, conditionally approve, or deny new-source NPDES permit), DOE action alternatives (approve or deny CCT award), site selection alternatives summary, site layout design alternatives summary, project alternative (1,150 MW facility without DOE CCT financial assistance), and selected technological alternatives. The EIS will address, as appropriate, environmental impacts of the project on water quality, air quality, wetlands, global climate change, protected federal and State of Florida species, cultural resources, socio-economics, land-use changes, solid and hazardous wastes, EMF effects, cumulative effects, pollution prevention, and biodiversity.

FOR FURTHER INFORMATION CONTACT: For general information on the proposed project and EIS process, please contact Mr. Heinz J. Mueller (Chief, Environmental Policy Section) or Mr. Christian M. Hoberg (Project Monitor) at the above EPA/Region IV address or at 404/347–3776 (FAX: 404/347–5206).

RESPONSIBLE OFFICIAL: Patrick M. Tobin, Acting Regional Administrator, U.S. Environmental Protection Agency, Region IV.

Dated: May 17. 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–12098 Filed 5–20–93; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4620–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly Receipts of Environmental Impact Statements filed May 10, 1993 through May 14, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930161, DRAFT EIS, AFS, WY, CO, Continental Divide National Scenic Trail Comprehensive Plan, Designation, Construction and Reconstruction, Implementation, Medicine Bow National Forest, Hayden Ranger District, WY to Rio Grande National Forest, Conejos Peak Ranger District, CO, Due: July 6, 1993, Contact: Gary Snell (719) 852–5941.

EIS No. 930162, DRAFT EIS, AFS, CA, Tallac Historic Site Master Plan, Implementation, Lake Tahoe Management Unit, Special Use Permit, El Dorado County, CA, Due: July 6, 1993, Contact: Jackie Faike (916) 573–2600.

EIS No. 930163, DRAFT EIS, FHW, WA, Twin Bridges Replacement Project, Grosscup Road over the Yakima River, Funding and COE Section 10/404 Permit, Benton County, WA, Due: July 6, 1993, Contact: Barry F. Moorehead (206) 753–2120.

EIS No. 930164, DRAFT EIS, BLM, NV, Bedell Flat Water and Natural Gas Pipelines Crossing Project, Right-of-Way Grants and COE Section 404 Permit, Washoe County, NV, Due: July 13, 1993, Contact: James M. Phillips (702) 885–6000.

EIS No. 930165, DRAFT EIS, BLM, NV, Newmont Gold Quarry Open-Pit Mine and Ore Processing Facility Expansion and Operation, Plan of Operation Approval, NPDES and COE Section 404 Permits, Eureka and Elko Counties, NV, Due: July 19, 1993, Contact: David Vandenberg (702) 753–0200.

EIS No. 930166, DRAFT EIS, AFS, OR, Upper Wahoo Timber Sale and Road Construction, Implementation, Deer Creek Watershed, Wallowa-Whitman National Forest, Baker Ranger District, Baker County, OR, Due: July 6, 1993, Contact: Barry Hansen (503) 523–4476.

EIS No. 930167, DRAFT EIS, NPS, DC, New Stadium Construction and Operation, Implementation, Anacostia Park, Washington, DC, Due: July 6, 1993, Contact: Robert Stanton (202) 619–7025.

Amended Notices

EIS No. 930155, DRAFT EIS, NOA, AL, LA, TX, FL, MS, Red Snapper Reeffish Fishery Management Plan and Amendment 5, Implementation, Approval of several Permits and Special Management Zones, (SMZ), Gulf of Mexico, FL, AL, MS, LA and TX, Due: June 28, 1993, Contact: Wayne E. Swingle (813) 228–2815. Published FR 05–14–93—Due Date Correction.

Dated: May 17, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–12096 Filed 5–20–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4657–4]

Open Meeting of the EPA Border Environmental Plan Public Advisory Committee; Meeting Agenda

INTRODUCTION: The EPA Border Environmental Plan Public Advisory Committee (the "Advisory Committee") was established on March 28, 1992, pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, to advise the EPA Administrator on matters concerning the Agency's involvement in the protection and enhancement of the environment within the U.S.-Mexico border area (the "Border Area"), an area extending 100 kilometers (62 miles) on either side of the U.S.-Mexico border. The Advisory Committee also makes recommendations to the EPA Administrator on the implementation of the Integrated Environmental Plan for the Mexican-U.S. Border Area (the "Border Plan").

TIME, PLACE AND PURPOSE: The EPA Border Environmental Plan Public Advisory Committee will meet on Tuesday, June 15, and Wednesday, June 16, 1993, in San Diego, California. The meeting will take place at the Doubletree Hotel at Horton Plaza, 910 Broadway Circle, San Diego, California 92101. On Tuesday, June 15, the meeting will run from 8:30 a.m. to 4:30 p.m., with additional discussion time until 7:30 p.m., if necessary. There will be a break for lunch between 12:15 p.m. and 2 p.m. On Wednesday, June 16, the meeting will run from 9 a.m. to 1 p.m.

The purpose of this meeting is to assess the accomplishments of the First Stage of the Plan (1992–1994) and to begin to update the Plan.

AGENDA:

Tuesday, June 15, 1993

8:30–9 a.m.: Welcome; opening statement

9–9:30: Discussion of the Good Neighbor Environmental Board authorized by the Enterprise for the

Americas Initiative Act of 1992, Pub. L. 102–532 (Oct. 27, 1992)

9:30–10: Discussion of the process of updating the Border Plan

10–10:30: EPA proposals related to the role of the present Advisory Committee

10:30–10:45: Break

10:45–12:15 p.m.: Discussion of the administration of the present Advisory Committee, including administrative support and resource and funding needs

12:15–2: Lunch Break

2–2:45: Continued discussion of the administration of the present Advisory Committee

2:45–3:30: Review of the accomplishments of the First Stage of the Border Plan

3:30–3:45: Break

3:45–4:30: Continued review of the accomplishments of the First Stage of the Border Plan

4:30–7:30: Additional time for discussion, if needed

Wednesday, June 16, 1993

9–10:30 a.m.: Identification and prioritization of current Border environmental issues

10:30–10:45: Break

10:45–12: Continued identification and prioritization of current Border environmental issues

12 noon–1 p.m.: Summary of proceedings

PUBLIC PARTICIPATION: The meeting will be open to the public. All persons desiring to attend are encouraged to inform Sylvia I. Correa, the Designated Federal Officer for the EPA Border Environmental Plan Public Advisory Committee, at the address or telefax numbers listed below, no later than 5 p.m. on June 9, 1993.

Public comments to the Advisory Committee may be made at any time through the submission of written statements. Written statements to be reviewed by Advisory Committee members prior to the June meeting must be received by Sylvia I. Correa, at the address or telefax numbers listed below, no later than 5 p.m. on June 9, 1993.

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Designated Federal Officer for the EPA Border Environmental Plan Public Advisory Committee, Office of International Activities, Mail Code A–106, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone: (202) 260–4890; telefax: (202) 260–8512 or (202) 260–4470.

Dated: May 17, 1993.

Sylvia I. Correa,

Designated Federal Officer for the EPA Border Environmental Plan, Public Advisory Committee, Office of International Activities, U.S. Environmental Protection Agency.

[FR Doc. 93–12099 Filed 5–20–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–64015; FRL 4183–2]

Grace Sierra Chemical Co., Inc.; Intent to Cancel Conditional Registration for Milban

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 17, 1987, EPA transferred the conditional registration for Milban Fungicide (current EPA Registration No. 58185–12) to Grace Sierra Crop Protection Company, Inc. (hereafter "Grace Sierra" or "Company"). EPA initially had granted the conditional registration for Milban to Mallinckrodt, Inc. (Mallinckrodt), on February 26, 1980, pursuant to section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136-136y. A condition of the grant of the original conditional registration was a requirement that Mallinckrodt conduct exposure studies to determine greenhouse worker exposure, and then submit them to EPA within 4 years of the date of registration. Mallinckrodt did not submit adequate exposure studies. When EPA approved the request to transfer the Milban conditional registration from Mallinckrodt to Grace-Sierra, it notified Grace-Sierra that all the existing conditions and deadlines for the registration were transferred with the registration, and that the Company was responsible for compliance with those requirements. Grace-Sierra failed to fulfill its obligations under the conditional registration in that it has not submitted the required studies to EPA. EPA is therefore issuing this Notice of Intent to Cancel Grace Sierra's conditional registration of Milban pursuant to section 6(e)(1)(B) of FIFRA. 7 U.S.C. 136d(e)(1)(B).

DATES: Under FIFRA section 6(e), requests for a hearing by the registrant or other adversely affected party must be received by EPA within 30 days of receipt by the registrant by mail of this Notice. 7 U.S.C. 136d(e)(2). The Agency plans to send this Notice to the registrant no later than May 21, 1993.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: This Notice has four units. Unit I. discusses the factual background; Unit II. discusses the legal background; Unit III. contains EPA's determinations on Grace-Sierra's compliance with conditions necessary to support continued registration; and Unit IV. contains a discussion of the procedures for implementing the regulatory action announced in this Notice.

I. Factual Background

On February 26, 1980, EPA issued a conditional registration to Mallinckrodt for Milban (original EPA Registration No. 372–51). Milban contains the active ingredient cyclododecyl-2, 6-dimethylmorpholine acetate, also called dodemorph acetate. EPA issued the registration on the condition that: (1) all data required for registration or reregistration under FIFRA section 3(c)(5) must be submitted when EPA requires all registrants of similar products to submit such data; and (2) studies determining the exposure of greenhouse workers to dodemorph and 2, 6-dimethylmorpholine "must be submitted within four years of the date of th[e] registration." The conditional registration also stated that the "exposure studies are being requested to demonstrate that [the] proposed use will not result in worker exposure which may necessitate the undertaking of one or more" certain chronic studies.

In July 1982, Mallinckrodt submitted a worker exposure study to EPA. EPA reviewed the study, and determined that it was deficient. Then in October 1982, it notified Mallinckrodt of the deficiencies, and required new studies. Mallinckrodt failed to submit the new studies as required by the conditional registration.

In 1987, Grace-Sierra obtained Mallinckrodt's registration of Milban, and asked EPA to approve the transfer of the Milban registration (current EPA Registration Number 58185–12). Effective July 17, 1987, EPA approved the transfer of the registration of Milban to Grace-Sierra, and notified the Company that the registration retained the same status that it had prior to the approval. The notification also stated:

When registrations are transferred from one company to a second company, all restrictions, data requirements, conditions

(suspensions), and deadlines existing on the registrations are transferred with the registrations. The new company is responsible for adhering to or complying with all such restrictions, etc. on the acquired products.

On June 3, 1988, EPA wrote to Grace-Sierra and directed the Company to identify the date when it would perform the exposure tests and submit the data. Grace-Sierra responded by stating that it would conduct and submit the exposure studies prior to the end of 1988. The Company failed to submit the studies by that date.

On January 16, 1989, Grace-Sierra requested the Agency to accept the use of the "bodysock" technique in lieu of the "patch" technique in their proposed protocol for the Worker Exposure Study. On March 15, 1989, the Agency responded that their proposed technique would be acceptable "...provided that all other requirements of the guidelines... are followed."

On March 30, 1989, Grace-Sierra submitted a protocol for a worker exposure study which EPA found acceptable on August 8, 1989, "...provided sufficient recovery information is included in the final report." In May 1989, Grace-Sierra requested an extension until March 31, 1990, for submission of the final study report. The Agency did not respond to the request. Subsequently, in July 1989, Grace-Sierra submitted a revised version of the previously submitted protocol. EPA approved the protocol on October 2, 1989, provided that specific items be addressed and remedied as requested in an attached scientific review. Then, on October 25, 1989, the Agency met with Grace-Sierra to address the specific items outlined in the scientific review.

In a letter dated December 12, 1990, Grace-Sierra stated that it would submit the actual exposure studies in the second quarter of 1991. Again, the Company failed to submit the studies.

As part of the reregistration of Milban, EPA issued a Data-Call-In to Grace-Sierra on February 12, 1991. Later, EPA notified Grace-Sierra that it must inform EPA of the submission date for the exposure studies when it filed the 90-day Response to the Data-Call-In. Grace-Sierra filed a 90-Day Response, but it failed to provide a date for the submission of the exposure studies.

On April 2, 1992, EPA notified Grace-Sierra that the exposure studies must be received by the Agency by August 31, 1992. If the studies were not submitted by that date, EPA stated that cancellation proceedings might be initiated. Grace-Sierra failed to submit a completed exposure study.

II. Legal Authority

Under section 3(c)(7)(C) of FIFRA, the Administrator of EPA may issue a conditional registration for a pesticide. 7 U.S.C. 136a(c)(7)(C). This type of registration is contingent upon the registrant's compliance with certain conditions, including the submission of data with respect to the pesticide's possible adverse effects upon human health and the environment. In general, a conditional registration allows a registrant to commence the sale and distribution of a pesticide even though data regarding the pesticide's adverse effects are not complete.

If a registrant does not comply with the conditions imposed by the registration, then FIFRA authorizes its cancellation. FIFRA section 6(e)(1)(B) provides in part:

> The Administrator shall issue a notice of intent to cancel a registration issued under section 3(c)(7) of [FIFRA] if * * * (B) at the end of the period provided for satisfaction of any condition imposed, that condition has not been met.

7 U.S.C. 136d(e)(1)(B).

FIFRA section 6(e)(2) provides that this cancellation shall become final and effective 30 days after receipt by the registrant of the notice of intent to cancel, unless a person adversely affected by the notice of intent to cancel requests a hearing within that 30 days. 7 U.S.C. 136d(e)(2). At the hearing, the only matters at issue are whether the conditions imposed by the conditional registration have been met within the time provided, and whether the Administrator's determination with respect to the disposition of existing stocks is consistent with FIFRA. A final determination on cancellation must be made within 75 days of receipt of the request for hearing. 7 U.S.C. 136d(e)(2).

III. Summary of Determinations With Respect to Compliance With Conditions to Support Continued Registration

Grace-Sierra's conditional registration of Milban is contingent upon the timely submission of appropriate studies to determine the exposure of greenhouse workers to dodemorph and 2, 6-dimethylmorpholine. The studies were initially due on February 2, 1984. Grace-Sierra stated that it would submit the required studies to EPA in 1988, and later it said it would submit them in 1991, but it did not. Subsequently, EPA notified Grace-Sierra that the studies must be submitted by August 31, 1992, but Grace-Sierra did not submit them.

Because Grace-Sierra has failed to make a timely submission of appropriate worker exposure studies, EPA has determined that Grace-Sierra has not satisfied a requirement that was imposed as a condition of its registration of Milban, and that the registration should be canceled.

IV. Procedural Matters

This unit of the Notice describes the different procedures by which the Agency will implement the regulatory positions described above. Specifically, this unit announces EPA's intent to cancel the conditional registration of Milban of the Grace Sierra Chemical Co., Inc., by the following procedures.

A. Availability of Existing Stocks

For the purpose of this Notice, existing stocks are defined as those stocks of Milban (EPA Registration Number 58185–12) that exist before the date on which the registration of this product is canceled. Under section 6(e)(1), the Administrator may permit the continued sale or use of existing stocks of pesticide whose conditional registration has been canceled, if he or she determines that such sale or use would be consistent with the purposes of FIFRA and will not have unreasonable adverse effects on the environment. 7 U.S.C. 136d(e)(1). In this case, EPA intends to cancel Grace Sierra's conditional registration because Grace Sierra has failed to give the Agency information needed to determine whether the use of Milban will result in unreasonable adverse effects on the environment. In view of the lengthy period of time given to the registrant to generate the required studies, the conditions attached to Grace Sierra's conditional registration and the importance of the missing data in determining the safety of the product, the Agency does not believe it would be consistent with the purposes of FIFRA to allow Grace Sierra to sell or distribute existing stocks of Milban after its conditional registration is canceled. EPA has reason to believe that the amount of existing stocks in the hand of distributors, retailers, and users is relatively limited, and should not significantly add to the risks to the environment. The Agency therefore will allow the continued sale, distribution, and use of existing stocks of Milban by persons other than Grace Sierra for 2-years after the conditional registration is canceled.

B. Procedure for Requesting a Hearing

To contest any provision of this Notice, a registrant must request a hearing within 30 days of receipt of this Notice. Any other person adversely affected by the cancellation action described in this Notice may also request a hearing within 30 days of the registrant's receipt of this Notice.

A registrant or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and the Agency Rules of Practice Governing Hearings [40 CFR part 164]. These procedures require, among other things, that each request identify the specific products, registration numbers and use[s] for which a hearing is requested, and that each request must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial to the request for a hearing. A request for a hearing must also be accompanied by objections specific to each use of the pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A-100), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

C. Consequences of Filing or Failing To File a Hearing Request

1. *Consequences of filing a timely and effective hearing request.* If a hearing on the action initiated by this notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rule of Practice for hearings under FIFRA section 6 (40 CFR part 164). The hearing will be limited to the specific uses and specific product registrations for which the hearing is requested.

2. *Consequence of failure to file in a timely and effective manner.* If a hearing concerning the registration of a specific pesticide product subject to this Notice is not received by EPA within the applicable 30-day period, registration of that product will automatically be canceled by the operation of law.

If the registration of Milban is canceled by operation of law, then:

a. The registrant may not sell or distribute in commerce any quantity of Milban after the effective date of cancellation; and

b. Persons other than the registrant may sell or distribute in commerce, with its approved labeling, any existing stocks of Milban for 2-years after the effective date of cancellation; and persons other than the registrant may use, in a manner consistent with the approved label, existing stocks of Milban for 2-years after the effective date of cancellation.

D. Separation of Functions

The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate, or in any investigative or expert capacity, or with any of their representatives.

Accordingly, the following Agency offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of the Agency in any Administrative hearing of this Notice of Intent to Cancel: The Office of Administrative Law Judges, the Environmental Appeals Board, the Administrator, Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any communication with the trial staff or any interested person not employed by EPA, on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

Authority: 7 U.S.C. 136-136y.

Dated: May 6, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–11868 Filed 5–20–93 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.

Title: Section 76.1002, Specific Unfair Practices Prohibited.

Action: New collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 20 responses; 25 hours average burden per response; 500 hours total annual burden.

Needs and Uses: On 4/1/93, the Commission adopted a Report and Order in MM Docket No. 92–265, Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage. Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 added new Section 628 to the Communications Act of 1934. Section 628 of the Act directs the Commission to prescribe rules to prohibit exclusive contracts between cable operators and vertically integrated satellite cable and broadcast programming vendors, that prevent a multichannel video programming distributor from obtaining satellite cable or satellite broadcast programming for distribution to persons in areas served by a cable operator unless the Commission determines that the exclusive contract is in the public interest pursuant to section 628(c)(4) of the Act. Pursuant to the legislative mandate of section 19 of the Cable Act (Section 628(c)(2)(D) of the Act). Section 76.1002(c)(5) requires any vertically integrated programmer or any cable operator seeking to execute an exclusive contract, to seek and obtain the Commission's public interest judgment before doing so by filing a "petition for exclusivity." The information will be used by FCC staff to determine on a case-by-case basis whether particular exclusive contracts for cable television programming comply with the statutory public interest standard of section 19 of the 1992 Cable Act and section 628(c)(2)(D) of the Act.

OMB Number: None.

Title: Section 76.1003, Adjudicatory Proceedings.

Action: New collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 100 responses; 20 hours average burden per response; 2,000 hours total annual burden.

Needs and Uses: On 4/1/93, the Commission adopted a Report and Order in MM Docket No. 92–265, Implementation of Sections of the

Cable Television Consumer Protection and Competition Act of 1992. Section 628 of the Act proscribes a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor from engaging in unfair practices and directs the Commission to, among other things, prescribe regulations to provide for an expedited FCC review of any complaints made under this section. Section 76.1003 of the Rules provides that any aggrieved multichannel video programming distributor intending to file a program access complaint must first notify the potential defendant cable operator, and/or the potential defendant satellite cable programming vendor or satellite broadcast programming vendor, that it intends to file such a complaint with the Commission. If the parties cannot resolve the dispute, the complainant may file a complaint with the Commission. The information will be used by FCC staff to resolve disputes alleging unfair methods of competition and deceptive practices by a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor where the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–12190 Filed 5–20–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1941]

Petitions for Reconsideration and Clarification and Request for Stay of Actions in Rulemaking Proceedings

May 13, 1993.

Petitions for reconsideration and clarification and request for stay have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed June 7, 1993. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Cable Television Consumer Protection and Competition Act of 1992. Broadcast Signal Carriage Issues. (MM Docket No. 92–259)

Number of Petitions Filed: 21.

Request for Stay

Subject: Implementation of the Cable Television Consumer Protection and Competition Act of 1992. Broadcast Signal Carriage Issues. (MM Docket No. 92–259)

Number of Requests Filed: 2.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–12022 Filed 5–20–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3096–EM]

Alabama; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Alabama (FEMA–3096–EM), dated March 15, 1993, and related determinations.

EFFECTIVE DATE: May 11, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Alabama dated March 15, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 15, 1993:

Expanded emergency assistance is authorized for reimbursement of eligible debris removal and emergency protective measure costs in the counties of: Autauga, Bibb, Butler, Chilton, Clarke, Cleburne, Conecuh, Cullman, Dallas, DeKalb, Greene, Hale, Houston, Jackson, Marshall, Perry, Pike, Sumter, Talladega, Washington, and Wilcox. (Already designated for assistance for opening critical emergency access on collector roads and streets, and on minor and principal roads for emergency vehicles, authorized for five days.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–12086 Filed 5–20–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–986–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–986–DR), dated April 26, 1993, and related determinations.

EFFECTIVE DATE: May 10, 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, in a letter dated May 10, 1993, the major disaster declaration of April, 26, 1993, was amended 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 damage in certain areas of the State of Iowa resulting from severe storms and flooding on March 26, 1993, through April 12, 1993, is of sufficient severity and magnitude to warrant the inclusion of Public Assistance in the major disaster declaration of April 26, 1993, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act").

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act of Public Assistance 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 Iowa and the Federal Coordinating Officer of this amendment to my major disaster declaration.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

The counties of Black Hawk, Butler, and Linn for Public Assistance. (Already designated for Individual Assistance.)

The counties of Floyd, Kossuth, and Mitchell for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–12087 Filed 5–20–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–988–DR]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–988–DR), dated May 11, 1993, and related determinations.

EFFECTIVE DATE: May 11, 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, in a letter dated May 11, 1993, the President declared a major disaster 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 damage in certain areas of the State of Maine, resulting from flooding, heavy rain, snowmelt, and ice jams on April 9, 1993, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance by supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Office for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster:

Androscoggin, Aroostock, Franklin, Kennebec, Oxford, Piscataquis, Penobscot, Somerset, and Waldo Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–12085 Filed 5–20–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–989–DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–989–DR), dated May 11, 1993, and related determinations.

EFFECTIVE DATE: May 11, 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, in a letter dated May 11, 1993, the President declared a major disaster 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 damage in certain areas of the State of Missouri, resulting from severe storms and flooding on April 15, 1993, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. You may request an amendment to this declaration for Public Assistance, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster.

St. Charles and Lincoln Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–12084 Filed 5–20–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–991–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–991–DR), dated May 12, 1993, and related determinations.

EFFECTIVE DATE: May 12, 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, in a letter dated May 12, 1993, the President declared a major disaster 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 damage in certain areas of the State of Oklahoma, resulting from severe storms, tornadoes, and flooding on May 8, 1993, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. You may request an amendment to this declaration for Public Assistance, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham L. Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Kingfisher, Logan, Oklahoma, and Payne Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–12089 Filed 5–20–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–990–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–990–DR), dated May 12, 1993, and related determinations.

EFFECTIVE DATE: May 12, 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, in a letter dated May 12, 1993, the President declared a major disaster 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 damage in certain areas of the State of Vermont, resulting from lake and river flooding caused by heavy rain and snowmelt on April 24, 1993, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster:

Addison, Chittenden, Franklin, and Grand Isle Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–12088 Filed 5–20–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Charter Agreement(s) Filed; MOL/HMM Space

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.: 217–011376–001.

Title: The MOL/HMM Space Charter Agreement in the Far East-U.S. Pacific Northwest Trades.

Parties: Mitsui O.S.K. Lines, Ltd. Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed amendment extends the term of the Agreement for one (1) year.

Dated: May 17, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–12036 Filed 5–20–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

James C. Davison, 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 June 9, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James C. Davison, to acquire an additional 9.59 percent of the voting shares through stock redemption of Corydon Bancorporation, Corydon, Iowa, for a total of 29.99 percent, and thereby indirectly acquire Corydon State Bank, Corydon, Iowa.

2. Terry N. Jost, to acquire an additional 27.24 percent through acquisition and 22.37 percent through stock redemption of Corydon

Bancorporation, Corydon, Iowa, for a total of 70.01 percent, and thereby indirectly acquire Corydon State Bank, Corydon, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. John A. Brunner, Jr., Marked Tree, Arizona; to acquire an additional 2.40 percent of the voting shares of Marked Tree Bancshares, Inc., Marked Tree, Arizona, for a total of 26.71 percent, and thereby indirectly acquire Marked Tree Bank, Marked Tree, Arizona.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. David F. Bolger, Ridgewood, New Jersey; to acquire 100 percent of the voting shares of S & S Holding Company, Meridian, Idaho, and thereby indirectly acquire Farmers and Merchants State bank, Meridian, Idaho.

Board of Governors of the Federal Reserve System, May 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–12055 Filed 5–20–93; 8:45 am]

BILLING CODE 6210–01–F

The Long-Term Credit Bank of Japan, Ltd., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

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 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 14, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Long-Term Credit Bank of Japan, Ltd., Tokyo, Japan; to acquire certain assets of Franchise Mortgage Acceptance Corporation, a California Corporation, and Franchise Mortgage Acceptance Corporation, L.P., a California limited partnership relating to FMAC Group's business of making, acquiring, servicing and selling loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire Shelby County Bancorp, Shelbyville, Indiana, and thereby indirectly acquire Shelby County Savings Bank, FSB, Shelbyville, Indiana, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Mountain Parks Financial Corp., Minneapolis, Minnesota; to acquire Mountain Parks Data Corp., Golden, Colorado, and thereby engage in providing data processing services to unaffiliated banks and other financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–12056 Filed 5–20–93; 8:45 am]

BILLING CODE 6210–01–F

OnBancorp, Inc., 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 June 14, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. OnBancorp, Inc., Syracuse, New York; to merge with Franklin First Financial Corp., Wilkes-Barre, Pennsylvania, and thereby indirectly acquire Franklin First Savings Bank, Wilkes-Barre, Pennsylvania. In connection with this application, Franklin First Financial Corp, Wilkes-Barre, Pennsylvania, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Franklin First Savings Bank, Wilkes-Barre, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama; to convert its subsidiary, SouthTrust Bank, FSB, Concord, North Carolina, to a state-chartered commercial bank operating under the title SouthTrust Bank of Central Carolina, Concord, North Carolina.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400

South Akard Street, Dallas, Texas 75222:

1. First Community Bankshares, Inc., Winnfield, Louisiana; to become a bank holding company by acquiring 94.86 percent of the voting shares of Winn Bancshares, Inc., Winnfield, Louisiana, and thereby indirectly acquire Winn State Bank and Trust Company, Winnfield, Louisiana.

Board of Governors of the Federal Reserve System, May 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–12057 Filed 5–20–93; 8:45 am]

BILLING CODE 6210–01–F

Society Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have 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.

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 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Society Corporation, Cleveland, Ohio; to engage *de novo* through its subsidiary, Society Equipment Leasing Company, Cleveland, Ohio, in real property leasing activities, under an arrangement that constitutes full payout, acting as agent, broker, or advisor in such leasing and to engage in commercial loan transactions pursuant to §§ 225.25(b)(5) and (b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Principal National Bancorp, Pontiac, Illinois; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Chambanco, Inc., Chambers, Nebraska; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–12058 Filed 5–20–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Refugee Resettlement Program: Proposed Allocations to States of FY 1993 Funds for Refugee Social Services and for Refugees Who Are Former Political Prisoners From Vietnam

AGENCY: Office of Refugee [1] Resettlement (ORR), ACF, HHS.

ACTION: Notice of proposed allocations to States of FY 1993 funds for refugee social services and for refugees who are former political prisoners from Vietnam.

SUMMARY: This notice announces the proposed allocations to States of FY 1993 funds for social services under the Refugee Resettlement Program (RRP). In order to help meet the special needs of former political prisoners from Vietnam, the Director proposes to add to the formula allocation $2,000,000 in funds previously set aside for social services discretionary projects. In the final notice, allocation amounts could be adjusted after considering comments and evidence from States on population estimates.

DATES: Comments on the allocations provided for in this notice will be considered if received by June 21, 1993.

ADDRESSES: Address written comments, in duplicate, to: Toyo A. Biddle, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

SUPPLEMENTARY INFORMATION:

I. Amounts Proposed for Allocation

The Office of Refugee Resettlement (ORR) has available $80,806,336 in FY 1993 refugee social service funds as part of the FY 1993 appropriations for the Department of Health and Human Services (Pub. L. No. 102–394).

Of the total of $80,806,336, the Director of ORR proposes to make available to States $68,685,386 (85%) under the allocation formulas set out in this notice. These funds would be made available for the purpose of providing social services to refugees. In addition, the Director of ORR proposes to make available $2,000,000 from discretionary social service funds to be allocated under the formula in this notice for services to former political prisoners from Vietnam. The allocation amounts proposed in this notice could be adjusted slightly in the final notice after

[1] In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

taking into consideration any population adjustments (see Section VI, below).

A. Discretionary Social Service Funds for Vietnamese Political Prisoners

In recognition of the special vulnerability of refugees who are former political prisoners from Vietnam, the Director of ORR proposes to set aside $2,000,000 from discretionary social service funds to be allocated under the formula set forth in this announcement, based on the number of actual political prisoner arrivals in FY 1992. The proposed formula allocation is shown separately in Table 1 (cols. 7 and 8). States would be required to use this allocation to provide services, as described below, to recent arrivals from Vietnam who are former political prisoners and members of their families.

Allowable services for the above-cited funds for political prisoners include the following direct services: (1) Specialized orientation and adjustment services, including peer support activities; and (2) specialized employment-related services, as needed. Under no circumstances may these funds be used for direct cash payments or stipends, or for the purchase of advertising space or air time.

Allowable services under this allocation for Vietnamese political prisoners are intended to supplement, not to supplant, those services provided to refugees in general under the social service formula allocation, discussed below.

ORR intends to provide technical assistance to States and organizations that request it to assure effective program development and implementation.

Because these funds are proposed specifically for services for former political prisoners from Vietnam, States which allocate social service funds to other local administrative jurisdictions, such as counties, shall do so for these funds, using a formula which reflects recent and anticipated arrivals of this target population only.

ORR strongly encourages States and other contracting jurisdictions, in selecting service providers for the above, to award these funds, to the extent possible, to qualified refugee mutual assistance associations with experience serving the target population and that all contractors receiving these funds will have Vietnamese language capacity and Vietnamese cultural understanding.

B. Refugee Social Service Funds

The population figures for the social service allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

The Director proposes to allocate $68,685,386 to States in the following manner:

- $65,185,396 would be allocated on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1992 (including a floor amount for States which have small refugee populations).
- $3,500,000 would be allocated on the basis of each State's proportion of the 3-year refugee population (including a floor amount of $5,000 for States with small refugee populations) in order to provide an incentive for States to fund refugee mutual assistance associations (MAAs). A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I. "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations will be calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) a base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

ORR has consistently supported floors for small States in order to provide sufficient funds to carry out a minimum service program. Given the range in numbers of refugees in the small States, we have concluded that a variable floor, as established in the FY 1991 notice, will be more reflective of needs than previous across-the-board floors.

The $12,120,950 in remaining social service funds (15% of the total funds available) is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. The discretionary funds would primarily support specific program activities designed to: (1) Reduce welfare dependency in States with large numbers of refugees on welfare; and (2) address the needs of special populations who experience particular difficulty adjusting to life in the U.S. (As indicated earlier, $2,000,000 of these discretionary funds would be allocated to States under this notice for services for former political prisoners from Vietnam.) One announcement of the availability of funding and grant application procedures has been issued: Availability of Funding for Planned Secondary Resettlement of Refugees, 57 FR 12130, April 8, 1992. ORR expects to continue emphasis on discretionary grants to address problems of persistent welfare dependency and to promote favorable resettlement opportunities. Announcements will be made when discretionary initiatives are decided on.

Population To Be Served

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's length of residence, in accordance with the requirements of 45 CFR part 400, subpart I—Refugee Social Services, published in the **Federal Register** of February 3, 1989 (54 FR 5481). However, in keeping with 45 CFR 400.147(a), a State must allocate an appropriate portion of its social service funds for services to newly arriving refugees who have been in the U.S. less than one year.

While 45 CFR 400.147(b) requires that in providing employability services, a State must give priority to a refugee who is receiving cash assistance, social service programs should not be limited exclusively to refugees who are cash assistance recipients. Social services may be provided to any refugee in need

of services, regardless of whether the refugee is receiving cash assistance.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. No. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. States, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146, if a State's cash assistance dependency rate for refugees (as defined in section 400.146(b)) is 55% or more, funds awarded under this notice for the basic and MAA incentive allocations are subject to a requirement that at least 85% of the State's award be used for employability services as set forth in section 400.154. ORR expects these funds to be used for services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs in less than one year as part of a plan to achieve self-sufficiency. This reflects the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on "employment-related services, English-as-a-second-language training (in non-work hours where possible), and case-management services". (INA, section 421(a)(1)(B).)

Since current welfare dependency data are not available, those States that historically have had dependency rates at 55% and above are invited to submit a request for a waiver of the 85% requirement if they can provide reliable documentation that demonstrates a lower dependency rate.

ORR will consider granting a waiver of the 85% provision if a State meets one of the following conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that the dependency rate of refugees who have been in the U.S. 24 months or less is below 55% in the State.

2. The State demonstrates to the satisfaction of the Director that (a) less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees and (b) there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. Or

3. In accordance with section 412(c)(1)(C) of the INA, the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

In keeping with Congressional intent with respect to the FY 1993 appropriation, States must use social service funds, to the maximum extent possible, for specialized refugee service programs in addition to and not duplicative of mainstream employment programs. The Report of the House Appropriations Committee (H.R. No. 102–708, p. 117) states:

> The Committee intends that, to the maximum extent possible, States will use social services funds for specialized refugee services programs that address the specific language, vocational and cultural needs of the refugees, in addition to and not duplicative of other federally funded mainstream employment services that are available for low income and needy persons.

States, therefore, must limit refugee social service funds, to the maximum extent possible, to the provision of refugee-specific services that are in addition to, and not duplicative of, the regular employment services provided to low-income people through State JOBS programs and other mainstream employment programs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

MAA Set-Aside

ORR believes that the continued and/or increased utilization or qualified refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. Therefore additional funds which would be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

ORR believes it is essential to build the capacity of MAAs as community-based organizations in order to enable these organizations to continue serving their communities well into the future. Therefore, ORR considers the MAA incentive allocation to represent the minimum commitment a State should make in social service funding to qualified MAAs. In addition, ORR strongly encourages States to give priority to MAAs in contracting for social services, particularly employment

services, whenever bidders are equally qualified, if the ethnic composition of the MAA is the same as the refugee population to be served.

In order to receive the MAA incentive funds, the appropriate State agency official would have to provide written assurance to the Office of Refugee Resettlement that the following conditions would be observed by the State agency in using funds made available to the State under this special allocation:

1. That such funds will be used to fund qualified refugee mutual assistance associations for the direct provision of services to refugee clients.

2. That the MAA incentive allocation is subject to and included under ORR's expectation that the total amount of social service funds allocated by this notice to a State be used primarily for the provision of employability services, as defined in 45 CFR 400.146 and 400.154.

3. That the State agency will observe the following definition of a mutual assistance association:

a. The organization must be legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees or former refugees, including both refugee men and women.

4. That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services to refugee clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, DC 20447. States must respond by 30 days from the date of this notice in order to avail themselves of this special allocation.

State Administration

States are reminded that under current regulations at 45 CFR 400.206 and 400.207, States have the flexibility to charge the following types of administrative costs against their refugee program social service grants, if they so choose: Direct and indirect administrative costs incurred for the overall management and operation of the State refugee program, including its coordination, planning, policy and program development, oversight and monitoring, data collection and reporting, and travel. See also State Transmittal No. 88–40.

II. [Reserved for Discussion of Comments in Final Notice]

III. Allocation Formula

Of the funds available for FY 1993 for social services, $65,185,386 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by —

3. The number of persons in item 2, above, in the State as of October 1, 1992, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State. Minimum allocations for small States are taken into account.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

Allocations for political prisoners are based on FY 1992 arrival numbers for this group in each State from the Refugee Data Center and are limited to States with 170 or more political prisoner arrivals. We have limited the population base to FY 1992 political prisoner arrival numbers because these funds are intended to serve recent arrivals. We have not included States with fewer than 170 former political prisoners in the political prisoner allocations formula because the resulting level of funding would be insignificant. In these States, we believe the small number of political prisoners could be served under the State's refugee social services program.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1993 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1992, for estimated secondary migration. The data base includes refugees of all nationalities and Amerasians from Vietnam. Figures on the number of Cuban and Haitian entrants resettled are obtained from several sources, including the ORR Florida office and the Immigration and Naturalization Service.

For fiscal year 1993, ORR's formula allocations for the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1990, 1991, and 1992. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1989, and September 30, 1992, who are thought to be living in each State as of October 1, 1992. Refugees admitted under the Federal Government's private-sector initiative are not included, since their assistance and services are to be provided by the private sponsoring organizations under an agreement with the Department of State.

The figures on arrivals of refugees and Amerasians used in developing these population estimates were based on final arrival data by State for FY 1990, FY 1991, and FY 1992. Deductions were made for refugees resettled under the private sector initiative. The figures on Cuban and Haitian entrants were based on arrival data by State for FY 1990, FY 1991, and FY 1992.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate. Because the reporting period covered on Form ORR–11 was a maximum of only 8 months as of June 1992 for the majority of States whose reporting base was their cash/medical assistance caseload, extra weight was given to the secondary migration reported by those States to arrive at estimates of secondary migration over a 36-month period. In 1992, no count of recently-arrived refugee children was available from the Department of Education for use as a comparison.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1992, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); the proposed allocation amounts after allowing for the minimum amounts (col.

5); and the proposed amounts available as an incentive to States to use MAAs as service providers (col. 6). Table 1 also shows the number of former political prisoner arrivals in FY 1992 (col. 7); and the allocation amounts for services to this population (col. 8).

These population estimates and proposed allocation amounts are intended to be as close to the final figures as was possible at the time they were developed. However, revisions may need to be made, based on data submitted by States in accordance with Section VI of this notice, and all population estimates and allocation amounts may change somewhat as a result.

A detailed explanation of the development of data used in this formula allocation can be obtained by writing to the address indicated in Section VI of this notice.

V. Proposed Allocation Amounts

Funding will be contingent upon the submittal and approval of a State annual services plan. The following amounts are proposed for allocation for refugee social services in FY 1993:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1993; AND FORMER POLITICAL PRISONER ARRIVALS AND PROPOSED ALLOCATIONS FOR FY 1993 [a]

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	MAA incentive proposed allocation (6)	Former political prisoner arrivals from Vietnam in FY 1992 (7)	Former political prisoner proposed allocation (8)
Alabama	894	18	912	$158,078	$158,078	$8,478	40	$0
Alaska	147	0	147	25,480	75,000	5,000	13	0
Arizona	4,511	29	4,540	786,924	786,924	42,206	302	32,599
Arkansas	447	0	447	77,479	100,000	5,000	36	0
California	95,525	529	96,054	16,649,157	16,649,157	892,969	7,887	851,360
Colorado	3,678	2	3,680	637,859	637,859	34,211	175	18,890
Connecticut	3,734	73	3,807	659,872	659,872	35,392	123	0
Delaware	135	9	144	24,960	75,000	5,000	8	0
District of Columbia	2,897	21	2,918	505,781	505,781	27,127	252	27,202
Florida	12,696	16,063	28,759	4,984,833	4,984,833	267,359	451	48,683
Georgia	7,650	58	7,708	1,336,037	1,336,037	71,658	873	94,236
Hawaii	929	0	929	161,025	161,025	8,636	101	0
Idaho	931	1	932	161,545	161,545	8,664	12	0
Illinois	13,478	96	13,574	2,352,798	2,352,798	126,191	279	30,117
Indiana	988	7	995	172,465	172,465	9,250	96	0
Iowa	2,767	2	2,769	479,954	479,954	25,742	189	20,402
Kansas	2,147	1	2,148	372,315	372,315	19,969	215	23,208
Kentucky	1,817	15	1,832	317,543	317,543	17,031	132	0
Louisiana	2,485	57	2,542	440,608	440,608	23,632	344	37,133
Maine	750	1	751	130,172	130,172	6,982	3	0
Maryland	7,450	235	7,685	1,332,050	1,332,050	71,444	375	40,479
Massachusetts	11,574	283	11,857	2,055,188	2,055,188	110,229	674	72,755
Michigan	7,065	31	7,096	1,229,958	1,229,958	65,968	371	40,048
Minnesota	6,683	0	6,683	1,158,373	1,158,373	62,129	291	31,412
Mississippi	268	0	268	46,453	87,786	5,000	11	0
Missouri	4,976	26	5,002	867,003	867,003	46,501	290	31,304
Montana	273	0	273	47,319	88,653	5,000	0	0
Nebraska	2,379	2	2,381	412,702	412,702	22,135	247	26,662
Nevada	883	139	1,022	177,145	177,145	9,501	47	0
New Hampshire	673	0	673	116,652	116,652	6,257	66	0
New Jersey	7,567	794	8,361	1,449,222	1,449,222	77,728	180	19,430
New Mexico	1,080	63	1,143	198,118	198,118	10,626	51	0
New York	61,860	683	62,543	10,840,654	10,840,654	581,433	570	61,529
North Carolina	3,893	24	3,917	678,938	678,938	36,415	172	18,566
North Dakota	809	0	809	140,225	140,225	7,521	10	0
Ohio	5,891	46	5,937	1,029,067	1,029,067	55,193	153	0
Oklahoma	1,370	2	1,372	237,810	237,810	12,755	150	0
Oregon	6,527	54	6,581	1,140,693	1,140,693	61,180	375	40,479
Pennsylvania	11,207	85	11,292	1,957,256	1,957,256	104,976	324	34,974
Rhode Island	1,421	11	1,432	248,210	248,210	13,313	0	0
South Carolina	326	2	328	56,853	98,186	5,000	54	0
South Dakota	891	0	891	154,438	154,438	8,283	0	0
Tennessee	3,108	20	3,128	542,180	542,180	29,080	227	24,503
Texas	17,226	148	17,374	3,011,457	3,011,457	161,518	1,920	207,254
Utah	1,855	0	1,855	321,529	321,529	17,245	129	0
Vermont	722	0	722	125,145	125,145	6,712	0	0
Virginia	6,045	20	6,065	1,051,254	1,051,254	56,383	621	67,034
Washington	17,393	0	17,393	3,014,750	3,014,750	161,695	924	99,741
West Virginia	122	0	122	21,146	75,000	5,000	0	0

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1993; AND FORMER POLITICAL PRISONER ARRIVALS AND PROPOSED ALLOCATIONS FOR FY 1993 [a]—Continued

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	MAA incentive proposed allocation (6)	Former political prisoner arrivals from Vietnam in FY 1992 (7)	Former political prisoner proposed allocation (8)
Wisconsin	4,115	3	4,118	713,778	713,778	38,283	37	0
Wyoming	17	0	17	2,947	75,000	5,000	4	0
Total	354,275	19,653	373,928	64,813,398	65,185,386	3,500,000	19,804	2,000,000

[a] Based on arrivals through September 30, 1992.

VI. State Evidence on Refugee Population

If a State wishes ORR to reconsider its population estimate, it should submit written evidence. Requests will be evaluated according to a strict standard. The following evidence should be provided:

- Documentation and discussion should be confined to the population entering the United States during the fiscal years 1990, 1991, and 1992, and should clearly identify what refugee or entrant groups are being discussed.
- Documentation should include a list of refugees identified by name, alien number, date of birth, date of arrival, and case size, if appropriate. Listings of refugees who are not identified by their alien numbers will not be considered. Data should be submitted in machine readable form, preferably in ASCII format on diskette.

Any State evidence on population estimates should be submitted separately from comments on the proposed allocation formula no later than 30 days from date of publication of this notice and should be addressed to: Mark Littman, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington DC 20447. Telephone: (202) 401–4568.

VII. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance State Administered Programs)

Dated: March 17, 1993.

David B. Smith,

Acting Director, Office of Refugee Resettlement.

[FR Doc. 93–12082 Filed 5–20–93; 8:45 am]

BILLING CODE 4184–01–M

Substance Abuse and Mental Health Services Administration

Cooperative Agreements for Technical Assistance Centers for the Evaluation of Mental Health Systems Change

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Request for application.

Introduction

The Center for Mental Health Services (CMHS) announces the availability of support for two Technical Assistance Centers for the Evaluation of Mental Health Systems Change (TA Centers). One TA Center will be expected to focus on technical assistance related to evaluations of the adult service system; the other will focus on technical assistance related to evaluations of the service systems for children and adolescents. The goal of these TA Centers will be to provide technical assistance services in the area of evaluation to States and non-profit public entities within the States for purposes of improving the planning, development, and operation of mental health services carried out as part of the Community Mental Health Services Block Grant program. Broadly speaking, the TA Centers should accomplish this goal through increasing the capacity of States and political subdivisions of States to conduct their own evaluations as well as through direct and indirect technical assistance activities; to support the evaluation of systems implementation strategies and changes at State and sub-State levels that have the potential for informing similar changes in other areas; and to encourage the dissemination and use by other States and local communities of the results of these evaluations. Funds will be awarded through a cooperative agreement mechanism to allow CMHS staff to coordinate these efforts with related technical assistance and information dissemination efforts.

Healthy People 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0; or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–783–3238).

Program Description

Background

One of the primary goals of the Community Mental Health Services Block Grant is to assist states in the creation of a comprehensive, community-based system of care for adults with severe mental illness and children with serious emotional disturbances. Many state and local mental health officials have identified a need to learn more from specific programmatic attempts to move the existing system toward the type of system envisioned within the Block Grant and to disseminate the lessons learned to others who might be implementing, or planning, similar changes. The requirement for the mental health system to implement changes as part of major health care reform further underscores this need. These proposed TA Centers represent one approach through which CMHS can support the efforts of public and private nonprofit organizations to evaluate specific changes within their service systems such as:

- Changes in financing patterns or mechanisms for public mental health care on organizations as well as on

access and quality of care for individual consumers (including potential changes as a result of implementing health care reform strategies);

- The introduction of system modifications aimed at dealing with racial and ethnic diversity in the population served;
- The effects of implementing a court-ordered change in the activities of the public mental health system;
- The treatment of clients with AIDS within the public mental health system;
- The implementation and outcomes of the reorganization of the State hospital system (including, for example, the closure or downsizing of hospitals); or
- The effects of a large influx of refugees on the operation of a local mental health system.

Activities of the TA Center

The TA Center will be expected to use project resources on each of the following types of activities:

- Enhancing the capacity of State and local mental health organizations to conduct and use evaluation in their ongoing operations (e.g., through training programs for State staff),
- Providing technical assistance with the design and implementation of specific evaluations (including on-site direct assistance if required),
- Identifying the important substantive program and policy issues (such as health care reform) that might be evaluated by State and local mental health organizations,
- Developing materials that enable these organizations to improve the quality of their evaluations in priority areas, and
- Facilitating the dissemination of evaluation results through publications and presentations in appropriate forums.

Project Requirements

Applicants should clearly indicate which population (i.e., adults or children) their efforts will focus on; applicants who wish to be considered for both centers must submit a separate application for each center. Applicants are expected to present specific plans for accomplishing each of the activities outlined above; these plans should include the relative resources to be expended in each area. The plans should also include approaches for prioritizing competing requests should insufficient resources be available to accommodate all requests in a particular area. While all of the activities are essential to accomplishing the overall mission of the TA Center, the activities of enhancing the capacity of the public mental health system to conduct evaluations, and of providing technical assistance should be the primary emphases of TA Center activities. Finally, the plans need to address how the TA Center will be responsive to the often-short timeframes within which many evaluations of systems changes must be designed and implemented as well as the limited resources available to implement them.

The organization of the proposed TA Center should be clearly described. Staff should be multidisciplinary and provide all the needed expertise, either on staff or through formal consultative relationships. The proposed TA Center Director should be a recognized expert in the evaluation of mental health systems and devote sufficient time to insure that TA Center activities are well planned, coordinated, high quality, and efficient. If the TA Center will be located within a larger organization, the prospective organizational, managerial, and administrative relationships must be addressed, particularly as they affect the ability of the TA Center to carry out its responsibilities within the time constraints expected to exist in some cases. Center costs should be justified in terms of the objectives Stated above. They may include salary for appropriate core personnel, staff or consultants to provide technical assistance, travel, dissemination of project reports, and other relevant expenses.

Applicants should also include a steering committee in their plans. The committee should meet at least twice a year to review TA Center activities and make recommendations regarding strategic directions. The committee should be composed of individuals involved in the evaluation of mental health programs at the State and local levels, mental health system administrators, consumers of mental health services, and family members. The steering committee will be co-chaired by the TA Center Director and CMHS staff collaborator (see section below on the role of Federal staff in cooperative agreements).

Eligibility

Applications may be submitted by public organizations, by private nonprofit, and by for-profit organizations (although no profit may be made on grant activities). Women and minorities are especially encouraged to apply.

Availability of Funds

It is estimated that approximately $1,500,000 will be available to support two awards under this announcement in FY93. Actual funding levels will depend upon the availability of funds.

Period of Support

Support may be requested for an initial period of up to three years. Annual awards will be made subject to continued availability of funds and progress. Applicants should assume that the level of funding will be approximately level throughout the project period.

Special Requirements

Letter of Intent

Organizations planning to submit an application in response to this announcement are requested to submit a letter of intent at least 30 days prior to the receipt date. Such notification is used by CMHS for purposes of review and program planning. This letter is voluntary and does not obligate the person/organization to submit an application.

In addition, the letter should be no longer than one page and should succinctly indicate:

- The number and title of the RFA.
- The name of the potential applicant organization, city and State.
- The name and affiliation of the proposed project director, i.e., the individual who will be assigned to coordinate the development and conduct of the project.
- The overall scope of the proposed project, including a brief description of the likely goals and objectives.

Letters of intent should be directed to: Roger Straw, Ph.D., Center for Mental Health Services, 5600 Fishers Lane, Room 18C–07, Rockville, Maryland 20857, ATTN: TA Center RFA/Letter of Intent.

Intergovernmental Review (E.O. 12372)

This announcement is not subject to the requirements of Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Role of Federal Staff in Cooperative Agreements

The cooperative agreement mechanism provides for substantial pre- and post-award Federal participation in the conduct of the project. CMHS involvement in the TA Centers will take a variety of forms including negotiation of the relative level of effort devoted to each required activity; consultation on, and participation in, specific projects; participation in meetings planning and

guiding the activities of the Center; membership on the steering committee established to facilitate accomplishment of the Center goals; and authorship or co-authorship of publications (in accordance with professional standards for authorship) to make results of project activities available to various audiences. In addition, CMHS staff will work with TA Center staff to insure that the TA Center's activities are coordinated with other CMHS, SAMHSA and Federal technical assistance and information dissemination activities. Mechanisms for assuring this involvement will be negotiated with grantees prior to award.

Policies Related to Participants in Evaluation Studies

SAMHSA, in conjunction with other agencies of the Federal Government, supports a variety of policies that insure the appropriate protection of participants in its programs. The TA Center is expected to be fully informed on these policies and to require that any evaluations supported by TA Center funds fully adhere to the relevant policies. These policies include, but are not limited to, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR part 2), the Human Subject Protection Regulations (45 CFR 46), and the inclusion of adequate representation of women and racial/ethnic minority populations in service programs.

Application Procedures

All applicants must use application form PHS 5161–1 (Rev. 7/92), which contains Standard Form 424 (face page). The narrative portion of the application is limited to 20 pages. The following information should be typed in Item Number 10 on the face page of the application form:

SM93–03 TA Center for Evaluation

Grant application kits (including form PHS 5161–1 with Standard Form 424, complete application procedures, and accompanying guidance materials for the narrative approved under OMB No. 0937–0189) may be obtained from: Mr. Steve Hudak, Center for Mental Health Services, 5600 Fishers Lane, Room 7C–25, Rockville, Maryland 20857, (301) 443–4456.

Applicants must submit: (1) An original copy signed by the authorized official of the applicant organization, with the appropriate appendices; and (2) two additional, legible copies of the application and all appendices to the following address: Center for Mental Health Services Programs, Division of Research Grants, NIH, Westwood Building, Room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892 [1]

Only one application seeking Public Health Service (PHS) support for the same programmatic activities may be submitted to PHS, and that same application may be submitted in response to only one PHS Program Announcement or Request for Applications.

Application Receipt and Review Schedule

The schedule for receipt and review of applications under this announcement is as follows:

Receipt date	IRG review	Earliest start date
July 12, 1993	Aug. 1993	Sept. 1993.

Consequences of Late Submission

The DRG system requires that applications must be received by the published application receipt date. However, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than one week prior to the deadline date. If the receipt date falls on a weekend, it will be extended to the following Monday; if the date falls on a holiday, it will be extended to the following work day.

Review Process

Applications submitted in response to this RFA will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures for grants. The Division of Research Grants, NIH, serves as a central point for the receipt of applications. Applications will be screened for completeness and compliance with instructions for submission. An application will not be accepted for review and will be returned to the applicant if:

1. It is received after the specified receipt date
2. It is incomplete
3. It is illegible
4. It exceeds the specified page limits
5. It does not conform to instructions for format, which include that it be typed single-spaced, using standard size black type not smaller than 15 characters per 1 inch or 2.5 centimeters, one column per page, with conventional border margins (1 inch or 2.5 centimeters), on only one side of standard size 8½ x 11 paper that can be photocopied
6. It is nonresponsive to the announcement
7. The material presented is insufficient to permit an adequate review

Returned applications may not be resubmitted for the single receipt date of this RFA.

Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts. Notification of the IRG recommendation will be sent to the applicant upon completion of the initial review. In addition, the IRG recommendations on technical merit of applications may undergo a second level of review by the appropriate advisory council, if established, whose review may be based on policy considerations as well as technical merit.

Review Criteria

The following criteria will be included in the technical merit review of applications:

- Adequacy and appropriateness of the proposed approaches and activities relative to the objectives stated in the announcement;
- Qualifications and experience of applicant organization, project director, and other key personnel;
- Adequacy of available resources (e.g., facilities, equipment);
- Reasonableness of the proposed budget.

Award Decision Criteria

Applications recommended for approval by the Initial Review Group and the appropriate advisory council will be considered for funding on the basis of overall technical merit as determined through the review process, the proposed target system (i.e., adult or child) and the availability of funds.

Terms and Conditions of Support

Grant funds may be used only for expenses clearly related and necessary to carry out the approved activities, including both direct costs which can be specifically identified with the project and allowable indirect costs. In order to recover allowable indirect costs of a project, it may be necessary to negotiate and establish an indirect cost rate (unless such a rate has already been established for the applicant organization). For information and assistance regarding the timing and submission of an indirect cost rate proposal, applicants should contact the appropriate office of the DHHS Division of Cost Allocation referenced in the list of "Offices Negotiating Indirect Cost Rates," included in the application kit.

[1] If an overnight carrier or express mail is used, the Zip Code is 20816.

Allowable Items of Expenditure

Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out service activities under the approved project;
- Supplies, communications, and rental of equipment and space directly related to approved project activities;
- Contracts for support of approved evaluation projects; and
- Other such items necessary to support approved project activities.

Funds cannot be used for the purchase of a facility to house any portion of the proposed program. Any funds proposed to be utilized for renovation expenses must be detailed and linked directly to programmatic activities. Any lease arrangements in association with the proposed program utilizing PHS funds may not extend beyond the project period or cover nonprogrammatic activities.

Alterations and Renovations

Costs for alterations and renovations (A&R) will be allowable only where such alterations and renovations are necessary for the success of the program. However, as subject to the PHS Grants Policy Statement, the maximum amount of funds budgeted or used for A&R under a single grant during three consecutive budget periods (whether or not the 3 years overlap two distinct competitive segments of support) cannot exceed the lesser of $150,000 or 25% of the total funds reasonably expected to be awarded by the PHS for direct costs for such 3-year period. [The maximum amount of PHS grant funds that may be applied to any single A&R project is $150,000.] Construction costs are not allowed.

Reporting Requirements

Specified interim and final progress reports and financial status and expenditure reports will be required by awardees in accord with PHS Grants Policy requirements.

Contacts for Additional Information

Questions concerning program issues may be directed to: Roger Straw, Ph.D., Center for Mental Health Services, 5600 Fishers Lane, Room 18C–07, Rockville, Maryland 20857, (301) 443–7883.

Questions regarding grants management issues may be directed to: Mr. Steve Hudak, Grants Management Officer, Center for Mental Health Services, 5600 Fishers Lane, Room 7C–25, Rockville, Maryland 20857, (301) 443–4456.

Authority and Regulations

Cooperative agreements awarded under this announcement are authorized under Section 1948(a) of the Public Health Service Act, as amended (42 U.S.C. 300x-58).

Federal regulations at Title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

Grants must be administered in accordance with the *PHS Grants Policy Statement* (Revised September 1, 1991).

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.119.

Dated: May 17, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse, Mental Health and Services Administration.

[FR Doc. 93–12078 Filed 5–20–93; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–32]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for

use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Foresberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following address: *Corps of Engineers:* Pete Digel, Headquarters, Army Corps of Engineers, Attn: CERE–MC, room 4224, 20 Massachusetts Ave. NW., Washington, DC 20314–1000; (202) 272–1753; *U.S. Navy:* John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; *GSA:* Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208–0619; *Dept. of Agriculture:* Marsha Pruitt, Realty Officer, USDA, South Bldg. Rm. 1566, 14th and Independence Ave. SW., Washington, DC 20250; (202) 447–3338; *Dept. of Transportation:* Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; *Dept. of Interior:* Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: May 14, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 05/21/93

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. TU–43
Millers Ferry Lock and Dam
Route 1, Box 102
Camden Co: Wilcox AL 36726–
Landholding Agency: COE
Property Number: 319011549
Status: Unutilized
Comment: 1000 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU–22
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36676–
Landholding Agency: COE
Property Number: 319011551
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU–21
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776–
Landholding Agency: COE
Property Number: 319011552
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU–23
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776–
Landholding Agency: COE
Property Number: 319011553
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU–24
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776–
Landholding Agency: COE
Property Number: 319011554
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU–15
Coffeeville Lock and Dam
Star Route Box 77
Blandon Springs Co: Choctaw AL 36919–
Landholding Agency: COE
Property Number: 319011556
Status: Unutilized
Comment: 1547 sq. ft.; 1 story frame residence; most recent use—lock tender's dwelling.

Arkansas

10 Houses
Hot Springs National Park
Hot Springs Co: Garland AR 71902–
Location: Linn St., Bower, McKinley, Grand, Conway Terrace, Akin, Old Crabtree Cemetary Rd., and Avenue Street
Landholding Agency: GSA
Property Number: 549310012
Status: Excess
Comment: 454 to 3334 sq. ft., 1 and 2 story residences, need major rehab, off-site use only.
GSA Number: 7–I–AR–0415–Z

California

199 Military Family Housing
Savannah Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240001
Status: Excess
Base closure; Number of Units: 398
Comment: 1405 sq. ft., 2-family duplexes, 1-story woodframe stucco, 144 units scheduled to be vacated 1/31/93; 254 units scheduled to be vacated 10/1/93.

Utility Bldg.
Savannah Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240002
Status: Excess
Base closure; Number of Units: 1
Comment: 237 sq. ft., 1-story woodframe stucco, most recent use—gas meter bldg., scheduled to be vacated 10/93.

100 Military Family Housing
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240003
Status: Excess
Base closure; Number of Units: 684
Comment: 2550 sq. ft. to 3024 sq. ft., 16-duplexes, 72-four plexes, and 12-six plexes totaling 684 units, 3 to 4 bedrooms, 1 to 2 story, scheduled to be vacated 10/94.

49 Detached Carports
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240004
Status: Excess
Base closure; Number of Units: 49
Comment: size varies, 1-story concrete block wall, scheduled to be vacated 10/94.

Convenience Store
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240005
Status: Excess
Base closure; Number of Units: 1
Comment: 4830 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

Youth Center
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240006
Status: Excess
Base closure; Number of Units: 1
Comment: 6576 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

Utility Bldg.
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240007
Status: Excess
Base closure; Number of Units: 1
Comment: 416 sq. ft., 1-story woodframe stucco, most recent use—gas meter building, scheduled to be vacated 10/94.

Child Care Center & Storage
Cabrillo Project

Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240008
Status: Excess
Base closure; Number of Units: 2
Comment: 6641 sq. ft., child care center and 400 sq. ft. storage bldg., 1-story woodframe stucco, scheduled to be vacated 10/94.

Maintenance Bldg.
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240009
Status: Excess
Base closure; Number of Units: 1
Comment: 900 sq. ft., 1-story steel panel bldg., scheduled to be vacated 10/94

Laundromat
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240010
Status: Excess
Base closure; Number of Units: 1
Comment: 1320 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

24 Bldgs.
San Pedro Complex, Taper Avenue
Long Beach Naval Station
Los Angeles Co: Los Angeles CA
Landholding Agency: Navy
Property Number: 779240021
Status: Excess
Base closure; Number of Units: 48
Comment: 2550 sq. ft. each unit, 2-unit family residences, 1–2 story, totaling 48 units, scheduled to be vacated 9/30/94.

23 Bldgs.
San Pedro Complex, Taper Avenue
Long Beach Naval Station
Los Angeles Co: Los Angeles CA
Landholding Agency: Navy
Property Number: 779240022
Status: Excess
Base closure; Number of Units: 92
Comment: 5980 sq. ft. each unit, 4-unit family residences, 1–2 story, totaling 92 units, scheduled to be vacated 9/30/94.

16 Detached Carports
San Pedro Complex, Taper Avenue
Long Beach Naval Station
Los Angeles Co: Los Angeles CA
Landholding Agency: Navy
Property Number: 779240023
Status: Excess
Base closure; Number of Units: 16
Comment: Holds 4 to 16 vehicles, concrete block frame, 1-story, scheduled to be vacated 9/30/94

Colorado

Former AF Finance Center
3800 York Street
Denver Co: Denver CO 80205–
Landholding Agency: GSA
Property Number: 549310011
Status: Excess
Comment: 293,932 sq. ft., 1-story timber frame with masonry exterior, fair condition, most recent use—storage, office, rehab
GSA Number: 7–GR–CO–468–D

Florida

Bldg. CN–3
1651 S. Franklin Lock Road
Alva Co: Lee FL 33920–
Landholding Agency: COE
Property Number: 319130006
Status: Unutilized
Comment: 1500 sq. ft., 1 story concrete block residence, off-site use only

Bldg. CN–43
Port Mayaca Lock and Spillway
Okeechobee Waterway
Port Mayaca Co: Martin FL 33438–
Location: Located approx. 9 mi n/o Canal Pt. at the intersection of US 441 and SR 76
Landholding Agency: COE
Property Number: 319210004
Status: Unutilized
Comment: 1700 sq. ft., 1 story concrete block/stucco structure, possible asbestos, off-site use only

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 466, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240012
Status: Unutilized
Comment: 100 sq. ft., 1-story, needs rehab, most recent use—gas station, off-site use only.

Bldg. 5, Radio Trans. Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310001
Status: Unutilized
Comment: 12046 sq. ft., one story, needs rehab, access restrictions, most recent use—offices, off-site use only.

Bldg. 31, Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310002
Status: Unutilized
Comment: 640 sq. ft., 1 story, access restrictions, need repairs, most recent use—storage, off-site use only.

Bldg. T33 Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310003
Status: Unutilized
Comment: 1536 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 64, Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310004
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 429 Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310006
Status: Unutilized
Comment: 13950 sq., ft., 3 story, access restrictions, needs rehab, most recent use—barracks, off-site use only.

Bldg. 430 Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310007
Status: Unutilized
Comment: 2680 sq., ft., 1 story, access restrictions, needs rehab, most recent use—dining facility, off-site use only.

Indiana

Bldg. 01, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8722
Landholding Agency: COE
Property Number: 319140002
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only.

Bldg. 02, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401--8772
Landholding Agency: COE
Property Number: 319140003
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only.

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Landholding Agency: COE
Property Number: 3139010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010110
Status: Underutilized
Comment: 7,270 sq ft., 1 story bldg, most recent use-storage, structural deficiencies

Bldg. 523—Transmitter Site
Naval Air Station
East Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230002
Status: Excess
Comment: 7270 sq. ft., 1-story bldg., most recent use—storage, needs rehab on 66 acres of land

Bldg. 524—Transmitter Site
Naval Air Station
East Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230003
Status: Excess

Comment: 384 sq. ft., 1-story bldg., most recent use—storage, needs rehab

Bldg. 332, Naval Air Station
Topsham Annex
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779240013
Status: Excess
Comment: 1248 sq. ft., 1-story, most recent use—office building, off-site use only

Bldg. 333, Naval Air Station
Topsham Annex
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779240014
Status: Excess
Comment: 12672 sq. ft., 2-story, most recent use—office building, off-site use only

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 319120018
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 319210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only

Bldg. 1, Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310008
Status: Excess
Base closure; Number of Units: 1
Comment: approx 300,000 sq. ft., 15 story, concrete/brick frame, pres of asbestos, needs rehab, 36.6 acres of improved land incs. tennis court, parking & roads, sched to be vacated 3/94.

3 Enlisted Quarters
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310009
Status: Excess
Base closure; Number of Units: 3
Comment: 6464–8418 sq. ft., ⅔ story, concrete/brick frame, presence of asbestos, needs rehab, scheduled to be vacated 3/94, elig. for nomination to Natl Register of Historic Places.

5 Officer's Quarters
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310010
Status: Excess
Base closure; Number of Units: 5
Comment: 1888–11582 sq. ft., 2 story, concrete/brick frame, presence of asbestos, needs rehab, scheduled to be vacated 3/94, elig. for nomination to Natl Register of Historic Places.

16 Administrative Bldgs.
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310011
Status: Excess
Base closure; Number of Units: 16
Comment: 6000–25250 sq. ft., ½ story, concrete/brick frame, needs rehab, pres. of asbestos, sched to be vacated 3/94, incs. offices/chapel/classrooms, elig for Natl Reg of Hist Places.

9 Support Bldgs.
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310012
Status: Excess
Base closure; Number of Units: 9
Comment: 150–6528 sq. ft., 1 story, concrete/brick frame, needs rehab, pres. of asbestos, sched to be vacated 3/94, incs. storage bldgs/garages/sheds, elig for Natl Reg of Hist Places.

6 Sentry Shelters
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310013
Status: Excess
Base closure; Number of Units: 6
Comment: 28–896 sq. ft., 1 story, concrete/brick frame, needs a roof, pres. of asbestos, sched to be vacated 3/94, incs. sentry house/shelters, elig for Natl Reg of Historic Places.

4 Support Bldgs.
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310014
Status: Excess
Base closure; Number of Units: 4
Comment: 5162–14756 sq. ft., 1 story, concrete/brick frame, presence of asbestos, roof needs replacement, sched to be vacated 3/94, incs. maint. shop, bowling alley, phys. therapy bldg.

3 Secured Bldgs.
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310015
Status: Excess
Base closure; Number of Units: 3
Comment: 8637–15566 sq. ft., 1 story, concrete/brick frame, presence of asbestos, needs major rehab, scheduled to be vacated 3/94, most recent use—storage.

6 Utility Structures
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310016
Status: Excess
Base closure; Number of Units: 6
Comment: 196–6172 sq. ft., 1 story, concrete/brick frame, presence of asbestos, needs rehab, scheduled to be vacated 3/94, incs. sewage/water pump houses, elec substations, heat plant

Staff Lounge
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310017
Status: Excess
Base closure; Number of Units: 1
Comment: 4164 sq. ft., 1 story, concrete/brick frame, presence of asbestos, scheduled to be vacated 3/94.

Bldg. 8, Warehouse
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310018
Status: Excess
Base closure; Number of Units: 1
Comment: 10558 sq. ft., 3 story, concrete/brick frame, roof needs replacement, presence of asbestos, scheduled to be vacated 3/94.

Rhode Island

Parcel 1 (7 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310029
Status: Excess
Base closure; Number of Units: 7
Comment: 1 story, presence of asbestos, on 52 acres, portion u/superfund cleanup site, includes gen. warehouses, gate house, admin bldg, scheduled to be vacated 9/94.

Parcel 2 (62 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310030
Status: Excess
Base closure; Number of Units: 62
Comment: 1–4 story, presence of asbestos, on 110 acres, portion u/superfund cleanup site, incs. theater, admin, barracks, storage, chapel, warehouses, scheduled to be vacated 9/94.

Parcel 4 (92 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310031
Status: Excess
Base closure; Number of Units: 92
Comment: 1 story, presence of asbestos, portion u/superfund cleanup site, on 216 acres, includes warehouses, admin, auto shops, heat plants, storage, scheduled to be vacated 9/94.

Parcel 5 (1 bldg.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310032
Status: Excess
Base closure; Number of Units: 1
Comment: 1 story, telephone exchange bldg., fair condition, presence of asbestos, scheduled to be vacated 9/94.

Parcels 7, 9, 10 (26 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310034
Status: Excess
Base closure; Number of Units: 26
Comment: 1–2 story, presence of asbestos, on 360 acres, portion u/superfund cleanup site, includes storage, auto shop, applied instruc. bldgs, rec. pavillion, scheduled to be vacated 9/94.

Parcel 8 (23 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310035
Status: Excess
Base closure; Number of Units: 23
Comment: 1–2 story, includes 9 family residences, detached garages, warehouses, presence of asbestos, fair condition, on 87 acres, scheduled to be vacated 9/94.

South Carolina

Bldg. 1
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011544
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 2
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011545
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 3
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011546
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 4
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011547
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 5
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011548
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Texas

Bldg. 2
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014815
Status: Unutilized
Comment: 94606 sq. ft.; 1 story wood, masonry, and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 4
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014816
Status: Excess
Comment: 1350 sq. ft.; 1 story structured clay tile and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 17
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014817
Status: Excess
Comment: 68 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.
GSA Number: 7–D–TX–879A

Bldg. 29
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014818
Status: Excess
Comment: 5028 sq. ft.; 1 story wood, masonry and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 30
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014819
Status: Excess
Comment: 5323 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 18
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014820
Status: Excess
Comment: 9560 sq. ft.; 1 story wood, masonry and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 6
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014821
Status: Excess
Comment: 1258 sq. ft.; 1 story structured clay tile and metal frame; subject to pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 7
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014822
Status: Excess
Comment: 508 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 8
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014824
Status: Excess
Comment: 171 sq. ft.; story concrete block and brick; subject to sewer pipeline easement; needs rehab; most recent use—watch tower.
GSA Number: 7–D–TX–879A

Bldg. 16
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014825
Status: Excess
Comment: 17263 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 19
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014826
Status: Excess
Comment: 25399 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 31
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014827
Status: Excess
Comment: 1392 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 9
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014828
Status: Excess
Comment: 244 sq. ft.; 1 story wood, hollow tile and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 25
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014829
Status: Excess
Comment: 1320 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—fire house.
GSA Number: 7–D–TX–879A

Bldg. 10
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014830
Status: Excess
Comment: 354 sq. ft.; 2 story concrete block and brick; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 26
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014831
Status: Excess
Comment: 3518 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 21
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014832
Status: Excess
Comment: 65 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.
GSA Number: 7–D–TX–879A

Bldg. 22
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014833
Status: Excess
Comment: 50581 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 27
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014834
Status: Excess
Comment: 228 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—control tower.
GSA Number: 7–D–TX–879A

Bldg. 32
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014835
Status: Excess
Comment: 19546 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

208 Off-base Capehart Housing
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210001
Status: Excess
Base closure; Number of Units: 208
Comment: 1320 sq. ft., 1 story brick/wood frame, 2 bedrooms/1 bath, needs routine maintenance, scheduled to be vacated 10/93.

54 Off-base Family Housing
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210002
Status: Excess
Base closure; Number of Units: 54
Comment: 1,000 to 2,000 sq. ft., 1 and 2 bedroom units, 1 and 2 story, brick/wood frame, routine maintenance required, scheduled to be vacated 10/93.

19 On-base Capehart Housing
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210003
Status: Excess
Base closure; Number of Units: 19
Comment: 1320 sq. ft., 1 story brick/wood frame, 1 and 2 bedrooms, needs routine maintenance, scheduled to be vacated 10/93.

3 Recreational Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210004
Status: Excess
Base closure; Number of Units: 3
Comment: 2100 to 13900 sq. ft., 1 story, concrete masonry frame, needs routine maintenance, includes theatre, bowling, racquetball, scheduled to be vacated 10/93.

4 Dining Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210005
Status: Excess
Base closure; Number of Units: 4
Comment: 6000 to 21900 sq. ft., 1 story, concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

5 Bachelor Quarters
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210006
Status: Excess
Base closure; Number of Units: 5
Comment: 16800 to 62200 sq. ft., 3 story, metal/brick frame, needs routine maintenance, scheduled to be vacated 10/93.

9 Administration Buildings
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210007
Status: Excess
Base closure; Number of Units: 9
Comment: 1300 to 29500 sq. ft., 1 and 2 story, concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

Hospital (clinic)
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210008
Status: Excess
Base closure; Number of Units: 1
Comment: 31000 sq. ft., 1 story, brick/concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

4 Miscellaneous Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210009
Status: Excess
Base closure; Number of Units: 4
Comment: 900 to 55600 sq. ft., 2 story, concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

4 Warehouses
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210010
Status: Excess
Base closure; Number of Units: 4
Comment: 800 to 40300 sq. ft., 1 story, concrete masonry frame, needs routine maintenance, used for storage, scheduled to be vacated 10/93.

16 Industrial Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210011
Status: Excess
Base closure; Number of Units: 16
Comment: 200 to 10900 sq. ft., 1 story, metal/concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

3 Fire/Security Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210012
Status: Excess
Base closure; Number of Units: 3
Comment: 5533 sq. ft., 1 story, wood/concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

5 Air Traffic Control Facs.
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210013
Status: Excess
Base closure; Number of Units: 5
Comment: 3200 sq. ft., 1 story, concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

3 Aircraft Related Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210014
Status: Excess
Base closure; Number of Units: 3
Comment: 42000 to 89300 sq. ft., 2 story, concrete masonry/metal frame, needs routine maintenance, used for storage/aircraft maintenance, scheduled to be vacated 10/93.

Washington

Vancouver Substations
Vancouver Co: Clark WA 98661–
Landholding Agency: GSA
Property Number: 549240004
Status: Excess
Comment: 7 electrical control houses and transmission line corridors, access

restrictions, high voltage present, minor contamination
GSA Number: 9–B–WA–1019—1028

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 45911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence: needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 45180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Land (by State)

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 187.30 acres

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized
Comment: 46 acres

California

Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino CA 95482–9404
Landholding Agency: COE
Property Number: 319011015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 5490100
Status: Excess
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities, environmental restrictions
GSA Number: 9–2–CA–1308

(P) Camp Elliott
Rosedale Tract
San Diego Co: San Diego CA
Landholding Agency: GSA
Property Number: 549310008
Status: Surplus
Comment: Parcel 1—0.15 acre, Parcel 2—0.17 acre, located in the narrow median strip between Murphy Canyon Rd. and State Highway 15, previously leased by homeless provider
GSA Number: 9–GR(6)–CA–694A

Folsom South Canal
SW corner of Whiterock Rd. & Folsom S Canal
Rancho Cordova Co: Sacramento CA 95670–
Landholding Agency: Interior
Property Number: 619310002
Status: Excess
Comment: 1.52 acres; perpetual easement over .25 acre, surrounding land use is commercial

NAVAIR Manor
Naval Air Station, Off-site component

Moffett Field
Sunnyvale Co: Santa Clara CA 94035–
Landholding Agency: Navy
Property Number: 779240020
Status: Excess
Base closure; Number of Units: 1
Comment: 7.19 acres, improved w/paved streets and sidewalks.

Florida

Outlying Field Kings
NW Corner of SR 267A & SR 186 Co: Escambia FL 32534–
Landholding Agency: GSA
Property Number: 549310013
Status: Excess
Comment: 160 acres, easement restrictions, small portion environmentally protected
GSA Number: 4–GR(1)–FL–737

0.25 acre
Hickory Lane
Holiday Co: Pasco FL
Landholding Agency: GSA
Property Number: 549310014
Status: Excess
Comment: 0.25 acre, small triangular tract of land with 48 sq. ft. tin bldg., possible access restrictions
GSA Number: 4–G–FL–968

Georgia

Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moulter IL 62565–9804
Landholding Agency: COE
Property Number: 319240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Indiana

Portion of Tract 1219
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310002
Status: Unutilized
Comment: 0.88 acre, potential utilities

Portion of Tract 1220
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310003
Status: Unutilized
Comment: 0.30 acre, potential utilities

Portion of Tract 1207
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310004
Status: Unutilized
Comment: 0.28 acre, potential utilities

Iowa

C BAR J Ranch
1/4 mile south of River Rd. on Stagecoach Rd.
Ames Co: Story IA
Landholding Agency: GSA
Property Number: 159230002
Status: Unutilized
Comment: 24.5 acres w/bldgs.—animal, shops, barn, storage; wood and metal frames; potential utils.; limestone quarry approx 3/4 mi. north, perform some blasting; fenced area w/locked gate.
GSA Number: 7–A–IA–493

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18 (See County) Co: Butler KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 319010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. Adjoining the city of Canton, KY. on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 Acres; steep and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010045

Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand River: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep and wooded; no utilities

Tract 500–2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acres; rolling; partially wooded; no utilities

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.70 acres; wooded; subject to utility easements.

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 319140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized

Comment: 11 acres; wildlife/forestry; no utilities.
Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 319011010
Status Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010111
Status: Underutilized
Comment: 66.13 acres, most recent use—transmitter station.

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co: Hubbard MN 56641–
Location: 1 miles from city of Federal Dam, Mn.
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and foresty management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Sections 2 and 3, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–10903
Landholding Agency: COE
Property Number: 319011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities, most recent use—wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Missouri

Harry S Truman Dam & Reservoir

Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Montana

120 acres, Fort Peck Lake Proj Co: McCone MT
Location: Twp 21 north, RNG 43 east, Section 34, N/2NE/4, Section 35, NW/4NW/4
Landholding Agency: COE
Property Number: 319220005
Status: Unutilized
Comment: 120.00 acres, rough & rugged terrain

New Mexico

Western Perimeter Tract
Los Alamos Co: Los Alamos NM
Landholding Agency: GSA
Property Number: 549310010
Status: Surplus
Comment: 194 acres, potential utilities, open area, no roadways through property
GSA Number: 7–B–NM–504–G, 7–GR(1)–NM–504–L

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal Co: Monroe OH 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank

Portion, VA Hospital Reservat.
Union Co: Ross OH 45601–
Landholding Agency: GSA
Property Number: 549310002
Status: Excess
Comment: 19.98 acres, no known utility potential, ravine and heavily forested, hospital restrictions, most recent use—biological sampling station for educational use.
GSA Number: 2–GR(1)–OH–452–E

Portion, Camp Sherman Range
Approximately 1 mile north of Chillicothe
Springfield Co: Ross OH
Landholding Agency: GSA
Property Number: 549310004
Status: Unutilized
Comment: 4.674 acres, potential utilities, previously leased by non-profit for homeless assistance use
GSA Number: 2–GR–OH–433B

Oklahoma

Parcel No. 18
Fort Gibson Lake
Section 12
Wagoner Co. Co: Wagoner OK
Landholding Agency: GSA
Property Number: 219013808
Status: Excess
Comment: 8.77 acres; subject to grazing lease; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0004

Parcel 7
Fort Gibson Lake
Section 6 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010869
Status: Excess
Comment: 16.31 acres; potential utilities; most recent use—recreational and development.
GSA Number: 7–D–OK–0442E–0001

Parcel 14
Fort Gibson Lake
Section 20 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010870
Status: Excess
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0002

Parcel 15
Fort Gibson Lake
Section 22 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010871
Status: Excess
Comment: 7.51 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0003

Parcel 28
Fort Gibson Lake
Section 35 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010877
Status: Excess
Comment: 36.59 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0005

Parcel 75
Fort Gibson Lake
Section 16 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010887
Status: Excess
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0009

Parcel 88
Fort Gibson Lake
Section 7 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010899
Status: Excess
Comment: 14 acres; potential utilities; subject to grazing lease; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0010

Parcel 89
Fort Gibson Lake
Section 7 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010900
Status: Excess
Comment: 16 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0011

Parcel 95
Fort Gibson Lake
Section 33 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010906
Status: Excess
Comment: 8 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0012

Pine Creek Lake
Section 27 (See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Parcel No. 43
Fort Gibson Lake
Section 11 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011371
Status: Excess
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0006

Parcel No. 49
Fort Gibson Lake
Section 15 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011377
Status: Excess
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0007

Parcel No. 61
Fort Gibson Lake
Section 13 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011389
Status: Excess
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0008

Parcel No. 99
Fort Gibson Lake
Section 21 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011400
Status: Excess
Comment: 5 acres; small creek on land; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0013

Parcel No. 102
Fort Gibson Lake
Section 33 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011403
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use recreation.
GSA Number 7–D–OK–0442E–0014

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001

Status: Excess
Comment: 24.09 acres; subject to flowage easement

Tracts L24, L26
Crooked Creek Lake (See County) Co: Armstrong PA 03051–
Location Left bank - 55 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 7.89 acres; potential for utilities.

North East Plot (K13)
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310019
Status: Excess
Base closure; Number of Units: 1
Comment: 2 paved parking areas, paved roads, (approx. 9.5 acres), scheduled to be vacated 3/94.

North West Plot (K12)
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310020
Status: Excess
Base closure; Number of Units: 1
Comment: 2 paved parking lots, paved roads, (2.7 acres), scheduled to be vacated 3/94.

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 319010933
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 319010937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres, subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 319130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120

Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tracts A–20, A–21
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140008
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 319140010
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Texas

Parcel #222
Lake Texoma (See County) Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation

Tract F–516 O.C. Fisher Lake
Parallel with Grape Creek Road
San Angelo Co: Tom Green TX 76902–3085
Landholding Agency: GSA
Property Number: 319120002
Status: Unutilized
Comment: 2.13 acres, potential limited utilities
GSA Number: 7–D–TX–0968–A

Parts of Tracts
B–143, B–144, B–146, B–148, B–179
Downstream of Lewisville Dam embankment
Lewisville Co: Denton TX 75067–
Location: Along State Hwy 121
Landholding Agency: GSA
Property Number: 319140015
Status: Underutilized
Comment: 101.78 acres in 3 parcels, most recent use—wildlife and low density recreation
GSA Number: 7–D–TX–0510K

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5000
Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA Number: 7–N–TX–402–V

Suitable/Unavailable Properties

Buildings (by State)

California

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706–
Landholding Agency: COE
Property Number: 319011298
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Florida

Bldg. CN7
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010012
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. CN8
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010013
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. SF–83
Moore Haven Lock & Dam
Ockeechobee Waterway
Moore Haven Co: Glades FL 33471–
Landholding Agency: COE
Property Number: 319310006
Status: Unutilized
Comment: 1441 sq. ft.; 1-story frame residence, average condition, restricted access

Georgia

Lot 3
Lake Forrest Subdivision
Woodframe House
Hartwell Co: Hartwell GA
Landholding Agency: COE
Property Number: 319110026
Status: Excess
Comment: 896 sq. ft.; 2 story wood frame residence; off-site removal only.

Idaho

Bldg.
Albeni Falls Dam
U.S. Highway 2, Priest River
Bonner Co: Bonner ID 83856–
Location: 3½ miles west of Priest River.
Landholding Agency: COE
Property Number: 319110028
Status: Unutilized
Comment: 2989 sq. ft.; 3 story log construction with wood frame; off-site removal only; needs rehab.

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame.

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Indiana

Cagles Mill Lake
Cagles Mill Lake Dam
Poland Co: Putnam IN 47868–
Location: Midway between Indianapolis and Terre Haute, 5 miles west of Poland on SR42.
Landholding Agency: COE
Property Number: 3190100046
Status: Unutilized
Comment: 1066 sq. ft.; wood frame residence; minor rehab.

Dwelling #2
Cagles Mill Lake
Poland Co: Putnam IN 47868–

Location: 5 miles west of Polano on SR 42
Landholding Agency: COE
Property Number: 319011686
Status: Unutilizied
Comment: 872 sq. ft.; 1 story wood frame residence; fair condition.

Kentucky

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010060
Status: Unutilized
Comment: 987 sq. ft.; 2 story wood frame; structural deficiencies.

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057–
Location: SR 421 north from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010061
Status: Unutilized
Comment: 1060 sq. ft.; 2 story wood frame; needs rehab.

Bldg. 1
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011628
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Maryland

Chesapeake Bay Hydraulic Model
Matapeake Co: Queen Annes MD 21666–
Landholding Agency: GSA
Property Number: 549040007
Status: Excess
Comment: 617280 sq. ft., 1 story metal bldg., ceiling height over 40 ft., lease restriction, Corps will maintain an antenna on property
GSA Number: 4–D–MD–578

Minnesota

Coast Guard Family Housing
404 East Hamilton Avenue
Baudette Co: Lake of Woo MN 56623–
Landholding Agency; GSA
Property Number: 549230007
Status: Excess
Comment: 1333 sq. ft., 1-story frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
406 East Hamilton Avenue
Baudette Co: Lake of Woo MN 56623–
Landholding Agency; GSA
Property Number: 549230008
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
408 East Hamilton Avenue
Baudette Co: Lake of Woo MN 56623–
Landholding Agency; GSA
Property Number: 549230009
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
418 East Hamilton Avenue
Baudette Co: Lake of Woo MN 56623–
Landholding Agency; GSA
Property Number: 549230010
Status: Excess
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

New Mexico

Indian School of Prac. Nursing
1015 Indian School Road, NW
Albuquerque NM 87104–
Landholding Agency: GSA
Property Number: 549140004
Status: Excess
Comment: 21635 sq. ft., 2 story plus basement, brick & masonry frame on 1.68 acres of improved land.
GSA Number: 7–F–NM–509B

Former Post Office
4th & Mitchell
Clovis Co: Curry NM 88101–
Landholding Agency: GSA
Property Number: 549230005
Status: Excess
Comment: 9225 sq. ft., 2 story concrete, brick & steel structure, good condition, pres. of asbestos, listed on Natl Register of Historic Places, most recent use—public library.
GSA Number: 7–GR–NM–478

Bldg. 1 and 4
U.S. Navy Reserve Center
512 N 12th Street
Carlsbad Co: Eddy NM 88220–3046
Landholding Agency: GSA
Property Number: 779040001
Status: Excess
Comment: 2460 sq. ft., one story, frame/concrete block bldg., most recent use—office, presence of asbestos, and 152 sq. ft. metal storage shed on 1.03 acres.
GSA Number: 7–N–NM–0555

New York

(P) Form. Alex. Bay CG Station
Landon Road, Wellesley Island
Alexandria Co: Jefferson NY
Landholding Agency: GSA
Property Number: 549310006
Status: Excess
Comment: 2500 sq. ft. 2-story wood bldg., new septic system needed, needs rehab with approximately 15 acres of land
GSA Number: 2–GR–NY–0730A

North Carolina

Federal Building
301 East King Street
Kinston Co: Lenoir NC 28501–
Landholding Agency: GSA
Property Number: 549230011
Status: Excess
Comment: 3950 sq. ft., 2-story building
GSA Number: 4–G–NC–706

Ohio

Parcel 2
Lock and Dam #16
Washington Co: Washington OH
Location: On the Ohio River; 4 miles downstream from New MataMoras, Grandview Township.
Landholding Agency: GSA
Property Number: 549110010
Status: Excess
Comment: Two story brick frame, subject to periodic flooding, possible asbestos on pipes, most recent use—office space
GSA Number: 2–GR(1)–OH–730

Parcel 1
Lock and Dam #16
Washington Co: Washington OH
Location: On the Ohio River, 4 miles downstream from New MataMorus, Grandview Township.
Landholding Agency: GSA
Property Number: 549110011
Status: Excess
Comment: 2.5 story brick frame, subject to periodic flooding, possible asbestos on pipes, most recent use—storage
GSA Number: 2–GR(1)–OH–730

Oregon

Former Resource Area Hdqts.
6615 Officers Row
Tillamook Co: Tillamook OR 97141–
Landholding Agency: GSA
Property Number: 549220001
Status: Surplus
Comment: 4400 sq. ft., 3-story wood bldg., needs repair, on 5.51 acres.
GSA Number: 9–I–R–515F

Pennsylvania

Conemaugh River Lake
Road #1, Box 702
Saltsburg Co: Indiana PA 15681–
Landholding Agency: COE
Property Number: 319010019
Status: Unutilized
Comment: 2642 sq. ft.; one unit of brick/frame duplex; most recent use—residence

Rhode Island

Parcel 6 (7 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310033
Status: Excess
Base closure; Number of Units: 7
Comment: 1 story, presence of asbestos, on 4.7 acres, includes gen. warehouses, heat plant, administration, storage, scheduled to be vacated 9/94.

Tennessee

Transient Quarters
Dale Hollow Lake and Dam Project
Dale Hollow Resource Mgr Office, Rt 1, Box 64
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140005

Status: Unutilized
Comment: 1400 sq. ft., concrete block, possible security restrictions, subject to existing easements

Texas

Marine Corps Reserve Center
208 South F Street
Harlingen Co: Cameron TX 78550–6475
Landholding Agency: GSA
Property Number: 549240002
Status: Excess
Comment: 4 Bldgs. and 0.82 acres of land; most recent use of bldgs—administration (4708 sq. ft. brick); carport/storage (1782/2800 sq. ft. wood); storage (4256 sq. ft. tin).
GSA Number: 7–N–TX–1032

Del Rio Federal Building
Main at Broadway
Del Rio Co: Val Verde TX 78840–
Landholding Agency: GSA
Property Number: 549310001
Status: Excess
Comment: 15600 sq. ft., 3 story plus basement, masonry frame, most recent use—offices and courthouse.
GSA Number: 7–G–TX–1034

Bldg. 2435
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010161
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2436
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010162
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2460
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010163
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2462
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010164
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2464
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010165
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2466
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010166
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2467
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010167
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2468
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010168
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2472
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010169
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2476
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010170
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2482
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010171
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2495
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010172
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2514
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010173
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2518
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010174
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2520
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010175
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2522
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010176
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2526
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010177
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2433
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010178
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.

Bldg. 2427
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010179
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2341
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010180
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2424
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010181
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2433
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010182
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2428
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010183
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2429
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010184
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2454
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–

Landholding Agency: Navy
Property Number: 779010185
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.
Bldg. 2477
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010186
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.
Bldg. 2485
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010187
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.
Bldg. 2499
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010188
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.
Bldg. 2503
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010189
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.
Bldg. 2507
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010190
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.
Bldg. 2513
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010191
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.
Bldg. 2521
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010192
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.
Bldg. 2451
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010193
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2458
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010194
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2461
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010195
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2473
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010196
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2478
Laguna Housing Area
NAS Corpus Christi
NAS Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010197
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2480
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010198
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2484
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010199
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2486
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010200
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2487
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010201
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2488
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010202
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2494
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010203
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2500
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010204
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2502
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010205
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2506
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010206
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2508
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010207
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2525
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010208
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.
Bldg. 2452
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010209
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2475
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010210
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2479
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010211
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2497
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010212
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.
Bldg. 2501
Laguna Housing Area

NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010213
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2505
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010214
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2515
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010215
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2517
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010216
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2519
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010217
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2523
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010218
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2465
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010219
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2493
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010220
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2510
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010221
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2574
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010222
Status: Underutilized
Comment: 3328 sq. ft.; 1 story residence.

Bldg. 2481
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010223
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.

Bldg. 2509
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010224
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2511
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Neuces TX 78419–
Landholding Agency: Navy
Property Number: 779010225
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2512
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010226
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2527
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010227
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Virginia

Tract HH 3331–E
John H. Kerr Reservoir
Woodframe House
South Boston Co: Halifax VA
Landholding Agency: COE
Property Number: 319110027
Status: Excess
Comment: 1040 sq. ft.; 1 story wood frame residence; off-site removal only.

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 779010109
Status: Underutilized
Comment: 3665 sq. ft., 1 story, possible asbestos, most recent use—laundry.

Washington

Federal Building
801 Capitol Way
Olympia Co: Thurston WA
Landholding Agency: GSA
Property Number: 549240003
Status: Excess
Comment: 13,800 sq. ft., 3-story plus basement, sandstone blocks over steel-concrete superstructure, most recent use—office space, listed on National Historic Register
GSA Number: G–WA–1040

West Virginia

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling Co: Ohio WV 26003–
Landholding Agency: Navy
Property Number: 779010077
Status: Excess
Comment: 32000 sq. ft.; 1 floor; most recent use—offices; 15% of total space occupied; needs rehab; land leased from city—expires September 1990.

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown WI 54115–
Landholding Agency: COE
Property Number: 319011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Land (by State)

California

New Hogan Lake
2713 Hogan Dam Road
Valley Springs Co: Calaveras CA 95252–0128
Landholding Agency: COE
Property Number: 319011017
Status: Unutilized
Comment: 3.08 acres; potential utilities; brush covered.

Receiver Site
Dixon Relay Station
7514 Radio Station Road
Dixon CA 95620–9653
Location: Approximately .16 miles southeast of Dixon, CA.
Landholding Agency: GSA
Property Number: 549010042
Status: Excess
Comment: 80 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, limited utilities.
GSA Number: 9–2–CA–1162–A

.4075 acres
Ocotillo Wells
Borrego CA
Landholding Agency: GSA
Property Number: 549230002
Status: Excess
Comment: unimproved land, surrounding land—desert
GSA Number: 9–F–CA–1327

Colorado

Portion/Curecanti Substation
Cimarron Co: Montrose CO 81220–
Location: 2 miles east of Cimarron on Highway 50
Landholding Agency: GSA
Property Number: 419030009
Status: Excess.
Comment: 36.39 acres, easement restrictions
GSA Number: 7–B–CO–624

Railroad Spur and Right-of-Way
Denver Federal Center
Lakewood Co: Jefferson CO 80215–
Landholding Agency: GSA
Property Number: 549120007
Status: Excess

Comment: 1.5 miles long (width varies 35 to 200 ft.), limited access, right-of-way restrictions
GSA Number: 7–G–CO–441–Q

Florida

Former US Army Reserve Center
Belvedere Rd. and Clubhouse Dr.
West Palm Beach Co: Palm Beach FL 33409–
Landholding Agency: GSA
Property Number: 549310005
Status: Unutilized
Comment: 3.10 acres, utilities, previously leased by non-profit for homeless assistance use
GSA Number: 4–GR–FL–682A

Naval Public Works Center
Naval Air Station
Pensacola Co: Escambia FL 32508–
Location: Southeast corner of Corey station—next to family housing.
Landholding Agency: Navy
Property Number: 779010157
Status: Unutilized
Comment: 22 acres

Georgia

Tracts 3, 16 and 33
Fort Gillem
GA Hwy 42
Forest Park Co: Clayton GA 30051–
Landholding Agency: GSA
Property Number: 219014293
Status: Excess
Comment: 11.19 acres, narrow strip of land, most recent use—railroad spur, access limitation
GSA Number: 4–D–GA–585–B

E.O. Tract A
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011516
Status: Unutilized
Comment: 17 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract B
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011517
Status: Unutilized
Comment: 88 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract F
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia GA
Location: Approximately 2 miles east of GA 104 and Keg Creek Road intersection.
Landholding Agency: COE
Property Number: 319011519
Status: Unutilized
Comment: 29 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract E
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia GA
Location: Approximately 1½ miles east of GA 104 and Keg Creek Road Intersection.
Landholding Agency: COE
Property Number: 319011520
Status: Unutilized
Comment: 12 acres; potential utilities; most recent use—forest reserve and wildlife management.

E.O. Tract G
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia GA
Location: 4 miles east of GA 104 and Ridge Road Intersection.
Landholding Agency: COE
Property Number: 319011521
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract I
J. Strom Thurmond Dam and Reservoir (See County) Co: Columbia GA
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011523
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010255
Status: Unutilized
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

Idaho

Portion
Former Farragut Naval Training Center
Athol Co: Kootenai ID 83801–
Landholding Agency: GSA
Property Number: 549230004
Status: Excess
Comment: 48.42 acres, former railroad right-of-way
GSA Number 9–GR(2)–ID–421C

Indiana

Portion, Cannelton Locks & Dam
Adjacent to Middle Creek Boat Launching Ramp Co: Floyd IN
Landholding Agency: GSA
Property Number: 549240008
Status: Excess
Comment: 28.65 acres with pumphouse, no utilities, periodic flooding
GSA Number: 2–D–IN–569–C

Kentucky

Carr Fork Lake
5 miles SE of Hindman, Ky., Hwy. 60
Hindman Co: Knott KY
Landholding Agency: COE
Property Number: 549240003
Status: Unutilized
Comment: 2.81 acres, most recent use—drainage area for bank stabilization for adjacent cemetery.

Massachusetts

Por. of Former Navy Ammo. Pit.
Fort Hill Street
Hingham Co: Plymouth MA 02043–
Location: Across from Bus Company Parking Garage.
Landholding Agency: GSA
Property Number: 549030017
Status: Excess
Comment: 1.129 acres, gravel pavement, most recent use—parking lot
GSA Number: 2–GR–MA–591B

Montana

0.01 acre, Fort Peck Lake Proj Co: Valley MT
Location: Twp. 27 north, RNG 41 east, Section 33, E/2SE/4NW/4NE/4
Landholding Agency: COE
Property Number: 319220002
Status: Excess
Comment: 0.01 acre, small triangular parcel, rough/steep terrain.

0.05 acre, Fort Peck Lake Proj Co: Valley MT
Location: Twp 27 north, RNG 41 east, Section 33, E/2SE/4NW/4NE/4
Landholding Agency: COE
Property Number: 319220003
Status: Excess
Comment: 0.05 acre, narrow strip next to highway, steep/rough terrain

122.60 acres
Fort Peck Lake Project Co: McCone MT
Location: Twp 26 north, RNG 42 east, Section 4, Lot 3, SW/4NE/4SE/4NW/4
Landholding Agency: COE
Property Number: 319220004
Status: Excess
Comment: 122.60 acres, rough & rugged terrain, grazing allotment administered by Bureau of Land Management

North Dakota

US Army Reserve Center
SE intersection of US 83 & County Road 10A
Minot Co: Ward ND 58701–
Landholding Agency: GSA
Property Number: 549240001
Status: Excess
Comment: 5 acres; most recent use—agricultural
GSA Number: 7–D–ND–0492

Oklahoma

Parcel No. 100/GSA No. 13
Lake Texoma
Section 25, T7S, R5E
Enos Co: Marshall OK
Location: 1 mile northeast of Enos
Landholding Agency: GSA
Property Number: 319010440
Status: Excess
Comment: 11.77 acres; most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 44/GSA No. 4
Lake Texoma
Section 15, T5S, R7E Co: Johnston OK
Location: About ½ miles southeast of Bee
Landholding Agency: GSA
Property Number: 319010475
Status: Excess
Comment: 14.98 acres, no utilities, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 46/GSA No. 5
Lake Texoma
Section 15 and Section 16, T5S, R7E Co: Johnston OK
Location: About 1 mile southwest of Bee
Landholding Agency: GSA
Property Number: 319010477
Status: Excess
Comment: 23.91 acres, no utilities, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 13/GSA No. 1
Lake Texoma

Section 7, T7S, R8E Co: Bryan OK
Location: Approximately 2 miles south of Mead, OK.
Landholding Agency: GSA
Property Number: 319011345
Status: Excess
Comment: 26.76 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 21/GSA No. 2
Lake Texoma
Section 3 T7S, R7E Co: Bryan OK
Location: Approximately 5 miles southwest of Mead, OK.
Landholding Agency: GSA
Property Number: 319011352
Status: Excess
Comment: 41.16 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H

Parcel No. 23/GSA No. 3
Lake Texoma
Section 34, T7S, R7E Co: Bryan OK
Location: Approximately 3½ miles west of Mead, OK.
Landholding Agency: GSA
Property Number: 319011354
Status: Excess
Comment: 9 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H

45 acre parcel, Sardis Lake
SE¼ NE¼ Section 4, T2N, R18E Co: Pushmataha OK 74521-
Landholding Agency: COE
Property Number: 319140004
Status: Excess
Comment: approx. 45 acres, most recent use—fish and wildlife conservation

Parcel No. 54/GSA No. 6
Lake Texoma Co: Marshall OK 73439–
Location: Section 17, 3½ miles north of Little City, OK
Landholding Agency: GSA
Property Number: 549210007
Status: Excess
Comment: 5.05 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 63/GSA No. 8
Lake Texoma Co: Marshall OK 73439–
Location: Section 19, 3½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210008
Status: Excess
Comment: 40.32 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 66/GSA No. 9
Lake Texoma Co: Marshall OK 73439–
Location: Sections 12 and 13, 2½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210009
Status: Excess
Comment: 14.05 acres, potential utilities, most recent use—low density recreation/natural gas well and pipelines.
GSA Number: 7–D–OK–0507–H

Parcel No. 78/GSA No. 11
Lake Texoma Co: Marshall OK 73439–
Location: Section 24, 1 miles east of McBride, OK
Landholding Agency: GSA
Property Number: 549210010
Status: Excess
Comment: 30.28 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 86/GSA No. 12
Lake Texoma Co: Marshall OK 73439–
Location: Section 1824, 3½ miles south of Kingston, OK
Landholding Agency: GSA
Property Number: 549210011
Status: Excess
Comment: 13 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 125/GSA No. 14
Lake Texoma Co: Marshall OK 73439–
Location: Section 17
Landholding Agency: GSA
Property Number: 549210012
Status: Excess
Comment: 11.24 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 150/GSA No. 15
Lake Texoma Co: Marshall OK 73439–
Location: Section 6
Landholding Agency: GSA
Property Number: 549210013
Status: Excess
Comment: 12.64 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 164/GSA No. 16
Lake Texoma Co: Love OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210014
Status: Excess
Comment: 40.20 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 165/GSA No. 17
Lake Texoma Co: Love OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210015
Status: Excess
Comment: 32.62 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 166/GSA No. 18
Lake Texoma Co: Love OK 73441–
Location: Section 10
Landholding Agency: GSA
Property Number: 549210016
Status: Excess
Comment: 62.61 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H

Parcel No. 68/GSA No. 10
Lake Texoma, Sect. 11 T6S, R6E
Cumberland Co: Marshall OK
Landholding Agency: GSA
Property Number: 549240010
Status: Excess
Comment: 29.76 acres, most recent use—recreation.
GSA Number: 7–D–OK–507–H

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 319011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground.

Portion of Tract 1037
Blue Marsh Lake
On PA Route 183
Bernville Co: Berks PA
Landholding Agency: GSA
Property Number: 549240011
Status: Excess
Comment: 32.45 acres Approx. 5.72 acre flowage easement and .04 acre roadway easement.
GSA Number: 4–D–PA–0765

South Carolina

E. O. Tract J
J. Strom Thurmond Dam and Reservoir (See County) Co: McCormick SC
Location: 4 miles southwest of Plum Branch SC on road to Clarks Mill Marina.
Landholding Agency: COE
Property Number: 319011514
Status: Unutilized
Comment: 57 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract C
J. Strom Thurmond Dam and Reservoir (See County) Co: McCormick SC
Location: Approximately 1 mile north of US 221 and SC 28 intersection.
Landholding Agency: COE
Property Number: 319011515
Status: Unutilized
Comment: 70 acres; potential utilities; most recent use—forest and wildlife reserve.

South Dakota

Por. of Pactola Dist. Ad. Site
803 Soo San Drive
Rapid City Co: Pennington SD 57702–
Landholding Agency: GSA
Property Number: 159130003
Status: Excess
Comment: 3.36 acres; potential utilities.
GSA Number: 7–A–SD–511

Texas

Part of Tract A–10 (See County) Co: Tarrant TX
Location: Off FM 2499 at north end of dam embankment.
Landholding Agency: COE
Property Number: 319010390
Status: Excess
Comment: 0.29 acres; most recent use—parking lot.
Part of Tract 340
Joe Pool Lake (See County) CO: Dallas TX
Landholding Agency: COE
Property Number: 31910400
Status: Unutilized
Comment: 1 acre; future use—recreation

Parcel #185/GSA No. 19
Lake Texoma Co: Cooke TX
Location: Robert Firinash survey A–368
Landholding Agency: GSA
Property Number: 31910405
Status: Excess
Comment: 31.64 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H

Virginia

St. Helena Annex (former portion)

Treadwell and South Main Streets
Norfolk Co: Norfolk VA 23523–
Landholding Agency: GSA
Property Number: 549120005
Status: Excess
Comment: 7.69 acres, most recent use—paved parking lot
GSA Number: 4–GR(2)–VA525AA

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 779010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Washington

Land

Goodnoe Hills Substation & Wind Study Site
Co: Klickitat WA 98620–
Location: 15 mi SE of Goldendale on S side of St. Hwy. 122
Landholding Agency: GSA
Property Number: 549210005
Status: Excess
Comment: 123 acres w/ a 20'x20' visitors center and a 6'x6' substation bldg. which has secured areas.
GSA Number: 9–B–WA–1017

Wyoming

Wind Site A
Medicine Bow Co: Carbon WY 82329–
Location: 3 miles south and 2 miles west of Medicine Bow
Landholding Agency: GSA
Property Number: 419030010
Status: Excess
Comment: 46.75 acres, limitation-easement restrictions

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 100
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010259
Status: Unutilized
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office space.

Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010260
Status: Unutilized
Comment: 580 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—office.

Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010261
Status: Unutilized
Comment: 3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—dining hall.

Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010262
Status: Unutilized
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—barracks.

Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010263
Status: Unutilized
Comment: 4439 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—shop.

Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010264
Status: Unutilized
Comment: 100 sq. ft.; 1 story permanent bldg; secure facilities with alternate access; most recent use—storage.

Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010265
Status: Unutilized
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—filling station

Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010266
Status: Unutilized
Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—office bowling alley.

Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010267
Status: Unutilized
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—recreation building.

Michigan

Former C. G. Lightkeeper Sta.
Little Rapids Channel Project
St. Marys River
Sault Ste. Marie Co: Chippewa MI 49783–
Location: 3 miles east of downtown Sault Ste. Marie.
Landholding Agency: COE
Property Number: 319011573
Status: Excess
Comment: 1411 sq. ft.; 2 story; wood frame on .62 acres; needs rehab; secured area with alternate access.

New York

Former Damtender's House
East Sidney Lake
Franklin Co: Delaware NY 13775–
Location: Located on the corner of Triverfold Rd. and County Rd. 44
Landholding Agency: GSA
Property Number: 319210007
Status: Excess
Comment: 1605 sq. ft., 2 story wood frame residence with 1 acre of land, asbestos shingle siding
GSA Number: 2–D–NY–814

Land (by State)

Arizona

Land—APO–GR–12–26A–09
120 Street and Mountain View
Scottsdale Co: Maricopa AZ 85259–
Location: South of Shea Boulevard and East of 120th Street
Landholding Agency: Interior
Property Number: 619240002
Status: Unutilized
Comment: 4.75 acres, easement restrictions, most recent use—acquired for construction of CAP canal.

Illinois

Libertyville Training Site
Libertyville Co: Lake IL 60048–
Landholding Agency: Navy
Property Number: 779010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Indiana

Cecil M. Harden Lake Project
Rockville Co: Parke IN 47872–
Location: Route 57 at intersection w/county road 910E.
Landholding Agency: COE
Property Number: 319011689
Status: Excess
Comment: 2.68 acres; narrow triangular shaped area of land.

Tracts 903, 905, 905–C
Patoka Lake Project
Taswell Co: Crawford IN 47527–
Location: From French Lick, IN, take SR 145S for 10 miles to intersection with SR 164, property lies east and adjacent to highway 145.
Landholding Agency: COE
Property Number: 319030003
Status: Excess
Comment: 22.35 acres; limited utilities.

Tracts 142–A, 143
Patoka Lake Project
Dubois Co: Dubois IN 47527–9661
Location: From French Lick, IN take SR 145 S. for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then right for ¼ mile to property.
Landholding Agency: COE
Property Number: 319030004
Status: Excess
Comment: 21.30 acres; limited utilities; subject to periodic flooding

Tract 142–B

Patoka Lake Project
Dubois Co: Dubois IN 47527–9661
Location: From French Lick, IN take SR 145 S for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then right for ¼ mile to property.
Landholding Agency: COE
Property Number: 319030005
Status: Excess
Comment: 4.74 acres; limited utilities; subject to periodic flooding.

Tract 601
Patoka Lake Project
French Lick Co: Orange IN 47527–
Location: IN. State Highway 145 south to Jordan Branch Road, Property abuts east right-of-way for Jordan Road.
Landholding Agency: COE
Property Number: 319030006
Status: Excess
Comment: 0.41 acre; limited utilities.

Kansas

Parcel #1
Fall River Lake
Section 26 (See County) Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010065
Status: Unutilized
Comment: 155 acres; most recent use—recreation and leased cottage sites.

Parcel #2
Fall River Lake
Section 25 and 26 (See County) Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010066
Status: Excess
Comment: 38.62 acres; most recent use—recreation

Parcel #3
Fall River Lake
Section 26 (See County) Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010067
Status: Excess
Comment 22.44 acres; most recent use—recreation.

Parcel No. 2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado Co: Butler KS
Landholding Agency: COE
Property Number: 319210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area

Kentucky

Tract B—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130002
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding

Tract A—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130003
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding

Tract C—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130005
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 319010016
Status: Excess
Comment: 1.45 acres.

Conant Brook Dam
Flood Control Dam
Wales Road
Monson Co: Hampden MA 01057–
Location: Portion of Tract 211
Landholding Agency: COE
Property Number: 319010017
Status: Excess
Comment: 5.27 acres

Hodges Village
Dam Flood Control Project
Old Howarth Road
Oxford Co: Worcester MA 01540–0500
Location: Portion of Tract A–108, See Project Manager at Hodges Village Dam, Oxford, MA (508) 987–2600.
Landholding Agency: COE
Property Number: 319011006
Status: Excess
Comment: 6.02 acres; 3 acres paved road, subject to utility easement.

Michigan

Marine Corps Reserve Center
3109 Collingwood Parkway
Flint MI 48502–
Landholding Agency: Navy
Property Number: 779240019
Status: Excess
Comment: 5 acres, previously had four bldgs on it.

Ohio

Middleport Public Access Site
Gallipolis Locks & Dam
Middleport Co: Meigs OH 45760–
Landholding Agency: COE
Property Number: 319230001
Status: Underutilized
Comment: approximately 17.23 acres including parking lot, flowage easement, right-of-way for city street and utilities

Oklahoma

Parcel No. 7
Kaw Lake
Section 27 (See County) Co: Kay OK
Landholding Agency: COE
Property Number: 319010842
Status: Excess
Comment: 21 acres; potential utilities; most recent use—recreation.

Pennsylvania

Dashields Locks and Dam (Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 319210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 319010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Texas

Tract J–957
Whitney Lake
Bosque Co: Bosque TX
Location: Via Avenue B within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110029
Status: Unutilized
Comment: .18 acres; potential utilities; encroachments on large portion of property.

Tract J–936
Whitney Lake
Bosque Co: Bosque TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110032
Status: Unutilized
Comment: 5.4 acres; potential utilities.

Tract F–516 O.C. Fisher Lake
Parallel with Grape Creek Road
San Angelo Co: Tom Green TX 76902–3085
Landholding Agency: COE
Property Number: 319120002
Status: Unutilized
Comment: 2.13 acres, potential limited utilities
GSA Number: 7–D–TX–0968–A

Part of Tract 102 Segment 1
Bardwell Dam Road
Ennis Co: Ellis TX 75119–
Landholding Agency: COE
Property Number: 319140014
Status: Unutilized
Comment: approx. 6.38 acres

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 319240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land.

Part of Tract E–434
FM Hwy 720 (Lewisville Lake)
Little Elm Co: Denton TX 76068–
Landholding Agency: COE
Property Number: 319310005
Status: Unutilized
Comment: 0.375 acre, frontage on paved highway

Unsuitable Properties

Buildings (by State)

Alaska

Sand Shed, Map Grid 45024

Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120004
Status: Unutilized
Reason: Secured Area

LORAN Station, Map Grid 09L11
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120006
Status: Unutilized
Reason: Secured Area

Bldg. 10196
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310021
Status: Unutilized
Reason: Secured Area

Bldg. 10517
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310022
Status: Unutilized
Reason: Secured Area

Bldg. 10518
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310023
Status: Unutilized
Reason: Secured Area

Bldg. 10535
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310024
Status: Unutilized
Reason: Secured Area

Bldg. 10538
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310025
Status: Unutilized
Reason: Secured Area

Bldg. 10539
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310026
Status: Unutilized
Reason: Secured Area

Bldg. 10540
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310027
Status: Unutilized
Reason: Secured Area

Bldg. 10603
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310028
Status: Unutilized
Reason: Secured Area

Arkansas

Winston Spring House
Garfield Co: Benton AR 72732–
Landholding Agency: Interior
Property Number: 619320001
Status: Excess
Reason: Other
Comment: Extensive deterioration

California

5 bungalows
125 South Grand Avenue
Pasadena Co: Los Angeles CA 91105–
Landholding Agency: GSA
Property Number: 549230012
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. 105
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010159
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 165
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010160
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 146
Naval Facilities Point Sur CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010268
Status: Unutilized
Reason: Other
Comment: sewer treatment facility

Colorado

Former Spickerman House
Bear Creek Lake
Lakewood Co: Jefferson CO
Landholding Agency: COE
Property Number: 319240013
Status: Unutilized
Reason: Floodway
Comment: Extensive deterioration

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010101
Status: Excess
Reason: Within airport runway clear zone

Cosgrove Shoal Light (offshore) Straits of Florida Co: Monroe FL
Landholding Agency: DOT
Property Number: 879320007
Status: Unutilized
Reason: Floodway
Comment: Extensive deterioration

Smith Shoal Light (offshore) Straits of Florida Co: Monroe FL
Landholding Agency: DOT
Property Number: 879320008
Status: Unutilized
Reason: Floodway Other
Comment: Extensive Deterioration

Pulaski Shoal Light (offshore) Gulf of Mexico Co: Monrue FL
Landholding Agency: DOT
Property Number: 879320009
Status: Unutilized
Reason: Floodway Other
Comment: Extensive Deterioration

Georgia

Naval Submarine Base-Kings Bay
1011 USS Daniel Boone Avenue
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010107
Status: Unutilized
Reason: Secured Area

Guam

Bldg. 96
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540–1400
Landholding Agency: Navy
Property Number: 779240018
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230012
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material Other
Comment: Extensive Deterioration

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230013
Status: Unutilized
Reason: Secured Area Other
Comment: Extensive Deterioration

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230014
Status: Unutilized
Reason: Secured Area Other
Comment: Extensive deterioration

Facility 189, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310045
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

Facility 342, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310046
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

Facility 343, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310047
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

Facility S6194
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–

Landholding Agency: Navy
Property Number: 779310048
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

Facility S7124
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310049
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

Facility 5985
Naval Station Pearl Harbor
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779310086
Status: Excess
Reason: Other
Comment: Extensive deterioration

Illinois

Bldg. 928
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010120
Status: Underutilized
Reason: Secured Area

Bldg. 28
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010123
Status: Underutilized
Reason: Secured Area

Bldg. 25
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010126
Status: Underutilized
Reason: Secured Area

South Wing—Building No. 62
Great Lakes Co: Lake IL 60088–5000
Landholding Agency: Navy
Property Number: 779110001
Status: Underutilized
Reason: Secured Area

Bldg. 235
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310039
Status: Underutilized
Reason: Secured Area

Bldg. 2B
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310040
Status: Underutilized
Reason: Secured Area

Bldg. 90
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310041
Status: Underutilized
Reason: Secured Area

Bldg. 232
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310042
Status: Underutilized
Reason: Secured Area

Bldg. 233
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310043
Status: Underutilized
Reason: Secured Area

Bldg. 234
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310044
Status: Underutilized
Reason: Secured Area

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 219040416
Status: Unutilized
Reason: Other
Comment: Spring House

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfurt Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 219040417
Status: Unutilized
Reason: Other
Comment: Coal Storage

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfurt Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 219040418
Status: Unutilized
Reason: Other
Comment: Coal Storage

Barn
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 219040419
Status: Underutilized
Reason: Other
Comment: 110 year old barn with crumbled foundation.

Tract 111—Building
Martins Fork Lake
Smith Co: Harlan KY 40867–
Location: 13 miles southeast of Harlan on Highway 987.
Landholding Agency: COE
Property Number: 319010062
Status: Unutilized
Reason: Floodway

Latrine
Kentucky River Lock and Dam Number 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 319040009
Status: Unutilized
Reason: Other
Comment: Detached Latrine

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120010
Status: Unutilized
Reason: Floodway

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120011
Status: Unutilized
Reason: Floodway

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120012
Status: Unutilized
Reason: Floodway

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Landholding Agency: COE
Property Number: 319120013
Status: Unutilized
Reason: Floodway

Maine

Bldg. 7, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230004
Status: Excess
Reason: Within airport runway clear zone Secured Area

Bldg. 10, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230005
Status: Excess
Reason: Within airport runway clear zone Floodway

Bldg. 93, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230006
Status: Excess
Reason: Secured Area

Bldg. 614, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230007
Status: Excess
Reason: Secured Area

Bldgs. 101–107
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230008
Status: Excess
Reason: Secured Area

Bldg. 186
Naval Air Station
Brunswick Co: Cumberland ME 04011–

Landholding Agency: Navy
Property Number: 779230009
Status: Excess
Reason: Secured Area

Bldg. 192
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230010
Status: Excess
Reason: Secured Area

Bldgs. 202–208
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779230011
Status: Excess
Reason: Secured Area

Bldgs. 293, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779240015
Status: Excess
Reason: Secured Area

Minnesota

Daryll Schwieger—Cabin Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320002
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Kenneth Krienke—Cabin Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320003
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Nebraska

Papio Dam Site 18
Papio Creek and Tributaries
Omaha Co: Douglas NE 68130–
Landholding Agency: COE
Property Number: 319240009
Status: Unutilized
Reason: Floodway, Other
Comment: Extensive Deterioration

New Mexico

Farmington Office and Yard
900 La Plata Highway
Farmington Co: San Juan NM 87499–
Landholding Agency: Interior
Property Number: 619010001
Status: Unutilized
Reason: Within airport runway clear zone

New York

Bldg. 204
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island Co: Suffolk NY 06390–
Landholding Agency: Navy
Property Number: 779010270
Status: Excess
Reason: Secured Area

Bldg. 255
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island Co: Suffolk NY 06390–
Landholding Agency: Navy
Property Number: 779010271
Status: Excess
Reason: Secured Area

Bldg. T–370
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island Co: Suffolk NY 06390–
Landholding Agency: Navy
Property Number: 779010272
Status: Excess
Reason: Secured Area

North Carolina

Bldg. 21, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320010
Status: Unutilized
Reason: Floodway, Secured Area

Bldg. 22, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320011
Status: Unutilized
Reason: Floodway, Secured Area

Bldg. 25, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320012
Status: Unutilized
Reason: Floodway, Secured Area

Bldg. 27, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320013
Status: Unutilized
Reason: Floodway, Secured Area

Bldg. 32, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320014
Status: Unutilized
Reason: Floodway, Secured Area

Ohio

William H. Harsha Lake Bldg.
3782 Williamsburg-Bantam Road
Batavia Co: Clermont OH 45106–
Landholding Agency: COE
Property Number: 319240011
Status: Unutilized
Reason: Other
Comment: Structural damage

Oregon

Eugene District Office Site
751 South Danebo
Eugene Co: Lane OR 97402–
Landholding Agency: Interior
Property Number: 619010003
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Pennsylvania

Bldg. 62
Philadelphia Naval Shipyard
Philadelphia Co: Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 779010112
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Rhode Island

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 779010273
Status: Excess
Reason: Secured Area

Parcel 3, Oil Storage Tank
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310036
Status: Excess, Base closure
Number of Units: 1
Reason: Other environmental
Comment: Oil Storage Tank

Parcel 4A
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310037
Status: Excess, Base closure
Number of Units: 1
Reason: Other
Comment: Electric Substation

South Dakota

Booster Station
Tract #1, Mapleton Township Co: Minnehaha SD 57101–
Landholding Agency: GSA
Property Number: 549230006
Status: Excess
Reason: Other
Comment: Extensive deterioration
GSA Number: 7–I–SD–480–A

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011499
Status: Unutilized
Reason: Floodway

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011503
Status: Underutilized
Reason: Floodway

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140011
Status: Excess
Reason: Other
Comment: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140012

Status: Excess
Reason: Other
Comment: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140013
Status: Excess
Reason: Other
Comment: water treatment plant

Texas

Bldg. 14
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014823
Status: Excess
Reason: Other
Comment: Pump house
GSA Number: 7–D–TX–879A

Bldg. 2426
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010279
Status: Underutilized
Reason: Floodway

Bldg. 2432
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010280
Status: Underutilized
Reason: Floodway

Bldg. 2476
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010281
Status: Underutilized
Reason: Floodway

Bldg. 2498
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010282
Status: Underutilized
Reason: Floodway

Bldg. 2504
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010283
Status: Underutilized
Reason: Floodway

Bldg. 1730
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010284
Status: Underutilized
Reason: Floodway

Bldg. 2422
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010285
Status: Underutilized
Reason: Floodway

Bldg. 2425
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010286
Status: Underutilized
Reason: Floodway

Bldg. 2430
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010287
Status: Underutilized
Reason: Floodway

Bldg. 2434
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010288
Status: Underutilized
Reason: Floodway

Bldg. 2449
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010289
Status: Underutilized
Reason: Floodway

Bldg. 2450
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010290
Status: Underutilized
Reason: Floodway

Bldg. 2453
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010291
Status: Underutilized
Reason: Floodway

Bldg. 2455
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010292
Status: Underutilized
Reason: Floodway

Bldg. 2456
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010293
Status: Underutilized
Reason: Floodway

Bldg. 2463
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010294
Status: Underutilized
Reason: Floodway

Bldg. 2483
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010295
Status: Underutilized
Reason: Floodway

Bldg. 2516
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010296
Status: Underutilized
Reason: Floodway

Bldg. 2524
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010297
Status: Underutilized
Reason: Floodway

Bldg. 2528
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010298
Status: Underutilized
Reason: Floodway

Bldg. 2137, Aircraft Hangar
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210015
Status: Excess, Base closure
Number of Units: 1
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 1032, Warehouse
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103–
Landholding Agency: Navy
Property Number: 779210016
Status: Excess, Base closure
Number of Units: 1
Reason: Other Comment: Structural deterioration

3 Storage Bldgs.
USCG Corpus Christi Group Detachment
Corpus Christi Co: Nueces TX 78407–
Landholding Agency: DOT
Property Number: 879320015
Status: Unutilized
Reason: Floodway, Secured Area

Washington

Bldg. 57
Naval Supply Center Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 47 (Report 1)
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010230
Status: Unutilized
Reason: Secured Area

Bldg. 26
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115–
Landholding Agency: Navy
Property Number: 779310085
Status: Excess, Base closure
Number of Units: 1
Reason: Other Comment: Extensive Deterioration

West Virginia

Parsons Nursery Bottom Bldgs.
Adj. US Rt 219, ¼ miles east
Parsons Co: Tucker WV 26287–
Landholding Agency: Agriculture
Property Number: 159320001
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Mary Conrad Roadside Park Bldg
Brownsville Road
Weston Co: Lewis WV 26452–9677
Landholding Agency: COE
Property Number: 319240012
Status: Underutilized
Reason: Floodway

Land (by State)

Alaska

Nike Site, Tract 104
Jig Battery "D"
Eielson Defense Area
Fairbanks Co: Fairbanks AK 99701–
Landholding Agency: GSA
Property Number: 549120001
Status: Excess
Reason: Other
Comment: Property is landlocked
GSA Number: 9–D–AK–506–AD

Arizona

Portion, Gila River
Buckeye Co: Maricopa AZ 85337–
Landholding Agency: GSA
Property Number: 549240005
Status: Excess
Reason: Floodway
GSA Number: 9–GR–AZ–533

California

Portion, Travis AFB
6 miles southeast of Vacaville
Travis AFB Co: Solano CA 94535–
Landholding Agency: GSA
Property Number: 549220012
Status: Surplus
Reason: Floodway
GSA Number: 9–D–CA–499L

Central Valley Project
San Luis Drain
Tracy Co: San Joaquin CA 95376–
Landholding Agency: GSA
Property Number: 549230003
Status: Excess
Reason: Other
Comment: Landlocked
GSA Number: 9–I–CA–1325

Parcel B
Santa Rosa Co: Sonoma CA
Landholding Agency: GSA
Property Number: 549310016
Status: Excess
Reason: Other
Comment: Sewage Treatment Plant
GSA Number: 9–G–CA–580C

Salton Sea Test Range
El Centro Co: Imperial CA 93555–
Landholding Agency: Navy
Property Number: 779010068
Status: Excess
Reason: Secured Area

Colorado

Sunset Canyon Field Station
Boulder Co: Boulder CO 80302–
Location: 5 miles west of Wall Street on County Road 118
Landholding Agency: GSA
Property Number: 549030019
Status: Excess
Reason: Floodway
GSA Number: 7–C–CO–602

Florida

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 779010097
Status: Unutilized
Reason: Floodway

East Martello Battery #2
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010275
Status: Excess
Reason: Within airport runway clear zone

Georgia

(P) Dobbins AFB/(P) NAS Atlanta
N.E. Quadrant of Intersection between Fairground & South Cobb Drive
Marietta Co: Cobb GA 30060–
Landholding Agency: GSA
Property Number: 549140001
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 4–GR–GA–557 & 4–GR–GA–587A

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay Co: Camden GA 31547–
Landholding Agency; Navy
Property Number: 779010228
Status: Underutilized
Reason: Secured Area

Illinois

1.6 acres of land
Rock Island Arsenal
South Shore Mississippi River Moline Pool
Moline Co: Rock Island IL 61299–
Landholding Agency: GSA
Property Number: 549310009
Status Excess
Reason: Floodway
GSA Number: 2-D-IL-620-B

Indiana

Portion of Tract No. 1224
Salamonie Lake
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310001
Status: Unutilized
Reason: Other
Comment: Landlocked

Kentucky

Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from US Highway 68
Landholding Agency: COE
Property Number: 319010030
Status: Underutilized
Reason: Floodway

Tract AA-2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010038
Status: Underutilized
Reason: Floodway

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010039
Status: Underutilized
Reason: Floodway

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 319010043
Status: Excess
Reason: Floodway

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 319011684
Status: Unutilized
Reason: Floodway

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 319120008
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120009
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288–
Location: Off State Hwy 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 319120014
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 319120015
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 319120016
Status: Underutilized
Reason: Floodway

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 319120017
Status: Unutilized
Reason: Floodway

Tract 6404, Cave Run Lake
U.S. Hwy 460
Index Co: Morgan KY
Landholding Agency: COE
Property Number: 319240005
Status: Underutilized
Reason: Floodway

Tract 6803, Cave Run Lake

State Road 1161
Pomp Co: Morgan KY
Landholding Agency: COE
Property Number: 319240006
Status: Underutilized
Reason: Floodway

E.C. Clements Job Corps Cntr.
1 Mile East of Morganfield, KY
Morganfield Co: Union KY 42437–
Landholding Agency: GSA
Property Number: 549120002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone
GSA Number: 4–L–KY–432–E

Louisiana

Land
Louisiana Army Ammunition Plant
Doyline Co: Webster LA
Landholding Agency: GSA
Property Number: 219013923
Status: Excess
Reason: Other
Comment: Barrow pit, predmoninately under water
GSA Number: 7–D–LA–0435D

Maryland

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 319240007
Status: Underutilized
Reason: Floodway

5,635 sq. ft. of Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 779230001
Status: Excess
Reason: Other
Comment: Drainage Ditch

Minneosta

Parcel G
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake between highways 6 and 371
Landholding Agency: COE
Property Number: 319011037
Status: Excess
Reason: Other
Comment: Highway right of way

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011018
Status: Underutilized
Reason: Within airport runway clear zone

Missouri

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden Co: Dunklin MO
Landholing Agency: COE
Property Number: 319130001
Status: Unutilized
Reason: Floodway

Union Lake
Sec 7, Twshp 42 north, Ranger West
Beaufort Co: Franklin MO
Landholding Agency: COE
Property Number: 319240008
Status: Unutilized
Reason: Floodway

Montana

Sherryl Tap Point Site
3 miles south of Drummond, MT Co: Granite MT
Landholding Agency: GSA
Property Number: 549240006
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 7–B–MT–0598

North Carolina

Land
Atlantic Intracoastal Waterway
(See County) Co: Corrituck NC
Location: Near old Coinjack Bridge
Landholding Agency: COE
Property Number: 319011537
Status: Unutilized
Reason: Floodway

Ohio

Ohio River
Pike Island Lock and Dam
RD #1, Box 33
Tiltonsville Co: Jefferson OH
Landholding Agency: COE
Property Number: 319011561
Status: Underutilized
Reason: Floodway

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner Co: Morrow OR 77836–
Location: Located up hill from the left abutment of the dam structure.
Landholding Agency: GSA
Property Number: 319011687
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–D–OR–708

Reedsport Substation
North 22nd Street
Reedsport Co: Douglas OR 97467–
Landholding Agency: GSA
Property Number: 549310003
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–B–OR–701

Pennsylvania

Land
Raystown Lake
Huntingdon Co: Huntingdon PA
Location: Downstream of Raystown Lake
Landholding Agency: COE
Property Number: 219040420
Status: Excess
Reason: Other
Comment: Property Landlocked

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project.
Landholding Agency: COE
Property Number: 319011564
Status: Unutilized
Reason: Floodway

Lock and Dam #3
Monongahela River
Elizabeth Co: Allegheny PA 15037–0455
Landholding Agency: COE
Property Number: 319240014
Status: Unutilized
Reason: Floodway

Puerto Rico

119.3 acres
Culebra Island PR 00775–
Landholding Agency: Interior
Property Number: 619210001
Status: Excess
Reason: Floodway

Destino Tract
Eastern Maneuver Area
Vieques PR 00765–
Landholding Agency: Navy
Property Number: 779240016
Status: Excess
Reason: Other
Comment: Inaccessible

Punta Figueras–Naval Station
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 779240017
Status: Excess
Reason: Floodway

South Carolina

Land—2.66 acres
Port Royal Co: Beaufort SC 29902–6148
Landholding Agency: GSA
Property Number: 54920009
Status: Excess
Reason: Floodway

Tennessee

McClure Bend
Cordell Hull Dam and Reservoir
Carthage Co: Smith TN 37030–
Location: Highway 85 to McClure Bend Road.
Landholding Agency: COE
Property Number: 219040412
Status: Underutilized
Reason: Floodway

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835- 837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 219040413
Status: Underutilized
Reason: Floodway

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 219040415
Status: Underutilized
Reason: Floodway

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 319011478
Status: Underutilized

Reason: Floodway

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011479
Status: Excess
Reason: Floodway

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011480
Status: Unutilized
Reason: Floodway

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011481
Status: Unutilized
Reason: Floodway

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011482
Status: Underutilized
Reason: Floodway

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granvill Co: Smith TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011483
Status: Underutilized
Reason: Floodway

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 319011484
Status: Underutilized
Reason: Floodway

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011485
Status: Underutilized
Reason: Floodway

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011486
Status: Unutilized
Reason: Floodway

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011487
Status: Unutilized
Reason: Floodway

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011488
Status: Underutilized
Reason: Within airport runway clear zone; Floodway

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011489
Status: Unutilized
Reason: Floodway

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011490
Status: Unutilized
Reason: Floodway

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 319011491
Status: Unutilized
Reason: Floodway

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011492
Status: Unutilized
Reason: Floodway

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214–
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167–
Location: Florence road near Enon Springs Road
Landholding Agency: COE
Property Number: 319011494
Status: Underutilized
Reason: Floodway

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167–
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 319011497
Status: Underutilized
Reason: Floodway

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564–
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway

Tract 104 et al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road

Landholding Agency: COE
Property Number: 319120007
Status: Underutilized
Reason: Floodway

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138–
Landholding Agency: COE
Property Number: 319130008
Status: Underutilized
Reason: Floodway

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake
(See County) Co: Dallas TX
Landholding Agency: COE
Property Number: 319010397
Status: Underutilized
Reason: Floodway

Part of Tract 201–3
Joe Pool Lake
(See County) Co: Dallas TX
Landholding Agency: COE
Property Number: 319010398
Status: Underutilized
Reason: Floodway

Part of Tract 323
Joe Pool Lake
(See County) Co: Dallas TX
Landholding Agency: COE
Property Number: 319010399
Status: Underutilized
Reason: Floodway

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 319010401
Status: Underutilized
Reason: Floodway

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 319010402
Status: Unutilized
Reason: Floodway

Virginia

0.07 Acre, Dismal Swamp Canal
West of U.S. Rt. 17
Chesapeake VA
Landholding Agency: COE
Property Number: 319210012
Status: Unutilized
Reason: Other
Comment: Inaccessible.

Washington

Land (Report 2), 234 acres
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010231
Status: Unutilized
Reason: Secured Area.

West Virginia

Ohio River
Pike Island Locks and Dam
Buffalo Creek
Wellsburg Co: Brooke WV
Landholding Agency: COE
Property Number: 319011529
Status: Unutilized
Reason: Floodway

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126–
Location: 20 miles east of Charleston, W. Virginia
Landholding Agency: COE
Property Number: 319011690
Status: Unutilized
Reason: Other
Comment: .03 acres; very narrow strip of land located too close to busy highway.

[FR Doc. 93–11954 Filed 5–20–93; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–920–93–4120–03; COC 54708]

Colorado; Invitation for Coal Exploration License Application, Cyprus Yampa Valley Coal Corp.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to title 43, Code of Federal Regulations, subpart 3410, members of the public are hereby invited to participate with Cyprus Yampa Valley Coal Corporation in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Routt County, Colorado:

T. 5 N., R. 86 W., 6th P.M.
Sec. 21, N½, and SE¼;
Sec. 22, E½E½, and W½;
Sec. 23, all;
Sec. 26, NW¼NE¼, NW¼, and N½SW¼;
Sec. 27, W½;
Sec. 28, NE¼, and E½NW¼;
Sec. 33, NE¼NE¼.

The area described contains approximately 2,480 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 54708 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after the publication of the Notice of Invitation in the **Federal Register**:

Richard D. Tate, Chief, Mining Law and Solid, Minerals Adjudication Section, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, and
Cyprus Yampa Valley Coal Corporation, Charles N. Thompson or Richard Mills, 29587 Routt County Road 27, Oak Creek, Colorado 80467.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: May 14, 1993.

Richard D. Tate,

Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 93–12027 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–JB–M

[NV–030–93–5101–09–XFKL; N51606]

Availability of Draft Bedell Flat Pipelines Rights-of-Way Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the draft Bedell Flat Pipelines Rights-of-Way Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Carson City District, has directed the preparation of a Draft Environmental Impact Statement (EIS) by a third party contractor. It analyzes the impact of a proposal by Washoe County, Nevada, for pipeline rights-of-way across public land to accommodate a portion of the facilities needed for Washoe County's project to transport water from eastern Honey Lake Valley, Nevada, through Bedell Flat to Lemmon Valley, Nevada.

DATES: Please submit written comments by July 23, 1993. Those who wish to comment in person, are welcome to attend these public hearings:

June 23, 1993, in Reno, Nevada, at the Holiday Inn, 1000 East 6th St., 7 p.m.
June 24, 1993, in Susanville, California, at Lassen High School, 7 p.m.

ADDRESSES: Please address written comments to: James M. Phillips, Lahontan Area Manager, U.S. Bureau of Land Management, 1535 Hot Springs Rd., suite 300, Carson City, NV 89706–0638.

FOR FURTHER INFORMATION CONTACT: David Loomis, EIS Project Manager, U.S. Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706–0638; (702) 885–6149.

SUPPLEMENTARY INFORMATION: The Draft EIS is a cooperative effort of the U.S. Bureau of Land Management as lead agency and its cooperating agencies, the U.S. Environmental Protection Agency; the U.S. Fish and Wildlife Service; the Pyramid Lake Paiute Tribe; the U.S. Army, Sierra Army Depot; the U.S. Geological Survey and the U.S. Bureau of Indian Affairs. The Draft EIS analyzes Washoe County's proposed pipeline rights-of-way and four alternatives: the Winnemucca Valley route, the Red Rock Valley route, the Antelope Valley route and the no-action alternative. Washoe County's proposal is intended to transport water from Fish Springs Ranch in Honey Lake Valley, Nevada, to Lemmon and Spanish Springs Valleys to serve projected population growth in those valleys.

Copies of the Draft EIS are available for review at public libraries in Washoe County, Nevada and Lassen County, California; the Nevada State Library in Carson City; and the libraries of the University of Nevada, Reno; the University of Nevada, Las Vegas; and Lassen Community College in Susanville, California. A limited number of copies will be available from the Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada, 89706–0638; phone (702) 885–6100. Public reading copies will be available for review at the following BLM locations:

Nevada State Office, 850 Harvard Way, Reno, Nevada 89520.
California State Office, 2800 Cottage Way, room E–2841, Sacramento, California 95825.
Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706.
Susanville District Office, 705 Hall Street, Susanville, California 96130.
Eagle Lake Resource Area, 471–850 Johnstonville Drive, Susanville, California 96130.

Dated: May 17, 1993.

Billy R. Templeton,

Nevada State Director.

[FR Doc. 93–12062 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–HC–M

Bureau of Land Management

[OR–015–03–4340–03: GP3–226]

Plan Amendment for Vegetation Management, Lake View, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of open house.

SUMMARY: The United States Bureau of Land Management (BLM) announces the availability, for public review and comment, of a proposed Plan Amendment and Environmental Assessment of the Warner Lakes Management Framework Plan. This amendment addresses the impacts of three alternatives proposed for the management of 13,000 acres of BLM administered lands. This affects portions of the Lakeview Resource Area in Lake County, Oregon, Washoe County, Nevada and Modoc County, California.

DATES: Written comments on the proposed Plan Amendment must be submitted by July 15, 1993. All comments must be sent to: Lakeview District Manager, Lakeview District Office, Post Office Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630. There will be an open house meeting to discuss provisions of the plan amendment, to answer questions and to accept comments in the Lakeview District Office conference room located at the above address. This open house meeting will be held on June 24, 1993 from 1–5 p.m. and resuming at 7–9 p.m. A tour will also be conducted of the plan area on June 25, 1993 leaving the Lakeview District Office at 10 a.m.

A copy of the proposed plan amendment will be sent to all individuals, Government agencies and groups who have expressed an interest in the Warner Lakes planning process. In addition, review copies may be examined at:

BLM State Office, Office of Planning and Environmental Coordination, 1300 NE 44th Avenue, Portland, OR 97208–0039 or
BLM Lakeview District Office, 1000 South Ninth Street, Lakeview, OR 97630 or
Lake County Library, Courthouse, Lakeview, OR 97630.

FOR FURTHER INFORMATION CONTACT: Alan Munhall, Lakeview District Office, Post Office Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630, (Telephone 503–947–2177).

SUPPLEMENTARY INFORMATION: A draft of the planning criteria and possible alternatives was identified in the scoping document dated December 10, 1992. As a result of public response to the scoping document, three alternatives were developed. A brief description of each is as follows:

Alternative 1

The present management alternative, discusses the existing management direction for watershed, wildlife and recreation along with other uses. This alternative corresponds to the No Action Alternative required by National Environmental Policy Act (NEPA).

Alternative 2

Allows juniper management to meet watershed, wildlife and riparian objectives excluding the Fish Creek Rim Wilderness Study Area (WSA).

Alternative 3

Allows juniper management to meet watershed, wildlife and riparian objectives including areas inside the WSA.

Dennis Simontacchi,

Acting District Manager.

[FR Doc. 93–11969 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–33–M

Bureau of Land Management

[NV–010–93/94–4370–03]

Public Hearing To Discuss the Use of Helicopters and Motorized Vehicles To Gather Wild Horses

AGENCY: BLM, Interior.

ACTION: Public Hearing to Discuss the Use of Helicopters and Motorized Vehicles to Gather Wild Horses During FY 93 & 94 on the Elko BLM District.

SUMMARY: The hearing is open to the public. Interested persons may make oral or written statements. Anyone wishing to make oral comments should contact Bruce E. Portwood, Elko District, Wild Horse Specialist by July 6, 1993. Written statements must be received by this date also.

DATES: July 6, 1993; 1 p.m.

ADDRESSES: Bureau of Land Management, 3900 E. Idaho Street, P.O. Box 831, Elko, Nevada 89803.

FOR FURTHER INFORMATION CONTACT: Bruce E. Portwood at (702) 753–0200.

Dated: May 12, 1993.

Rodney Harris,

District Manager, Elko, Nevada.

[FR Doc. 93–12028 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–HC–M

[ID–020–4210–05; I–29493]

Realty Action, Sale of Public Land in Cassia County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public land in Cassia County.

SUMMARY: The following described public land has been examined and through the public supported land use planning process has been determined

to be suitable for disposal by direct sale to Cassia County pursuant to section 203 of the Federal Land Policy and Management Act of 1976 at no less than the appraised fair market value of $2,500.00. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Boise Meridian, Idaho

T. 13 S., R. 27 E.
Sec. 21: SW¼NW¼SW¼
Containing 10 acres, more or less.

The patent, when issued, will be subject to all valid existing rights (i.e., rights-of-way, etc.). It will also contain a reservation to the United States for ditches and canals, oil and gas, and geothermal resources.

DATES: On May 21, 1993, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Bureau of Land Management, Burley District Office, Route 3 Box 1, Burley, ID 83318.

FOR FURTHER INFORMATION CONTACT: Scott Barker, Realty Specialist, at the address shown above or (208) 678–5514.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to Cassia County in conjunction with the Southern Idaho Regional Solid Waste District, based on their need to establish a system of solid waste transfer stations throughout the county.

It has been determined that the subject parcel does not contain significant salable or locatable mineral values; therefore, those mineral interests will be conveyed simultaneously. A separate nonrefundable filing fee of $50.00 is required from the purchaser for conveyance of the mineral interests. The leasable mineral estate, as described above, will be reserved in the patent.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Burley District, at the above address. Any adverse comments will be reviewed by the District Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review by the State Director who may sustain, vacate, or modify this realty action. This realty action will become the final determination of the Department of the Interior.

Dated: May 14, 1993.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 93–12029 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–GG–M

[NM–030–4210–05; NMNM89241]

Recreation and Public Purpose Lease, Socorro County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Socorro County, New Mexico has been examined and found suitable for classification for lease or conveyance to the San Antonio Mutual Domestic Water Consumers Association (SAMDWCA) under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.) SAMDWCA proposes to use the land for a maintenance yard/materials storage area with office and meeting space.

New Mexico Principal Meridian, New Mexico

T. 4 S., R. 1 E.,
Sec. 31, Portions of NE¼NE¼SE¼NE¼.
Containing 1.0 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance of the land for recreational or public purpose use is consistent with current BLM land use planning and would be in the public interest.

DATES: Interested parties may submit comments on the recreation and public purpose lease on or before July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Jon Hertz, Socorro Resource Area Office, 198 Neel Ave., Socorro, New Mexico, 87801 or at (505) 835–0412.

ADDRESSES: Comments should be sent to District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

SUPPLEMENTARY INFORMATION: Lease or conveyance of the land will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
3. All valid existing rights documented on the official public land records at the time of lease/patent issuance.
4. All minerals shall be reserved to the United States, together with the right to prospect, mine, and remove the minerals.
5. Any other reservations that the authorized office determines appropriate to ensure public access and proper management of Federal land and interest therein.
6. Those rights for electric power purposes granted to the Socorro Electric Cooperative by right-of-way grants NMNM 0370905 and NMNM 014159, and those rights for water pipeline and access roads purposes granted to the SAMDWCA by right-of-way grant NMNM 20855.

Upon publication of this Notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands on or within 45 days of the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a maintenance yard/materials storage area, with office and meeting space.

Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a maintenance yard/materials storage area, with office and meeting space.

Adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: May 14, 1993.

Stephanie Hargorve,

Associate District Manager.

[FR Doc. 93–11971 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–FB–M

[WY–060–4210–05; WYW94502]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands in Crook County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 Stat. 2750; 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

T. 57 N., R. 66 W.,
Sec. 33, lots 1, 2.

The above land aggregates 45.58 acres in Crook County.

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Area Manager, Bureau of Land Management, Newcastle Resource Area, 1101 Washington Blvd., Newcastle, Wyoming 82701, 307–746–4453.

SUPPLEMENTARY INFORMATION: This sale is consistent with Bureau of Land Management policies and the Newcastle Management Framework Plan. The purpose of this sale is to dispose of an isolated parcel of public land. The fair market values, planning document, and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Newcastle Resource Area, Newcastle, Wyoming.

The parcel will be offered by direct sale to the adjoining landowner. The adjoining landowner will be required to submit proof of adjoining land ownership before a bid can be accepted.

The publication of this Notice of Realty Action in the **Federal Register** shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant if the Notice segregates the land from the use applied for in the application. The segregative effect of this Notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation Notice is published, whichever occurs first.

Sale Procedures

1. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

2. Sealed bidding is the only acceptable method of bidding. All bids must be received in the Newcastle Resource Area Office by 11 a.m., July 28, 1993, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked on the front lower left-hand corner with the words "Public Land Sale, (W–94502), Sale held July 28, 1993."

3. All sealed bids must be accompanied by a payment of not less than 10 percent of the total bid. Each bid and final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: Department of the Interior-BLM.

4. Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be honored or the land will be reoffered under competitive procedures. If two or more envelopes containing valid bids of the same amount are received, supplemented sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

5. If the parcel fails to sell, it will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Newcastle Resource Area Office by 11 a.m. on the fourth Wednesday of each month beginning August 25, 1993. Reoffered land will remain available for sale until sold or until the sale action is cancelled or terminated. Reappraisals of the parcel will be made periodically to reflect the current fair market value. If the fair market value of the parcel changes, the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals will be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the BLM Newcastle Resource Area Office.

For a period of 45 days from the date of this notice published in the **Federal Register**, interested parties may submit comments to the BLM, District Manager, Casper District Office, 1701 East E Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: May 14, 1993.

Mike Karbs,

District Manager.

[FR Doc. 93–12030 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–22–M

[NV–050–03–4333–04]

Final Supplementary Rules for Certain Public Lands Managed by the Bureau of Land Management Within the Red Rock Canyon National Conservation Area, Las Vegas District, Nevada

May 11, 1993.

SUMMARY: These supplementary rules are necessary for the management of actions, activities, and public use on certain public lands which may have or are having adverse impacts on persons using public lands, on property, and on resources located on public lands located in, or acquired for inclusion within, the Red Rock Canyon National Conservation Area (NCA), Las Vegas District, in the State of Nevada. The supplementary rules consists of rules and legal definitions which support the rules.

The affected lands are located in the following areas:

Mount Diablo Meridian

T. 20 S., R. 57 E., Sec. 24, 25, and 36.

T. 20 S., R. 58 E., Sec. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17; Lots 1–4 and E½, E½W½ of Sec. 18; Lots 1–4 and E½, E½W½ of Sec. 19; Sec. 20, 21, 22, 23, 24, 25, 26, 27, 28, 29; Lots 1–4, E½, E½W½ of Sec. 30; Lots 1–4, E½, E½W½ of Sec. 31; Sec. 32, 33, 34, 35, 36.

T. 20 S., R. 59 E., Lots 1–4 and E½, E½W½ of Sec. 7; Sec. 8, 9; N½ of Sec. 16; Lots 1–12 of Sec. 17; Lots 1–4 and E½, E½W½, of Sec. 18; Lots 3–12 and E½ SW¼, SE¼ of Sec. 19; Lots 1–4 of Sec. 20; Lots 1–4 and E½, E½W½ of Sec. 30; Lots 1–4 and E½, E½W½, of Sec. 31; S½ (within) of Sec. 32.

T. 21 S., R. 57 E., Lots 1–4 and S½N½, S½, of Sec. 1; Sec. 12, 13, 24, 25, 36.

T 21 S., R. 58 E., Lots 2, 3, 4 and SW¼NE¼, W½SE¼NE¼, S½NW¼, SW¼, W½NE¼SE¼, SE¼NE¼SE¼, W½SE¼, SE¼SE¼, of Sec 1; Lots 1–4, S½N½, S½ of Sec. 2; Lots 1–4, S½N½, S½ of Sec. 3; Lots 1–4, S½N½, S½ of Sec. 4; Lots 1–4, S½N½, S½ of Sec. 5; Lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼ of Sec. 6; Lots 1–4, E½, E½ of Sec. 7; Sec. 8, 9, 10, 11, 12, 13, 14, 15; N½N½, SE¼NE¼, SW¼NW¼, S½ of Sec. 16; Sec. 17; Lots 1–4, E½, E½W½ of Sec. 18; Lots 1–4, E½, E½W½ of Sec. 19; Sec. 20, 21, 22, 23; E½NE¼, E½W½NE¼, NW¼NW¼NE¼, N½NW¼, SW¼NW¼, N½SE¼NW¼, SW¼SE¼NW¼, W½SW¼, W½SE¼SW¼, E½NE¼SE¼, NE¼SW¼SE¼; SE¼SE¼ of Sec. 24; W½NW¼NE¼, SE¼NW¼NE¼, SW¼NE¼, W½, W½E½SE¼, W½SE¼ of Sec. 25; Sec. 26, 27, 28, 29; Lots 1–4, E½, E½W½ of Sec. 30; Lots 1–4, E½, E½W½ of Sec. 31; Sec. 32, 33; N½, SW¼, N½SE¼, SW¼SE¼ of Sec. 34; E½, NW¼ of Sec. 35; W½E½NE¼, W½NE¼, W½, N½SE¼, SW¼SE¼, W½SE¼SE¼ of Sec. 36.

T. 21 S., R. 59 E., S½NW¼ of Sec. 3; Lots 3, 4 (within), Lots 5–8 and S½NW¼, SW¼, of Sec. 4; Lots 1–4 and S½N½, S½, of Sec. 5; Lots 1, 2, 7 and S½NE¼, S½SE¼SE¼NW¼, N½NW¼NE¼SW¼, S½S½NE¼SW¼, SE¼SW¼, E½SE¼, S½NE¼SW¼SE¼, N½NW¼SW¼SE¼ of Sec. 6; Lots 1–4, E½, E½W½ of Sec. 7; Sec. 8, 9; Lots 15–18 of Sec. 10; Lots 3, 4 and N½NW¼, of Sec. 16; Lots 1–7 and N½N½ of Sec. 17; Lots 5–17 and N½NE¼, NE¼NW¼, of Sec. 18; Lots 1–4 and E½, E½W½ of Sec. 19.

T. 22 S., R. 58 E., Lots 1–4 and S½N½, N½SE¼, SE¼SE¼ of Sec. 1; Lots 1–3 and S½N½, N½SW¼, NW¼SE¼ of Sec. 2; Lots 3, 4 and SW¼NW¼, S½SW¼, SE¼ of Sec. 3; Lots 1–4 and S½N½, S½ of Sec. 4; Lots 1–4 and S½N½, S½ of Sec. 5; Lots 1, 2, 7–13, S½NE¼, SE¼SW¼, SE¼ of Sec. 6; Lots 1–4, E½, and E½W½ of Sec. 7; Sec. 8, 9, 10; Lots 1–4 and N½, SW¼ of Sec. 11; Lots 1–6 and E½, SE¼SW¼ of Sec. 12; Lots 1, 2 and E½, E½W½, W½SW¼ of Sec. 13; Lots 1–10 and W½NW¼, SW¼ of Sec. 14; Sec. 15, 16, 17; Lots 1–4 and E½, E½W½ of Sec. 18; NE¼ of Sec. 20; Sec. 21, 22; Lots 1–8 and S½ of Sec. 23; Lots 1–4 and N½, SW¼ of Sec. 24; Lots 1–5 and SW¼NE¼, W½W½, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼, of Sec. 25; Lots 1, 2 and N½, SW¼, E½SE¼ of Sec. 26; Sec. 27, 28; Lots 1–6 and N½NE¼, W½ of Sec. 33; Lots 1–13 and W½NE¼, NE¼NW¼ of Sec. 34; Lots 1–11, and E½E½, NW¼SE¼ of Sec. 35; Sec. 36.

T. 22 S., R. 59 E., Lot 4 (within), Lots 5, 6, 7 and SE¼NW¼ (within), E½SW¼, NW¼SE¼ (within), SW¼SE¼, SE¼ SE¼ (within) of Sec. 6; Lots 1–4 and N½NE¼, N½SW¼NE¼, E½NW¼, E½SW¼, S½NE¼SW¼SE¼, W½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼ of Sec. 7; W½NW¼, SW¼, SW¼SE¼ of Sec. 8; W½NE¼, NW¼ of Sec. 17; Lots 1, 2 and NE¼, E½NW¼ of Sec. 18.

T. 23 S., R. 58 E., Lots 1–4 and S½N½, S½ of Sec. 1; Lots 1–4 and S½N½, S½ of Sec. 2; Lots 1–4 and S½N½, S½ of Sec. 3; Lots 1–4 and S½N½, S½ of Sec. 4; Sec. 9, 10, 11, 12.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Randy August, Bureau of Land Management, Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126, Telephone: 702–647–5000.

SUPPLEMENTARY INFORMATION: The Nevada State Director of the Bureau of Land Management is establishing these supplementary rules which are necessary for the protection of persons, property and public lands and resources within the Red Rock Canyon National Conservation Area (NCA), lands acquired for inclusion in the Red Rock Canyon NCA, and all lands that may be incorporated into Red Rock Canyon NCA, in the Las Vegas District, as provided for in 43 CFR 8365.1–6. Violations of these rules are punishable by a fine not to exceed $1,000.00 or imprisonment not to exceed 12 months, or both, as provided for under the Federal Land Policy Management Act (Pub. L. 94–579) as amended by 18 U.S.C. 3571(b)(5).

Some of the supplementary rules make reference to "designated" roads, "designated" fruits, nuts, plants, or berries, "designated" trials, and so on. Those designations are currently being developed as part of the resource management planning process for the Red Rock Canyon National Conservation Area. Those designations may not become final until after these supplementary rules take effect.

These supplementary rules were published in the **Federal Register** as proposed rules on December 13, 1991 (56 FR 65095). Nine comments were received. Three of the comments were general in nature either in favor of or opposed to the rules, without specifically addressing them. The remaining six comments were specifically focused on individual rules.

Several commenters made proposals that were either beyond the scope of the proposed rules, or exceeded the Bureau's statutory authority. An example is a proposal to ban trapping within the National Conservation Area, which exceeds the Bureau's statutory authority. Two commenters opposed the proposed rule allowing designation of a target shooting area, and that proposal was dropped; several commenters opposed the proposed rule on disposal of human waste, which was modified to allow burial of waste instead of requiring that it be removed; lengthy comments on protection of rock art, which resulted in modification of the proposed rules to close all areas within fifty feet of any rock art to climbing; and minor drafting, spelling, and organizational changes to make the rules clearer. The proposed rule requiring registration for overnight climbs is deleted, as is the proposed rule that all pets must be on a leash or under physical control at all times.

Rules for Non-commercial Soliciting, Public Assemblies or Meetings, Sale or Distribution of Printed Material, Spray Paint and technical aspects of vehicle use after hours were added in response to comments and for further clarification.

Supplementary Rules, Red Rock Canyon National Conservation Area

Section 1.0 Definitions and Administrative Provisions

1.1 Definitions

The following definitions shall apply to all regulations in 43 CFR part 8360, unless modified within a specific part or regulation:

"Abandonment" means the voluntary relinquishment of control of property for longer than a period specified with no intent to retain possession.

"Accident" means the collision, intentional or unintentional, of a vehicle with another vehicle, bicycle, pedestrian, structure, sign, or fixed object.

"Administrative activities" means those activities conducted under the authority of the Bureau of Land Management for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with the regulations in this chapter, or repairing or maintaining government facilities.

"Bicycle" means every device, other than wheelchairs, propelled solely by human power upon which a person or persons may ride on land, having one, two, or more wheels.

"Camping" means the erecting of a tent or shelter or natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy.

"Cultural resource" means material remains of past human life or activities that are of significant cultural interest and are at least 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, rock art, bottles, weapons, weapon projectiles, tools, structures or portions of structures, or any portion or piece of the foregoing items, and the physical site, location, or context in which they are found, or human skeletal materials or graves.

"Designated road" means a road or roads identified on a map of designated roads which will be maintained and available for public inspection at the Las Vegas District Office, Bureau of Land Management, and at the Red Rock Canyon National Conservation Area Vistor Center, and which are also posted as designated roads through the posting of appropriate signs or markers. Any road with any signed or physical barrier, including posts, branches, or rocks, is not a designated road.

"Designated trails" means a trail or trails identified on a map of designated trails which will be maintained and available for public inspection at the Las Vegas District Office, Bureau of Land Management, and at the Red Rock Canyon National Conservation Area Visitor Center, as well as any trail or route designated for a specific use by the posting of appropriate signs.

"Firearm" means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

"Handling", as applied to wild horses and burros, means the intentional touching, feeling, or moving of a wild horse or burro.

"Hunting" means taking or attempting to take wildlife, except trapping.

"Motor vehicle" means every vehicle that is self-propelled by a non-living power source, including any vehicle that is propelled by electric power, but not operated upon rails or upon water.

"Operator" means a person who operates, drives, controls, or otherwise has charged of a mechanical mode of transportation or any other mechanical equipment.

"Paleontological" means pertaining to ancient life forms, and includes but is not limited to fossilized remains of plant and animal life.

"Permit" means a written authorization, from an authorized officer of the Bureau of Land Management, to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

"Person" means an individual, firm, corporation, society, association, partnership, or private or public body.

"Pet" means a dog, cat or any animal that has been domesticated.

"Picnic area" means any area set aside or designated for picnic use by either the posting of appropriate signs, or by the provision of picnic tables.

"Possession" means exercising direct physical control or dominion, with or without ownership, over property, or archaeological, cultural or natural resources.

"Property" means both real and personal property.

"Red Rock Canyon National Conservation Area" means all lands owned by the United States and included within, acquired for inclusion within, or which are later incorporated within, the Red Rock Canyon National Conservation Area. This includes lands owned by the United States, but managed by the Nevada Division of State Parks or another organization or agency, pursuant to a cooperative management agreement. See Pub. L. 101–621, entitled "Red Rock Canyon National Conservation Area Establishment Act of 1990."

"Rock art" means images and symbols engraved into, pecked into, scratched upon, painted upon, or otherwise marked into or on geological features by past residents of or visitors to Red Rock Canyon National Conservation Area, and which are at least one hundred years old, including but not limited to petroglyphs, pictographs, and inscriptions.

"Smoking" means the carrying or possession of lighted cigarettes, cigars or pipes, or the intentional and direct inhalation of smoke from these objects.

"Take" or "taking" means to pursue, hunt, harass, harm, shoot, trap, net, capture, collect, kill, wound, or attempt to do any of the above.

"Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together while using any road, trail, street or other thoroughfare for purposes of travel.

"Traffic control device" means any sign, painted roadway marking, or other device or means for controlling or directing vehicle traffic.

"Trap" means a snare, trap, mesh, wire or other implement, object or mechanical device designed to entrap or kill animals other than fish.

"Trapping" means taking or attempting to take wildlife with a trap.

"Unattended" means failure to exercise direct control over property.

"Unloaded," as applied to weapons and firearms, means that:

(1) There is no unexpended shell, cartridge, or projectile in any chamber or cylinder of a firearm or in a clip or magazine inserted in or attached to a firearm;

(2) A muzzle-loading weapon does not contain gun power in the pan, or the percussion cap is not in place; and

(3) Bows, crossbows, spear guns or any implement capable of discharging a missile or similar device by means of a loading or discharging mechanism, when that loading or discharging mechanism is not charged or drawn.

"Vehicle" means every device in, upon, or by which a person or property is or may be transported or drawn on land, except devices used exclusively upon stationary rails or track.

"Weapon" means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, spearguns, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapons, nun-chucks, clubs, billy-clubs, and any device modified for use or designed for use as a striking instrument; and includes any weapon the possession of which is prohibited under Nevada law.

"Wildlife" means any member of the animal kingdom and includes a part, product, egg or offspring thereof, or the dead body or part thereof, except fish.

1.2 Permits

(a) An authorized officer may issue a permit to authorize an otherwise prohibited or restricted activity. Such permits may contain reasonable restrictions necessary to preserve and protect public lands and their resources, and to minimize interference with and inconvenience to other visitors to Red

Rock Canyon National Conservation Area.

(b) Violation of the terms and conditions of a permit is prohibited.

Section 2.0 Vehicle Operations and Traffic Safety

2.1 Unsafe Operation

The following are prohibited:

(a) Failing to maintain that degree of control of a vehicle necessary to avoid danger to persons, property or wildlife.

(b) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid, or break free of the road surface.

(c) Operating a vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, pedestrians, traffic, weather, road and light conditions and road character.

2.2 Towing or Moving Vehicles

(a) No person shall tow or move a vehicle that has been involved in an accident without first notifying an authorized officer, unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before the vehicle is removed from Red Rock Canyon National Conservation Area.

(b) Failure to notify an authorized officer as required in the preceding subsection is prohibited.

2.3 Weight, Width, and Length Limitations

(a) The following restrictions are hereby established for the Red Rock Canyon Scenic Loop Drive:

(1) No vehicle, or vehicle and trailer combination, may be operated which exceeds thirty-five thousand (35,000) pounds gross vehicle weight.

(2) No vehicle may be operated which exceeds eight feet in width.

(3) No vehicle, towing any trailer, may be operated when the length of the trailer exceeds 35 feet.

(b) Operating a vehicle on the Red Rock Canyon Scenic Loop Drive, when that vehicle exceeds any of the weight, width, or length restrictions listed above, is prohibited.

(c) Exemptions. The weight, width, and length restrictions listed in this section do not apply to vehicles used by any federal, state, county, or local government agency, or to privately owned vehicles performing work for any such agency.

2.4 State Laws Applicable

(a) Unless specifically addressed by regulations set forth in 43 CFR, the laws of the State of Nevada shall govern the use and operation of vehicles. Such State laws which are now or may later be in effect are hereby adopted and made a part of the regulations in this part.

(b) Violating a provision of State law is prohibited.

2.5 Obstructing Traffic

The following are prohibited:

(a) Stopping, parking, or leaving any vehicle, whether attended or unattended, upon the paved, graded, or maintained surface of a road, so as to leave less than ten (10) feet of the width of the same traffic lane for the free or unobstructed movement of other vehicles is prohibited, except in the event of accident or other conditions beyond the immediate control of the operator, or as otherwise directed by an authorized person.

(b) Causing or permitting a vehicle under one's control to obstruct traffic by driving so slowly as to interfere with the normal flow of traffic, or in any other manner, is prohibited.

2.6 Bicycles

Except when specifically allowed by permit, the following are prohibited:

(a) The use of bicycles except on paved roads and parking areas, other roads or routes designated for motor vehicles, and on routes or trails designated for bicycle use. Such designations may be by the posting of signs or may be identified on a map which shall be available at the Las Vegas District Office and the Red Rock Canyon National Conservation Area Visitor Center.

(b) Possessing a bicycle in a wilderness area established by Federal statute.

(c) On roads, riding a bicycle other than on the right side of the roadway.

(d) On roads, riding a bicycle abreast of a bicycle being ridden on the right side of the roadway.

2.7 Travel and Parking Off Designated Roads

(a) Minor disturbance. Operating, or parking, a motor vehicle off of but less then 20 feet from a designated road or parking area is classified as a minor disturbance to natural features. Such disturbance of natural features is prohibited.

(b) Major disturbance. Operating, or parking, a motor vehicle 20 feet or further from a designated road or parking area is classified as a major disturbance to natural features. Such disturbance of natural features is prohibited.

2.8 Maintaining Vehicles

Lubricating or repairing any vehicle, except repairs necessitated by emergency, is prohibited.

2.9 Traffic Control Device

Failure to comply with the directions of a traffic control device is prohibited unless directed otherwise by an authorized person.

This section is applicable to persons using bicycles.

Section 3.0 Public Use and Recreation

3.1 Fireworks and Explosives

(a) The possession or use of fireworks is prohibited, except pursuant to the terms and conditions of a permit.

(b) The possession or use of explosives and blasting agents is prohibited, except pursuant to the terms and conditions of a permit. This section shall not apply to explosives carried aboard vehicles being driven through Red Rock Canyon National Conservation Area on State Highway 159 or State Highway 160, provided that the persons possessing or transporting such explosives are in compliance with all other applicable state and federal laws, rules, and regulations controlling the possession and transportation of explosives.

3.2 Weapons

(a) The following are prohibited within Red Rock Canyon National Conservation Area:

(1) Possession of a loaded weapon, except as authorized under subsection (b), following.

(2) Intentional discharge of any weapon, except as authorized under subsection (b), following.

(3) Possession of an unregistered firearm, when registration of the firearm is required by either the State of Nevada or Clark County.

(b) The possession of loaded weapons, and their use, is allowed when the possessor is at the time of possession involved in hunting within Red Rock Canyon National Conservation Area in accordance with state law, and in compliance with the restrictions contained in section 3.4(b) of these Supplementary Rules.

3.2 Trapping

(a) Trapping is allowed in accordance with state law, except within areas closed to trapping. Trapping in violation of state law is prohibited.

(b) The following areas are closed to trapping:

(1) those portions of Red Rock Canyon National Conservation Area north of State Highway 160, on the east side of

the Spring Mountain range, and which are located below the elevation of 5,000 feet.

(2) all areas within one mile of any designated hiking trail, or of any trail designated for the use of horses and pack animals. Such designations will be identified on a map which will be made available for public inspection at the Red Rock Canyon National Conservation Area Visitor Center, and at the Las Vegas District Office of the Bureau of Land Management.

(c) Trapping, in an area designated as closed to trapping, is prohibited.

3.4 Hunting

(a) Hunting is allowed in accordance with state law, except within areas designated as closed to hunting. Hunting in violation of state law is prohibited.

(b) For purposes of public safety, the following area is designated as closed to hunting:

(1) those areas of Red Rock Canyon National Conservation Area north of State Highway 160, on the east side of the Spring Mountain range, and which are located below the elevation of 5,000 feet; except that hunting for bighorn sheep, in accordance with state law, is allowed below the elevation of 5,000 feet in the following two areas:

Mount Diablo Meridian

R. 58 E., T. 20 S. N½ of Section 36
R. 59 E., T. 20 S., NW¼ of Section 31

3.5 Fires

The following are prohibited:

(a) Lighting, tending, or maintaining any fire, except in a stove or grill provided for such purpose; or, within designated camping areas, in a fire ring provided for such purpose by the Bureau of Land Management. This prohibition does not apply to camp stoves, such as portable gasoline stoves or charcoal grills, brought by visitors for the purpose of cooking.

(b) Throwing or discarding lighted or smoldering material in a manner that threatens, causes damage to, or results in the burning of property or resources.

3.6 Glass Containers

The possession of glass containers, except within vehicles, designated camping areas, and designated picnic areas, is prohibited.

3.7 Human Waste

(a) Human fecal matter, including paper or other items contaminated with human fecal matter, may be deposited or disposed of only in restrooms, toilets, or other facilities designed or designated for the disposal of human fecal matter; or, where such facilities are not provided or available, shall either be removed from Red Rock Canyon National Conservation Area or be buried at least six inches below ground level. Human fecal matter may not be buried within 200 feet of any water source or supply.

(b) Depositing or disposing of human fecal matter within Red Rock Canyon National Conservation Area, except in accordance with subsection (a) above, is prohibited.

3.8 Preservation of Natural and Cultural Resources

(a)(1) An authorized person may designate fruits, nuts, seeds, plants, berries, and similar plant materials which may be collected for personal use within Red Rock Canyon National Conservation Area. Such designations may, if appropriate, specify a maximum amount that may be collected for personal use. Collection of plant materials in excess of the designated maximum is prohibited.

(2) Collection of plant materials, other than those designated under (a)(1) above, is prohibited; except that the District Manager may authorize collections other than those in (a)(1) above through the issuance of a permit; and except for removal, collection, and/or transplantation of plants and plant materials for official purposes such as landscaping and trail maintenance and construction.

(b) The following are prohibited:

(1) Possessing, destroying, taking, injuring, defacing, removing, harassing, or disturbing from its natural state living or dead wildlife, or the parts or products thereof, such as antlers or nests, except when incident to hunting conducted in accordance with state law.

(2) Introducing wildlife, fish, or plants, including their reproductive bodies, into Red Rock Canyon National Conservation Area, except when authorized by the District Manager for administrative activities, or pursuant to the terms and conditions of a permit.

(3) Digging for, removing, destroying, damaging, disturbing, or possessing artifacts, rock art, or other cultural resources, or using any device for detecting metal, except when allowed by permit.

(4) Feeding, attempting to feed, riding, attempting to ride, handling, or otherwise harassing or disturbing wild horses or burros, except pursuant to the terms and conditions of a permit.

(5) Collecting wood or other plant material for use in a campfire or for any other purpose, except pursuant to subsection (a)(1), above.

(6) Tossing, throwing, or rolling rocks or other items inside caves or caverns, into valleys or canyons, or down hillsides or mountainsides.

(7) Possessing, destroying, defacing, digging, or removing rocks, cave formations or parts thereof, or fossilized or non-fossilized paleontological specimens.

(8) Applying chalk to, making a rubbing of, making a casting of, painting upon, or making a latex or other mold of, any rock art.

3.9 Pets

(a) The following are prohibited:

(1) Allowing a pet to make noise that is unreasonable considering location, time of day or night, and impact on public land users.

(2) At developed sites including campgrounds, picnic areas, parking areas, and visitor centers, failing to remove waste deposited by a pet.

(3) Allowing a pet, other than a seeing-eye dog, hearing-ear dog, or other animal specifically trained to assist a handicapped person, to enter buildings operated by the Bureau of Land Management.

(4) Leaving a pet unattended and tied to an object.

(b) Pets or feral animals that are running-at-large and observed in the act of killing, injuring, or molesting humans, livestock, or wildlife may be destroyed by an authorized person if necessary for public safety or the protection of livestock or wildlife.

(c) Pets running-at-large may be impounded, and may be turned over to Clark County Animal Control or to another appropriate organization which will accept, care for, and dispose of such pets. The owner of such pets may be charged reasonable fees for kennel or boarding costs, feed, veterinary care, and transportation.

(d) This section does not apply to dogs used by authorized Federal, State, and local law enforcement officers in the performance of their official duties.

3.10 Horses and Pack Animals

Except when authorized by permit, and except for horses and pack animals used for administrative activities or for the official business of any governmental entity or agency, the following are prohibited:

(a) The use of horses or pack animals in picnic areas, or on trails other than those designated as open to horses and pack animals. Such designations will be identified on a map which will be available for public inspection at the Red Rock Canyon National Conservation Area Visitor Center and at the Las Vegas District Office.

(b) The use of horses or pack animals on a paved road, except:

(1) Where such travel is necessary to cross the road.

(2) When the road has been closed to motor vehicles.

(c) Free-trailing or loose-herding of horses or pack animals on trails or cross-country.

(d) Allowing horses or pack animals to proceed in excess of a slow walk when passing in the immediate vicinity of persons on foot or bicycle.

(e) Obstructing a trail while horses or pack animals are passing; or making any unreasonable noise or gesture with the intent of, or recklessly creating a risk thereof, frightening, stampeding, spooking, or otherwise interfering with a user's control over his horses or pack animals.

(f) At developed sites including campgrounds, picnic areas, paved parking areas, and visitor centers, failing to remove waste deposited by horses and pack animals.

3.11 Alcoholic Beverages

(a)(1) The use and possession of alcoholic beverages within Red Rock Canyon National Conservation Area is allowed in accordance with the provisions of this section.

(2) The following are prohibited:

(i) The sale or gift of an alcoholic beverage to a person under 21 years of age.

(ii) The possession of an alcoholic beverage by a person under 21 years of age.

(b)(1) The District Manager may close all or a portion of public buildings, or structures, parking lots, picnic areas, overlooks, walkways, commemorative areas, historic areas, or archaeological sites within Red Rock Canyon National Conservation Area to the consumption of alcoholic beverages when it is determined that:

(i) The consumption of alcohol would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(ii) Incidents of aberrant behavior related to the consumption of alcohol are of such magnitude that diligent attempts to enforce applicable regulations do not alleviate the problem.

(2) Such closures may be either by publication of the closure in the **Federal Register**, by the posting of appropriate signs, or both.

(3) Failure to abide by such a closure is prohibited.

(c) Presence in Red Rock Canyon National Conservation Area when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person, or damage property or public land resources, is prohibited.

3.12 Disorderly Conduct

A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(a) Engages in fighting or threatening, or in violent behavior.

(b) Uses language, an utterance or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

3.13 Smoking

(a)(1) The District Manager may designate areas of Red Rock Canyon National Conservation Area, or all or a portion of a building, structure or facility as closed to smoking when necessary to protect public land resources, reduce the risk of fire, or prevent conflicts among visitor use activities. Such closures may be either by publication of the closure in the **Federal Register** by the posting of appropriate signs, or both.

(2) Smoking in an area or location so designated is prohibited.

(b) Smoking is prohibited within all caves and caverns.

3.14 Property

(a) The following are prohibited:

(1) Abandoning property.

(2) Leaving property unattended for more than 24 hours in a day use area, or 72 hours in other areas, unless the owner of the property by permit or registration is specifically authorized a longer period of time.

(3) Failing to turn in found property to an authorized person as soon as practicable.

(b) Impoundment of property. (1) Property left unattended in excess of the time limits in subsection (a)(2), above, may be impounded by an authorized person.

(2) Unattended property that interferes with visitor safety, orderly management of Red Rock Canyon National Conservation Area, or presents a threat to public land resources may be impounded by an authorized person at any time.

(3) The owner of record is responsible and liable for charges to the person who has removed, stored, or otherwise disposed of property impounded to this section.

(c) Disposition of property. Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days, and shall be disposed of in accordance with applicable regulations.

3.15 Aircraft and Air Delivery

Delivering or retrieving a person or object by parachute, helicopter, ultralight aircraft, hang glider, balloon, or other airborne means, except in emergencies involving public safety or serious property loss, or pursuant to the terms and conditions of a permit, is prohibited. The provisions of this section shall not be applicable to official business of the Federal government, or emergency rescues or rescue training in accordance with the direction of the District Manager, or to landings due to circumstances beyond the control of the operator.

3.16 Camping

(a) Camping is prohibited within Red Rock Canyon National Conservation Area, except: at elevations 5,000 feet above sea level and higher; within the designated camping areas at Oak Creek and Black Velvet Canyon; or within such additional or substitute areas as may be designated in a General Management Plan or Resource Management Plan for the National Conservation Area and posted by appropriate signs.

(b) By the posting of appropriate signs at the entrance to any campground, the District Manager may establish special conditions or rules for camping within any campground. Violation or such conditions or rules is prohibited.

(c) The following are prohibited:

(1) Digging or leveling the ground at a campsite.

(2) The installation of permanent camping facilities.

(3) Failing to obtain a permit, when required.

(4) Violation of the terms and conditions of any camping permit.

(5) In designated campgrounds, creating or sustaining unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m.

(6) Except within designated campgrounds, camping within 200 feet of any natural or man-made water source.

3.17 Misappropriation of Property

The following are prohibited:

(a) Obtaining or exercising unlawful possession over the property of another with the purpose to deprive the owner of the property.

(b) Acquiring or possessing the property of another, with knowledge or reason to believe that the property is stolen.

3.18 Tampering and Vandalism

The following are prohibited:

(a) Tampering or attempting to tamper with property or real property, or moving, manipulating, or setting in motion any of the parts thereof, except when such property is under one's lawful control or possession.

(b) Destroying, injuring, defacing, or damaging property or real property.

3.19 Climbing

The following are prohibited:

(a) Climbing on, or within fifty feet of, any rock art.

(b) Touching or contacting any rock art, or allowing climbing equipment, including but not limited to ropes, slings, or packs, to fall upon, rest against, or otherwise come in contact with any rock art.

(c) Using climber's chalk, drilling bolts, or inserting or applying pitons, chocks, or any other anchoring device, within fifty feet of any rock art.

3.20 Closures

(a)(1) The existing limited closures of the Red Rock Canyon Scenic Loop Drive and the use areas associated with it, of the La Madre Spring area, and of the Red Spring Picnic Area, remain in effect. These areas will continue to be limited to daytime use only, with the exact hours of closure posted at the entrance to these areas.

(2) The existing limited closure of the Red Rock Canyon Scenic Loop Drive is modified as follows: From one-half-hour before sunrise until the posted opening hour, pedestrians and bicyclists may enter and use the Scenic Loop Drive and the use areas associated with it. Motor vehicles will remain prohibited, except for administrative purposes or by permit or registration.

(b) The area known as the Cave, located at T. 21S, R. 58E, section 13, and accessible by trail from State Highway 159, is limited to daytime use only. The exact hours of closure will be posted at the entrance to the area.

(c) The area known as Brownstone Canyon, located at T. 20S, R. 58E, sections 23, 24, 25, and 26, is limited to public use as follows:

(1) Daytime use only is permitted, with the exact hours of closure posted at the entrance to Brownstone Canyon.

(2) Vehicles, other than authorized vehicles, are prohibited from travelling into Brownstone Canyon beyond the fenced and/or signed barrier. For a vehicle to be authorized, it must be entering Brownstone Canyon in the performance of the official business of a federal, state, county, or local government agency or organization; or it must have registered and/or been issued a permit by the Bureau of Land Management. Such permits or registration can be obtained at the Red Rock Canyon National Conservation Area Visitor Center, or at the Las Vegas District Office of the Bureau of Land Management.

3.21 Non-Commercial Soliciting

(a) Non-commercial soliciting is defined as requesting or demanding gifts, money, goods, or services. Non-commercial soliciting is prohibited, unless a permit to allow non-commercial soliciting has been issued by the Manager, Red Rock Canyon National Conservation Area.

(b) An application for such a permit shall set forth the name of the applicant and organization (if any), the date, time, duration, nature, and location where the non-commercial solicitation is proposed to take place, the number of participants, the equipment and facilities to be used, and any other information required by the permit application form.

(c) The Manager shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area; or

(2) It reasonably appears that the non-commercial solicitation will present a clear and present danger to the public health or safety; or

(3) The number of persons engaged in the non-commercial solicitation exceeds the number that can reasonably be accommodated in the particular location applied for, considering such issues as damage to public lands resources or facilities, impairment of the National Conservation Area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use of facilities; or

(4) The location applied for has not been designated as available for the purpose of non-commercial solicitation; or

(5) The activity would constitute a violation of an applicable law or regulation.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The Manager shall designate on a map, that shall be available at the Red Rock Canyon National Conservation Area visitor center and at the Las Vegas District Office, the locations that are available for the purpose of non-commercial soliciting. Locations may be designated as not available only if the non-commercial solicitation would:

(1) Cause injury or damage to public lands resources; or

(2) Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or similar protected areas or zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other programs or administrative activities of the Bureau of Land Management; or

(4) Substantially impair the operations of public use facilities or services of cooperating associations, concessionaires, or contractors; or

(5) Present a clear and present danger to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the National Conservation Area for the purposes for which it was established. It may also contain reasonable limitations on the equipment used and the time and area within which the non-commercial solicitation is allowed.

(g) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) A permit may be suspended or revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a suspension or revocation shall be made in writing, with the reason(s) for suspension or revocation clearly set forth, except under emergency circumstances, when an immediate verbal suspension or revocation may be made followed by written confirmation within 72 hours.

(i) For any person engaged in non-commercial solicitation, the following are prohibited:

(1) Violating the terms or conditions of a permit.

(2) Obstructing or impeding pedestrians or vehicles; harassing public lands users or visitors with physical contact or persistent demands; or misrepresenting the purposes or affiliations of those engaged in the non-commercial solicitation.

3.22 Public Assemblies or Meetings

(a) Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within the Red Rock Canyon National Conservation Area, provided a

permit therefor has been issued by the Manager of the National Conservation Area. Conducting a public assembly, meeting, gathering, demonstration, parade or other public expression of views without a permit is prohibited.

(b) An application for such a permit shall set forth the name of the applicant and organization (if any); the date, time, duration, nature, and place of the proposed event; an estimate of the number of persons expected to attend; a statement of equipment and facilities to be used; and any other information required by the permit application form.

(c) The Manager shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area; or

(2) It reasonably appears that the event will present a clear and present danger to the public health or safety; or

(3) The event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such issues as damage to public lands resources or facilities, impairment of the National Conservation Area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use of facilities.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The Manager shall designate on a map, that shall be available at the Red Rock Canyon National Conservation Area visitor center and at the Las Vegas District Office, any locations that are closed or restricted for public assemblies. Locations may be designated as not available only if such activities would:

(1) Cause injury or damage to public lands resources; or

(2) Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or similar protected areas or zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other programs or administrative activities of the Bureau of Land Management; or

(4) Substantially impair the operations of public use facilities or services of cooperating associations, concessionaires, or contractors; or

(5) Present a clear and present danger to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the National Conservation Area for the purposes for which it was established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(g) No permit shall be issued for a period in excess of 7 days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) A permit may be suspended or revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a suspension or revocation shall be made in writing, with the reason(s) for suspension or revocation clearly set forth, except under emergency circumstances, when an immediate verbal suspension or revocation may be made followed by written confirmation within 72 hours.

(i) For any person engaged in activities covered under a permit issued pursuant to this section, the following are prohibited:

(1) Violating the terms or conditions of a permit.

(2) Obstructing or impeding pedestrians or vehicles, or harassing public lands users or visitors with physical contact or persistent demands.

3.23 Sale or Distribution of Printed Matter

(a) The sale or distribution of printed matter is allowed within the Red Rock Canyon National Conservation Area, provided that a permit to do so has been issued by the Manager of the National Conservation Area, and provided further that the printed matter is not solely or principally commercial advertising. Selling or distributing printed matter without a permit is prohibited.

(b) An application for such a permit shall set forth the name of the applicant and organization (if any), the date, time, duration, nature, and location of the proposed sale or distribution, the number of participants, the equipment and facilities to be used, and any other information required by the permit application form.

(c) The Manager shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area; or

(2) It reasonably appears that the sale or distribution will present a clear and present danger to the public health or safety; or

(3) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for, considering such issues as damage to public lands resources or facilities, impairment of the National Conservation Area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use of facilities; or

(4) The location applied for has not been designated as available for the sale or distribution of printed matter; or

(5) The activity would constitute a violation of an applicable law or regulation.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The Manager shall designate on a map, that shall be available at the Red Rock Canyon National Conservation Area visitor center and at the Las Vegas District Office, the locations that are available for the sale or distribution of printed matter. Locations may be designated as not available only if the sale or distribution of printed matter would:

(1) Cause injury or damage to public lands resources; or

(2) Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or similar protected areas or zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other programs or administrative activities of the Bureau of Land Management; or

(4) Substantially impair the operations of public use facilities or services of cooperating associations, concessionaires, or contractors; or

(5) Present a clear and present danger to the public health and safety.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the National Conservation Area for the purposes for which it was established. It may also contain reasonable limitations on the equipment used and the time and area within which the sale and distribution of printed matter is allowed.

(g) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) A permit may be suspended or revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a suspension or revocation shall be made in writing, with the reason(s) for suspension or revocation clearly set forth, except under emergency circumstances, when an immediate verbal suspension or revocation may be made followed by written confirmation within 72 hours.

(i) For any person engaged in the sale or distribution of printed matter, the following are prohibited:

(1) Violating the terms or conditions of a permit.

(2) Obstructing or impeding pedestrians or vehicles; harassing public lands users or visitors with physical contact or persistent demands; misrepresenting the purposes or affiliations of those engaged in the sale or distribution of printed matter; or misrepresenting whether the printed matter is available without cost or donation.

(j) The provisions of this section do not apply to any group or organization that has entered into a cooperative agreement with the Bureau of Land Management to further the management of the Red Rock Canyon National Conservation.

3.24 Spray Paint

The following are prohibited:

(a) The use of spray paint within Red Rock Canyon National Conservation Area, except for:

(1) administrative activities of the Bureau of Land Management or another federal agency; or

(2) the official business of any state, county, or local governmental entity; or

(3) the necessary performance of work related to the maintenance or construction of any authorized improvements or facilities on public lands.

(b) The possession of spray paint within Red Rock Canyon National Conservation Area, except when such containers of spray paint are located:

(1) in the trunk of a motor vehicle; or

(2) if a motor vehicle is not equipped with a trunk, in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers.

3.25 Persons Entering the Scenic Loop Drive at Willow Springs

(a) Any vehicle, which has traversed the road from Lovell Canyon to Willow Springs, may enter the Red Rock Canyon Scenic Loop Drive. When such entry is made after the posted closing time of the Scenic Loop Drive, the operator of the vehicle must proceed immediately to the exit of the Scenic Loop Drive, while obeying the one-way traffic requirement.

(b) For any person who enters the Red Rock Canyon Scenic Loop Drive at Willow Springs after the posted closing time, the following are prohibited:

(1) Failing to immediately proceed to the exit of, and to immediately exit from, the Scenic Loop Drive in accordance with the one-way traffic pattern.

(2) Remaining within the Scenic Loop Drive longer than is necessary to travel from Willow Springs to the exit.

3.26 Authorization for After-Hours Vehicle Parking

(a) Vehicles parked on the Scenic Loop Drive at times other than the posted open hours must either have registered with the Bureau of Land Management, or must have obtained a permit, for such parking. Leaving vehicles parked on the Scenic Loop Drive after the posted closing hour, without a valid permit or registration, is prohibited.

(b) Permits, or registration, may be obtained at either the Las Vegas District Office or at the Red Rock Canyon NCA Visitor Center during normal business hours. Such authorization to park after hours on the Scenic Loop Drive expires when the operator of the vehicle returns to the parking area.

(c) Persons returning to a properly permitted or registered vehicle after the posted closing time of the Scenic Loop Drive must immediately exit the Scenic Loop Drive in accordance with the one-way traffic pattern. The following are prohibited:

(1) Failing to immediately proceed to the exit of, and to immediately exit from, the Scenic Loop Drive in accordance with the one-way traffic pattern.

(2) Remaining within the Scenic Loop Drive longer than is necessary to travel to the exit.

Billy Templeton,

State Director, Nevada.

[FR Doc. 93–12059 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–HC–M

[ID–942–03–4730–02]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 14, 1993.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of section 30, the survey of the meanders of the 1989–1992 left bank of the Snake River in section 29, and the survey of a portion of the center line of the new U.S. Highway 26 and the old U.S. Highway 26 in section 30, Township 2 North, Range 43 East, Boise Meridian, Idaho, Group No. 785, was accepted May 6, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: May 14, 1993.

[FR Doc. 93–12031 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–GG–M

Geological Survey

National Earthquake Prediction Evaluation Council; Public Meeting

Pursuant to Public Law 92–463, effective January 5, 1973, notice is hereby given that an open meeting will be held beginning at 8:30 a.m. (local time) on Thursday, June 3, 1993, and continuing through Friday, June 4, 1993. The National Earthquake Prediction Evaluation Council will meet at the Hyatt Dulles Hotel in Herndon, Virginia.

(1) *Purpose.* To discuss current earthquake hazard potential in California, Pacific Northwest, Hawaii, and other areas.

(2) *Membership.* The Council is chaired by Dr. Thomas V. McEvilly and is composed of scientists from academic and government institutions.

(3) *Agenda.* Review status of the ad hoc working groups on Parkfield prediction experiment, Landers—Phase II, Cascadia subduction zone, and seismic issues on the East Coast and Hawaii.

For more detailed information about the meeting, please call Dr. Robert L. Wesson, Chief, Office of Earthquakes, Volcanoes, and Engineering, Reston, Virginia, 22092, (703) 648–6714.

Dated: May 17, 1993.

Dallas L. Peck,

Director, U.S. Geological Survey.

[FR Doc. 93–12128 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Concession Contract Negotiations; Independence National Historical Park, PA

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to extend the notice of December 24, 1992, proposing to award a concession contract authorizing continued food and beverage facilities and services for the public at Independence National Historical Park, Pennsylvania for a period of ten (10) years from the date of execution of the contract and is modifying the requirements previously advertised.

EFFECTIVE DATE: June 21, 1993.

ADDRESSES: Interested parties should contact the Regional Director, Mid-Atlantic Region, 143 South Third Street, Philadelphia, Pennsylvania 19106, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: The Secretary has modified three of the requirements of the contract proposed under the December 24, 1992 notice as follows:

1. Government Improvement Account. The concessioner will be required to contribute $68,000 per year into this account; the prior requirement was $56,000 per year. However, unlike the prior requirement, this requirement will not start until the second year of the contract.

2. The Concessioner will not be required to undertake the $107,400 Improvement and Building Program as specified in SEC. 1(b) and (c) of Enclosure 7, and on page 6 of 14 of the Prospectus. Instead the Concessioner will be required to make an estimated $56,500 expenditure in certain improvements to the Government Improvements. The Concessioner will also be required to repair or replace certain Concessioner improvements.

3. An offer will be considered superior only if it provides all of the requirements in the Prospectus and offers to increase the annual contribution to the Government Improvement Account.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared. The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1990, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing consessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director not later than the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Dated: May 12, 1993.

John J. Reynolds,

Regional Director, Mid-Atlantic Region.

[FR Doc. 93–12137 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan/ Environmental Impact Statement for Hagerman Fossil Beds National Monument, Idaho

AGENCY: National Park Service, DOI.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the General Management Plan for Hagerman Fossil Beds National Monument, Idaho.

SUMMARY: The National Park Service is preparing a General Management Plan/ Environmental Impact Statement (GMP/ EIS) for Hagerman Fossil Beds National Monument, Idaho.

In the GMP/EIS and its accompanying public review process, the National Park Service will formulate and evaluate the environmental impacts of a range of alternatives to address distinct management issues for the Monument, including resource protection, visitor use, and palentological research. The Monument's purpose, significance, major interpretive themes, and management objectives will be identified as a conceptual framework for formulating these alternatives.

Public scoping meetings for the GMP were initially conducted in Hagerman and Twin Falls, Idaho, in January 1990. This notice will initiate an additional scoping period. In lieu of holding additional meetings, a newsletter will serve as the major scoping vehicle and will be sent to all interested parties by early June 1993. The newsletter will reintroduce the public to the GMP process and identify issues raised during previous scoping meetings. The issues raised previously, and any raised in 1993, will form the basis for developing management alternatives. Persons who may be interested in or affected by the proposed plan/EIS are invited to participate in the scoping process by responding to this Notice with written comments.

The draft plan and environmental impact statement are expected to be completed and available for public review by May 1994. The final plan, environmental impact statement, and Record of Decision are expected to be completed approximately one year later.

The responsible official is Charles H. Odegaard, Regional Director, Pacific Northwest Region, National Park Service.

DATES: Comments should be received on or before July 20, 1993.

ADDRESSES: Written comments concerning the GMP/EIS should be sent to the Superintendent, Hagerman Fossil Beds National Monument, National Park Service, 963 Blue Lakes Blvd., Suite 1, Twin Falls, ID 83301–6601.

FOR FURTHER INFORMATION CONTACT: Superintendent, Hagerman Fossil Beds National Monument, at the above address or at telephone number (208) 733–8398.

Dated: May 7, 1993.

William C. Walters,

Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 93–12038 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–70–M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, June 16, 1993, at Louisiana State University, University Center, Lakefront, New Orleans, Louisiana.

The Delta Region Preservation Commission was established pursuant

to section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—General Management Plan update
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130–2341, telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: May 10, 1993.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 93–12039 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–70–M

Delaware and Lehigh Navigation Canal National Heritage Corridor

AGENCY: Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, National Park Service, DOI.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: June 16, 1993 at 1:30 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: "The Big House", Stoddartsville Falls of the Lehigh River, is on Route 115, about five (5) miles from Blakeslee Corner. (Intersection of Routes 115 & 940 Stoddartsville, PA.)

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P–208, Bethlehem, PA 18018 (215) 861–9345.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100–692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P–208, Bethlehem, PA 18018, Attention: David B. Witwer.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

John J. Reynolds,

Regional Director, Mid-Atlantic Region.

[FR Doc. 93–12040 Filed 5–20–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–539–D (Final)]

Uranium From Tajikistan

AGENCY: United States International Trade Commission.

ACTION: Continuation and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the continuation of final antidumping investigation No. 731–TA–539–D (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Tajikistan of uranium, provided for in subheadings 2612.10.00, 2844.10.10, 2844.10.20, 2844.10.50, and 2844.20.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 13, 1993.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being continued as a result of notification by the Department of Commerce that the Government of Tajikistan has terminated the suspension agreement on uranium from Tajikistan and that Commerce has resumed its antidumping investigation. Consequently, the Commission is continuing its investigation.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on June 18, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on July 1, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 17, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 23, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is June 25, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 12, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appeafance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 12, 1993. A supplemental brief addressing only the final antidumping determination of the Department of Commerce is due on July 16, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 17, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–12081 Filed 5–20–93; 8:45 am]

BILLING CODE 7021–02–U

INTERSTATE COMMERCE COMMISSION

Intent to Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. Parent corporation and address of principal office:

Browning-Ferris Industries, Inc., 757 N. Eldridge, Houston, Texas 77079—Delaware

B. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

1. Acco International, Inc.—Texas
2. Acco Waste Disposal, Inc.—Texas
3. Acco Waste Paper, Inc.—Texas
4. Action Disposal System, Inc.—Minnesota
5. Arbor Hills Center for Resource Management, Inc.—Delaware
6. Azusa Land Reclamation Co., Inc.—California
7. BFI Acquisition Company—Ohio
8. BFI Constructors—California
9. BFI Disposal Systems of Alabama, Inc.—Delaware
10. BFI Disposal Systems of Florida, Inc.—Florida
11. BFI Disposal Systems of Georgia, Inc.—Delaware
12. BFI Disposal Systems of Mississippi, Inc.—Delaware
13. BFI Disposal Systems of North America, Inc.—Delaware
14. BFI Disposal Systems of North Carolina, Inc—Delaware
15. BFI Disposal Systems of Ohio, Inc.—Delaware
16. BFI Foundation Landfill, Inc.—Colorado
17. BFI Medical Waste Systems of Arizona, Inc.—Delaware
18. BFI Medical Waste Systems of California, Inc.—Georgia
19. BFI Medical Waste Systems of Colorado, Inc.—Delaware
20. BFI Medical Waste Systems of Illinois, Inc.—Delaware
21. BFI Medical Waste Systems of Iowa, Inc.—Iowa
22. BFI Medical Waste Systems of Minnesota, Inc.—Minnesota
23. BFI Medical Waste Systems of New Jersey, Inc.—New Jersey
24. BFI Medical Waste Systems of Oregon, Inc.—Delaware
25. BFI Medical Waste Systems of Utah, Inc.—Delaware
26. BFI Medical Waste Systems of Washington, Inc.—Delaware
27. BFI Medical Waste Systems Niagara Frontier, Inc.—New York
28. BFI Medical Waste Systems (Atlantic), Inc—Delaware
29. BFI Medical Waste Systems (Northeast), Inc.—Delaware
30. BFI Medical Waste Systems (Steel), Inc.—Delaware
31. BFI Medical Waste Systems (South Central), Inc.—Tennessee
32. BFI Medical Waste Systems (Southeast), Inc.—Delaware
33. BFI Memphis Recyclery, Inc.—Tennessee
34. BFI Modern Landfill, Inc.—Illinois
35. BFI Northern Transfer—Delaware
36. BFI Palisades, Inc.—New Jersey
37. BFI Recycling Systems of Minnesota, Inc—Minnesota
38. BFI Recycling Systems of Nebraska, Inc.—Nebraska
39. BFI Recycling of New Jersey, Inc.—New Jersey
40. BFI Riverside, Inc.—California
41. BFI of Albion, Inc.—New York
42. BFI of Metro New York, Inc.—Delaware
43. BFI of North Metro, Inc.—Michigan
44. BFI Organic Waste Services, Inc.—Connecticut
45. BFI Services Group, Inc.—California
46. BFI Tire Recyclers of Georgia, Inc.—Georgia
47. BFI Tire Recyclers of Minnesota, Inc.—Minnesota
48. BFI Tire Recyclers of Ohio, Inc.—Ohio
49. BFI Transfer Systems of Maryland, Inc.—Maryland
50. BFI Transfer Systems of New Jersey, Inc.—New Jersey
51. BFI Twin Cities Recyclery, Inc.—Minnesota
52. BFI Waste Systems, Inc.—Texas
53. BFI Waste Systems of Michigan, Inc.—Delaware

54. BFI Waste Systems of Ohio, Inc.—Delaware
55. BFI Whispering Oaks Sanitary Landfill, Inc.—Missouri
56. BFI Wood Resource of Jacksonville, Inc.—Florida
57. Bio-Medical Services Corp.—Georgia
58. Bio-Tech Services, Inc.—Missouri
59. Blount County Disposal, Inc.—Alabama
60. Brooks Disposal Service, Inc.—Illinois
61. Browning—Ferris, Inc.—Delaware
62. Browning—Ferris, Inc,—Maryland
63. Browning-Ferris Industries Chemical Services, Inc.—Nevada
64. Browning-Ferris Industries Waste Control, Inc.—Delaware
65. Browning-Ferris Industries, Inc.—Massachusetts
66. Browning-Ferris Industries of Alabama, Inc.—Alabama
67. Browning-Ferris Industries of Arizona, Inc.—Delaware
68. Browning-Ferris Industries of Arkansas, Inc.—Arkansas
69. Browning-Ferris Industries of Atlanta, Inc.—Delaware
70. Browning-Ferris Industries of California, Inc.—California
71. Browning-Ferris Industries of Central Jersey, Inc.—Delaware
72. Browning-Ferris Industries of Colorado, Inc.—Colorado
73. Browning-Ferris Industries of Connecticut, Inc.—Delaware
74. Browning-Ferris Industries of Eagle, New York, Inc.—Texas
75. Browning-Ferris Industries of Elizabeth, N.J., Inc.—New Jersey
76. Browning-Ferris Industries of Falls Township, Inc.—Pennsylvania
77. Browning-Ferris Industries of Florida, Inc.—Delaware
78. Browning-Ferris Industries of Georgia, Inc.—Georgia
79. Browning-Ferris Industries of Hawaii, Inc.—Delaware
80. Browning-Ferris Industries of Idaho, Inc.—Idaho
81. Browning-Ferris Industries of Illinois, Inc.—Delaware
82. Browning-Ferris Industries of Indiana, Inc.—Indiana
83. Browning-Ferris Industries of Iowa, Inc.—Iowa
84. Browning-Ferris Industries of Kansas, Inc.—Kansas
85. Browning-Ferris Industries of Kansas City, Inc.—Missouri
86. Browning-Ferris Industries of Kentucky, Inc.—Delaware
87. Browning-Ferris Industries of Long Island, Inc.—New York
88. Browning-Ferris Industries of Maine, Inc.—Delaware
89. Browning-Ferris Industries of Marion County, Inc.—Delaware
90. Browning-Ferris Industries of Michigan, Inc.—Michigan
91. Browning-Ferris Industries of Minnesota, Inc.—Minnesota
92. Browning-Ferris Industries of Mississippi, Inc.—Mississippi
93. Browning-Ferris Industries of Montana, Inc.—Nevada
94. Browning-Ferris Industries of Nebraska, Inc.—Nebraska
95. Browning-Ferris Industries of New Hampshire, Inc.—New Hampshire
96. Browning-Ferris Industries of New Jersey, Inc.—New Jersey
97. Browning-Ferris Industries of New York, Inc.—New York
98. Browning-Ferris Industries of North Jersey, Inc.—New Jersey
99. Browning-Ferris Industries of Ohio, Inc.—Delaware
100. Browning-Ferris Industries of Ohio and Michigan, Inc.—Ohio
101. Browning-Ferris Industries of Oregon, Inc.—Oregon
102. Browning-Ferris Industries of Owensboro, Inc.—Delaware
103. Browning-Ferris Industries of Oyster Bay, Inc.—Delaware
104. Browning-Ferris Industries of Paterson, N.J., Inc.—New Jersey
105. Browning-Ferris Industries of Pennsylvania, Inc.—Delaware
106. Browning-Ferris Industries of Philadelphia, Inc.—Pennsylvania
107. Browning-Ferris Industries of Pinal County, Inc.—Arizona
108. Browning-Ferris Industries of Quincy, Illinois, Inc.—Iowa
109. Browning-Ferris Industries of Rhode Island, Inc.—Delaware
110. Browning-Ferris Industries of Rochester, Inc.—Minnesota
111. Browning-Ferris Industries of South Atlantic, Inc.—North Carolina
112. Browning-Ferris Industries of South Jersey, Inc.—New Jersey
113. Browning-Ferris Industries of Southern Illinois, Inc.—Delaware
114. Browning-Ferris Industries of Southeastern Michigan, Inc.—Michigan
115. Browning-Ferris Industries of Southwest Virginia, Inc.—Virginia
116. Browning-Ferris Industries of Southwestern Jersey, Inc.—New Jersey
117. Browning-Ferris Industries of Springfield, Inc.—Missouri
118. Browning-Ferris Industries of St. Louis, Inc.—Delaware
119. Browning-Ferris Industries of Tennessee, Inc.—Tennessee
120. Browning-Ferris Industries of Utah, Inc.—Utah
121. Browning-Ferris Industries of Vermont, Inc.—Vermont
122. Browning-Ferris Industries of Washington, Inc.—Washington
123. Browning-Ferris Industries of West Virginia, Inc.—Delaware
124. Browning-Ferris Industries of Western Jersey, Inc.—New Jersey
125. Browning-Ferris Industries of Western Jersey, Inc.—Wisconsin
126. Browning-Ferris Industries of Wyoming, Inc.—Wyoming
127. Butts County Development Corp.—Georgia
128. CECOS International, Inc.—New York
129. CMS Development Corp.—North Carolina
130. Condor Waste Transportation, Inc.—Texas
131. Disposal Specialists, Inc.—Vermont
132. Dooley Equipment Corporation—Massachusetts
133. E & E Hauling, Inc.—Illinois
134. East DeKalb Landfill, Inc.—Georgia
135. EnvironMed, Inc.—Massachusetts
136. Escatawpa Environmental Services, Inc.—Mississippi
137. Geneva Waste Services, Inc.—New York
138. George Fenske Sanitary Service, Inc.—Minnesota
139. Hall's Ferry Investments, Inc.—Missouri
140. Hawk Ridge Compost Facility, Inc.—Maine
141. Hawk Ridge Farms, Inc.—Maine
142. Heavy Equipment Leasing Services Co., Inc.—New York
143. Health Management, Inc.—Tennessee
144. Health Management of New Orleans, Inc.—Louisiana
145. Hennepin Transfer, Inc.—Minnesota
146. Holly Springs Disposal, Inc.—North Carolina
147. Homestand Land Corp.—Pennsylvania
148. Hooksett Recycling & Processing Center, Inc.—New Hampshire
149. HL–NIW, Inc.—New York
150. Imperial Landfill Company, Inc.—Pennsylvania
151. International Disposal Corp. of California—California
152. Isler's Refuse Service, Inc.—Ohio
153. Jefferson Pike Landfill, Inc.—Tennessee
154. Karas Trucking Co., Inc.—Ohio
155. Keller Canyon Landfill Company—California
156. Lancaster Bio-Medical Services Group.—Pennsylvania
157. Land Reclamation, Inc.—New York
158. Lawrence County Disposal, Inc.—Alabama
159. Loma Linda Disposal, Inc.—California
160. Lorain County Resource Recovery Complex, Inc.—Delaware
161. Louis Kmito & Son, Inc.—Massachusetts
162. Lyon Development Co.—Michigan
163. Marble Mill Recycling and Transfer Station, Inc.—Georgia
164. Merrimack Valley Medical Services Company, Inc.—Massachusetts

165. Middle Tennessee Recyclery, Inc.—Tennessee
166. Mon Valley Sanitary Landfill, Inc.—Pennsylvania
167. Moreland Avenue Disposal, Inc.—Georgia
168. National Disposal Service of Nebraska, Inc.—Nebraska
169. New Morgan Landfill Company, Inc.—Pennsylvania
170. Newco Waste Systems, Inc.—New York
171. Newco Waste Systems of New Jersey, Inc.—New Jersey
172. Niagara Landfill, Inc.—New York
173. Niagara Recycling, Inc.—New York
174. Niagara Sanitation Company, Inc.—New York
175. Northern Disposal, Inc.—Massachusetts
176. Philadelphia Bio-Medical Services Corp.—Pennsylvania
177. Pine Bend Landfill, Inc.—Minnesota
178. Pleasant Hill Bayshore Disposal, Inc.— California
179. Port of Albany Medical Waste Facility New York, Inc.—New York
180. ROS, Inc.—Colorado
181. Rx Thermal of Colorado, Inc.—Colorado
182. Refuse Transfer, Inc.—Minnesota
183. Regional Landfill, Inc.—Texas
184. Residential Service, Inc.—Nebraska
185. Resource Conservation Services, Inc.—Maine
186. Resource Recovery Corporation—Massachusetts
187. River City Refuse Removal, Inc.—Wisconsin
188. Sampson County Disposal, Inc.—North Carolina
189. South Alabama Disposal, Inc.—Alabama
190. Springfield Relay Systems, Inc.—Missouri
191. TRC, Inc.—Pennsylvania
192. T.R.A.S.H., Inc.—Tennessee
193. Town and County Waste Service; Inc.—Wisconsin
194. Troy Area Landfill, Inc.—Wisconsin
195. Van Buren Services, Inc.—New York
196. Walker County Disposal, Inc.—Alabama
197. West Roxbury Crushed Stone Co.—Massachusetts
198. Westowns Disposal Systems, Inc.—Wyoming
199. Wood Resource Recovery, Inc.—Florida
200. Woodlake Sanitary Service, Inc.—Minnesota
201. Youngstown BFI Waste Systems, Inc.—Ohio

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–12110 Filed 5–20–93; 8:45 am]

BILLING CODE 7035–01–M

Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: May 18, 1993.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Northwest Agricultural Cooperative Association, Inc. (N.A.C.A., Inc.)
(2) P.O. Box 1, Ontario, OR 97914
(3) 920 SE 9th Avenue, Ontario, OR 97914
(4) Jerry Ready, P.O. Box 1, Ontario, OR 97914

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–12109 Filed 5–20–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32237]

Norfolk and Western Railway Co., Purchase and Operate Exemption; Consolidated Rail Corp.

AGENCY: Interstate 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. 11343–45 Norfolk and Western Railway Company's purchase and operation of about 5.6 miles of rail line in Wayne County, IN, owned by Consolidated Rail Corporation.

DATES: This exemption is effective on June 20, 1993. Petitions for stay must be filed by June 7, 1993, and petitions for reconsideration must be filed by June 15, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32237 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives:

Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

John J. Paylor, Consolidated Rail Corporation, Two Commerce Square-16A, 2001 Market Street, Philadelphia, PA 19101–1416.

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. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: May 11, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–12108 Filed 5–20–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32234]

Providence and Worcester Railroad Co., Continuance in Control Exemption; Connecticut Rail Systems, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the continuance in control by Providence and Worcester Railroad Company (P&W) of Connecticut Rail Systems, Inc. (CRSI), on the latter's becoming a rail common carrier, subject to standard labor protective conditions. CRSI, a wholly owned subsidiary of P&W, was incorporated as a non-carrier entity to acquire from Consolidated Rail Corporation and operate a rail line and incidental rights. The related acquisition and operation transaction was the subject of a notice of exemption in Finance Docket No. 32233 served and

published in the **Federal Register** (58 FR 17625) on April 5, 1993. Pending the outcome of this proceeding, P&W has placed all its shares of CRSI stock in an independent voting trust to avoid a common control violation.

DATES: The exemption will be effective on June 21, 1993. Petitions to stay must be filed by June 1, 1993 and petitions to reopen must be filed by June 10, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32234 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioners' representative: Terence M. Hynes, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Jasneth C. Metz, (202) 927–6294 or Richard Felder, (202) 927–5610 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain 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. (Assistance for the hearing impaired is available through TDD services: (202) 927–5721.)

Decided: May 12, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–12107 Filed 5–20–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida
- FL930017 (Feb. 19, 1993)

Massachusetts
- MA930001 (Feb. 19, 1993)
- MA930002 (Feb. 19, 1993)
- MA930003 (Feb. 19, 1993)
- MA930008 (Feb. 19, 1993)

Pennsylvania
- PA930006 (Feb. 19, 1993)
- PA930014 (Feb. 19, 1993)

Virginia
- VA930015 (Feb. 19, 1993)

Volume II

Illinois
- IL930008 (Feb. 19, 1993)
- IL930009 (Feb. 19, 1993)
- IL930011 (Feb. 19, 1993)
- IL930013 (Feb. 19, 1993)

Kansas
- KS930006 (Feb. 19, 1993)
- KS930007 (Feb. 19, 1993)
- KS930009 (Feb. 19, 1993)
- KS930012 (Feb. 19, 1993)

Missouri
- MO930001 (Feb. 19, 1993)
- MO930005 (Feb. 19, 1993)

Wisconsin
- WI930005 (Feb. 19, 1993)

Volume III

Utah
- UT930003 (Feb. 19, 1993)
- UT930025 (Feb. 19, 1993)
- UT930026 (Feb. 19, 1993)
- UT930027 (Feb. 19, 1993)
- UT930028 (Feb. 19, 1993)
- UT930030 (Feb. 19, 1993)
- UT930032 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50

Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14th day of May 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–11822 Filed 5–20–93; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. B and B Coal Company

[Docket No. M–93–58–C]

B and B Coal Company, 225 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Rock Ridge No. 1 Slope (I.D. No. 36–07741) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air ventilating the charging stations, at the No. 1 chute of the active gangway level, continue through the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Dynamic Recovery, Inc.

[Docket No. M–93–59–C]

Dynamic Recovery, Inc., P.O. Box 25, Clarksville, Pennsylvania 15322 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Lazarus Mine (I.D. No. 36–08336) located in Greene County, Pennsylvania. Due to hazardous roof conditions, certain areas of the mine cannot be safely traveled. The petitioner proposes to monitor the quality and quantity of air at the affected areas on a weekly basis. The petitioner states that rehabilitation of the affected areas would constitute a diminution of safety for the personnel involved. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Quarto Mining Company

[Docket No. M–93–60–C]

Quarto Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (escapeways; bituminous and lignite mines) to its Powhatan No. 4 Mine (I.D. No. 33–01157) located in Monroe County, Ohio. The petitioner seeks to modify the requirement that escapeways be maintained at least 6 feet wide. As an alternative the petitioner proposes to reroute portions of the alternate and primary escapeways. Post signs or markers identifying the new routes and to use the primary escapeway in case of an emergency. If the primary escapeway is impassable the longwall machinery and belt haulage would be denergized while transporting injured persons. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Sheldon Derck

[Docket No. M–93–61–C]

Sheldon Derck, 133 East Academy Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Slope No. 1 (I.D. No. 36–07018) located in Northumberland County, Pennsylvania. The petitioner proposes to construct an overlapping 1 inch hardwood board to a minimum 2 inches thick and coat with a flame retardant coating as a seal for its anthracite coal mine, to make daily visual inspections of stoppings, and to take air measurements before and after a series of stoppings. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Cross Mtn. Coal, Inc.

[Docket No. M–93–62–C]

Cross Mtn. Coal, Inc., 100 Coal Drive, London, Kentucky 40741–8799 has filed a petition to modify the application of 30 CFR 75.333(b) (ventilation controls) to its Mine No. 6 (I.D. No. 40–02971) located in Campbell County, Tennessee. The petitioner proposes to use semipermanent stoppings in rooms where second mining is projected. The semipermanent stoppings would be constructed of 4-inch hollow-core concrete blocks, dry stacked and coated on one side with wood-fiber based plaster and have a minimum of air of 9000 cubic feet per minute at all times in the last open crosscut during advance mining and on the intake end of the pillar line during second mining. The petitioner states that application of the standard would result in a diminution of safety to the miners.

6. U.S. Steel Mining Company, Inc.

[Docket No. M–93–64–C]

U.S. Steel Mining Company, Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15219–4776 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Cumberland Mine (I.D. No. 36–05018) located in Greene County, Pennsylvania. The petitioner proposes to install SHD+GC (SHD–CGC) cable check instead of SHD–GC cable on its high-voltage longwall system. The petitioner asserts that the electrical protection provided by the SHD+GC (SHD–CGC) cable would provide at least the same measure of protection as would the mandatory standard.

7. New Warwick Mining Company

[Docket No. M–93–65–C]

New Warwick Mining Company, R.D. 1, Box 167A, Mount Morris, Pennsylvania 15349 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Warwick Mine (I.D. No. 36–02374) located in Greene County, Pennsylvania. Due to hazardous roof conditions, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to establish check points that would be monitored weekly for the intake aircourse. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June

21, 1993. Copies of these petitions are available for inspection at that address.

Dated: May 14, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–12131 Filed 5–20–93; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Performance Review Board

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: This notice announces a revision in the membership of the SES Executive Resources and Performance Review Board.

Effective May 14, 1993, Michael S. Shapiro, General Counsel, Office of the General Counsel/Congressional Liaison, has been designated to replace Anne D. Neal, General Counsel, Office of General Counsel/Congressional Liaison, as a Member of the SES Performance Review Board. Mr. Shapiro will serve the unexpired portion of Anne D. Neal's term through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Personnel, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

Donald Gibson,

Acting Chairperson.

[FR Doc. 93–12129 Filed 5–20–93; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation, and Dissemination; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: June 7–8, 1993; 8:30 a.m. to 5 p.m.

Place: The River Inn, 924 Twenty Fifth Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Ms. Barbara Lovitts, Division of Research, Evaluation and Dissemination, rm. 1227, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, Telephone (202) 357–7071.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Research in Teaching and Learning Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–12132 Filed 5–20–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8914]

Hecla Mining Co.; Final Finding of No Significant Impact Regarding the Termination of a Source Material License for Hecla Mining Company, Johnny M Mine Site, McKinley County, New Mexico

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to terminate the source material license authorizing Hecla Mining Company (Hecla) to possess byproduct material at the Johnny M Mine, McKinley County, New Mexico.

2. Reasons for the Final Finding of No Significant Impact

The Johnny M Mine located near San Mateo, New Mexico, was operated by Ranchers Exploration and Development (predecessor to Hecla Mining Company) from early 1972 to late 1982. The mining operation included backfilling of mined-out areas with mill tailings. The tailings were returned to the site from the mill which processed the ore. An estimated 286,000 tons of tailings were injected into the mine. Disposal depths ranged from 1134 feet to 1148 feet and from 1162 feet to 1183 feet below the surface (using the shaft for datum) or about 1100 to 1300 feet underground, depending on the terrain.

Reclamation of the mine property began in early 1982. The mine shaft was sealed with a 4-foot thick water ring reinforced concrete plug set between the Dakota formation and the Westwater Canyon member of the Morrison formation. The portal was sealed with a 12-inch thick reinforced concrete plug, and a 20-inch diameter capped steel pipe was set in the concrete.

The radiological reclamation plan for the site consisted of removing the remaining surface contamination until appropriate standards were met. The underground tailings were to be left undisturbed. The contaminated material was transported to and disposed of at the Quivira Mining Company's Pond 2 disposal area.

The NRC staff evaluated an Environmental Report, submitted by the licensee on February 26, 1993, addressing the effect of the proposed action on the environment.

In accordance with Title 10, Code of Federal Regulations, Part 51, Section 51.21, NRC prepared an environmental assessment addressing the proposed termination of the license. As a result of that assessment, the NRC has determined that an environmental impact statement is not required for this proposed licensing action. The following statements support the Finding of No Significant Impact and summarize the environmental assessment:

A. In accordance with 10 CFR 51.60(b)(3), the licensee submitted an Environmental Report documenting the potential environmental effects of the proposed change.

B. The closure of site meets all the criteria of 10 CFR Part 40, appendix A. It was determined that the ground water has not been significantly affected by the tailings. Surface reclamation has been verified by soil sampling. The deed to the land has been annotated to indicate that the tailings are present and that they are subject to an NRC general license under Title 10, Part 40, Code of Federal Regulations, prohibiting the disruption and disturbance of the tailings.

C. The site has been reclaimed to the requirements of 10 CFR Part 40, Paragraph 40.42, and is suitable for release for unrestricted use.

D. There is no need for long-term surveillance of the site due to the location of the tailings in the mine.

In accordance with 10 CFR 51.34(a), the Director, Uranium Recovery Field Office (URFO), made the determination to issue a final finding of no significant impact in the Federal Register. Source Material License SUA–1482 for the Johnny M Mine will be terminated upon publication in the Federal Register.

The environmental evaluations setting forth the basis for the finding are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the .

Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Denver, Colorado, this 13th day of May 1993.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 93–12090 Filed 5–20–93; 8:45 am]

BILLING CODE 7590–01–M

Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–245]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to an exemption from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.C.1 issued to the Northeast Nuclear Energy Company (NNECO or the licensee) for Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would correct an administrative error. The exemption, which was issued on June 5, 1991, granted exemptions for Penetrations X–25, X–26, X–202E and X–205 from the local leak test (Type C) requirements of 10 CFR part 50, appendix J, section III.C.1. The NRC staff concluded that the proposed alternative test procedures are the most conservative with the existing configuration and will test both valve seals to provide indication of the leak tightness of the containment boundaries. In a letter dated April 15, 1993, NNECO stated that one of the penetrations was not correctly identified, penetration X–202E should have been X–202D, and requested that the exemption be corrected.

The Need for the Proposed Action

The proposed exemption amendment is needed to correctly identify the subject penetration.

Environmental Impacts of the Proposed Action

The proposed exemption amendment corrects a misidentified penetration and, therefore, does not have any environmental impact. In the June 5, 1991, exemption, Penetration X–202E should have been X–202D. Penetration X–202E is for a vacuum breaker (torus to drywell) and does not require 10 CFR part 50, appendix J testing.

Thus, radiological releases will not differ from those determined previously and the proposed exemption amendment does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption amendment does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption amendment.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption amendment, any alternative to this amendment will have either no significant different environmental impact or greater environmental impact. The principal alternative would be to deny the exemption amendment requested. Such action would not enhance the protection of the environment and would result in the misidentification of the penetration.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Millstone Nuclear Power Station, Unit 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption amendment.

For further details with respect to this proposed action, see the licensee's letter dated April 15, 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 Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 13th day of May 1993.

For the Nuclear Regulatory Commission.

John F. Stolz, Director,

Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–12092 Filed 5–20–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–269, 50–270, and 50–287; License Nos. DRP–38, DPR–47, and DPR–55; EA 92–211]

Duke Power Co., Oconee Nuclear Station; Order Imposing Civil Monetary Penalty

I

Duke Power Company (Licensee) is the holder of License Nos. DPR–38, DPR–47, and DPR–55 issued by the Nuclear Regulatory Commission (NRC or Commission) on February 6, 1973, October 6, 1973, and July 19, 1974, respectively. The licenses authorize the Licensee to operate the Oconee Nuclear Station in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on September 26–November 3, 1992. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated December 28, 1992. The Notice stated the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation. The Licensee responded to the Notice by letter dated February 25, 1993. In its response, the Licensee requested that the civil penalty be mitigated because the violation was not safety significant and by itself does not warrant significant regulatory concern and that the particular example cited does not adequately consider all of the related information that accompanied the discovery and identification of the degraded Low Pressure Service Water System flow condition.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation

designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $100,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street NW., suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland, this 14th day of May 1993.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

Appendix—Evaluation and Conclusion

On December 28, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. Duke Power Company (licensee) responded to the Notice on February 25, 1993. The licensee requests that the civil penalty assessed for the violation be mitigated because the violation was not safety significant and by itself did not warrant significant regulatory concern. The NRC staff's evaluation and conclusion regarding the licensee's requests are as follows:

Restatement of the Violation

10 CFR 50, Appendix B, Criterion XVI, Corrective Action, and the licensee's Quality Assurance Program (Duke 1–A, Section 17.3.2.13), require that measures be established to assure that conditions adverse to quality are promptly identified and corrected.

Contrary to the above, a condition adverse to quality was indicated during the performance of procedure PT/3/0150/22A, "Operational Valve Stroke Test", and the licensee failed to identify and correct the condition. Specifically, although the plant operators identified on June 9, 1992, that one low pressure service water (LPSW) system pump failed to provide the required flowrate (i.e., 5200 gpm) through the 3B low pressure injection (LPI) cooler for single LPI cooler operation, they did not recognize this as a condition adverse to quality. During subsequent testing on September 14, 1992, while the unit was shutdown for a refueling outage, the licensee determined that the reduced LPSW flow was due to valve 3LPSW–78 (the LPSW cooler outlet manual isolation valve) remaining in a throttled position due to an actuator problem.

Summary of Licensee's Response

While not denying that a condition adverse to quality existed, the licensee, in both the body of the letter and the corrective actions listed, in effect, disputes that the violation occurred as written. The licensee also contends that the NRC staff, in assessing the violation, did not adequately consider all pertinent information concerning discovery and identification of the problem. The licensee also stated that mitigation factors used in assessing the civil penalty were not fully considered.

1. Although the licensee's response does not deny the violation as cited, the licensee disputes that the operators were at fault in not recognizing that a problem existed in the LPSW system. The licensee contends that an undocumented evaluation had been performed by engineering and operating staff personnel when the anomalous flow indication first occurred. Operating crews who witnessed the questionable indications during subsequent tests were told that the issue had been evaluated and a problem did not exist. The licensee does admit that the evaluation was in error, but does not think that the operators were to blame. Rather, the licensee argues that the initial evaluation adequately addressed the practice of starting two LPSW pumps to perform the valve stroke test. The licensee contends that the actions taken were reasonable because the indications available at the time were not sufficient to reasonably expect the degraded condition to have been identified. The licensee further contends that only after actual flow testing was performed in September 1992, was information disputing the evaluation available.

2. Since the test was not specifically designed to evaluate system performance, the observed flow indication did not immediately alert the operating crews to the possibility that a problem existed. Operators should not, therefore, be blamed for not immediately pursuing the issue.

3. The licensee does not believe that the problem presented by the failed valve was safety significant because the valve disc would have always failed such that the disc would present the smallest cross section to the system flow. The observed flow reduction was a result of some amount of flutter in the disc's position. As a result, the LPSW system was continuously capable of supplying sufficient flow in the affected loop.

4. The licensee recognizes that previous findings regarding a lack of flow testing had been identified in a Self-Initiated Technical Audit (SITA) performed on the LPSW system in 1987. The flow testing which uncovered the problem with the valve was being performed to validate the engineering flow calculations and to resolve concerns expressed by the inspector following his review of those calculations. The licensee does not, however, concede that the problem definitely would have been discovered earlier even if the flow testing had been performed. This is primarily due to the nature of the interconnected system, which does not allow testing in all alignments.

5. In addressing the escalation factors, the licensee has taken issue with the contention that the violation was primarily identified by the NRC resident staff. The licensee states that when the resident inspector questioned the need to start a second pump during the June 1992 test, the inspector was given the same explanation the operators had been given, and he did not express additional concerns at that time. The licensee contends that its conclusion is supported by NRC Inspection Report 92–13, which covers the time period in which the NRC inspector first raised the concern. The licensee points out that while the report addresses the valve stroke testing it does not contain any concerns relating to that testing. The licensee further states that after the inspectors found mistakes in the flow calculations which were performed to resolve some of the questions about the LPSW system, the concerns were promptly addressed. Plant management then agreed that system testing would be beneficial and performed tests on Unit 3 prior to its scheduled startup. During that test the failed valve was found.

6. In assessing the application of prior enforcement history, the licensee states that the root cause of the violation was the lack of system performance testing which could have more promptly identified the problem with the system. Since the previous enforcement action had identified different root causes, the previous enforcement actions should not be linked to the present enforcement action.

NRC Staff Evaluation

1. The violation as written describes a condition observed by the operators which

should have been further investigated by the plant staff. The licensee's position appears to be that it is acceptable for the operators and plant management to be reassured by, and in fact to rely only on, a seemingly plausible explanation without a formal analysis or testing supporting such a position. Instead of requiring a formal response the first time the problem was observed, in July of 1991, operators accepted the system engineer's explanation which was provided informally on the spot without any documentation. The next two times the test was run and the same problem was indicated, operators were assured that the problem had already been evaluated.

The operators and plant management knew that the LPSW system is cross-connected at the discharge of the two pumps. Given that fact, the explanation that non-essential loads would have an effect on the "B" train and not the "A" train does not appear to be persuasive, and should have been challenged. In addition, the LPSW system alignment for the valve stroke test (service to a single cooler and non-essential loads) was actually less demanding than the alignment for a full system performance test (service to two coolers, multiple reactor building cooling units, and non-essential loads). Therefore, if the 5200 gpm could not be achieved under the alignment used for the valve stroke test, a question should have been raised about the system's ability to meet the more demanding requirements that full system performance required. Finally, in the past there had been instances of cooler outlet flow control valves failing in the full open position which resulted in flow rates through the coolers high enough to peg the flow indicators (greater than 8000 gpm). Operators were therefore well aware of the LPSW pump excess capability and the potential for *high* flow rates through the coolers should an outlet flow control valve malfunction. However, when subsequently confronted with a low flow condition through one of the coolers, they accepted an explanation that was in apparent conflict with their past experience. In summary, the NRC staff concludes that operations personnel had ample reasons to challenge and question the explanations given. In addition, the NRC staff concludes that licensee management given the above, had reason to question the engineering staff's conclusions, and failed to require a thorough evaluation of conditions, such as the one encountered in this situation.

2. The licensee's position that the tests were not designed to evaluate system performance does not relieve the licensee of the responsibility to investigate and resolve any observed problems. It is essential that anomalies or discrepancies be aggressively pursued regardless of the context in which they occur. This is the essence of the inquisitive, questioning attitude expected of all licensee personnel. Additionally, the fact remains that the flow anomaly was pursued by an NRC inspector rather than a member of the plant staff and that anomaly did, in fact, indicate a condition adverse to quality. That the anomaly would have been more aggressively pursued, if it had occurred during a test which stipulated that 5200 gpm was required with only one LPSW pump operating, goes without saying. In that circumstance, the acceptance criteria would have required meeting the flow rate or declaring the system inoperable. If the acceptance criteria of the observed test had, in fact, required that 5200 gpm could be achieved with one pump, the violation would have been cited in that context. What is at issue in this case is that a problem was indicated during a flow test. While not of a level to require action to be taken, (i.e., not meeting an acceptance criteria for operability), there was, as discussed above, certainly enough reason for the issue to have been pursued. Neither NRC staff nor the licensee should accept a position that only when acceptance criteria are not met should problems be thoroughly investigated.

3. The NRC staff does not agree with the licensee's contention that the valve failure was not safety significant. While the potential safety consequences of the valve's failure in the as found condition were fortuitously minimal, other issues need to be considered when assessing safety significance. First, there is the significance of the failure of licensee personnel to identify this problem which has been discussed above. In addition, the potential for the valve to have failed in a more limiting condition needs to be considered and is discussed below. During the system's performance testing which finally identified that the valve had failed, the flow rate through the valve decreased each time the valve was operated in the shut direction, and flow did not return to the same value when the valve operator was returned to the full open position. The fact that flow did not return to the previous value when the valve was partially cycled was the method used to determine that the valve was not operating properly. This also indicates that the valve disc's position was not exclusively a function of system flow. Rather, it indicates that the valve disc could have changed to less conservative positions when operated. While an evaluation performed after the fact may indicate that the observed flow was adequate, there is no assurance that the flow through the failed valve would not have changed significantly in the non-conservative direction under accident conditions or by operator action if the problem had not been identified and corrected.

4. A lack of adequate flow testing was indeed a finding of the 1987 SITA on the LPSW system. However, contrary to the implication in paragraph 2.C of the licensee's response, the NRC staff did not state or imply, in either the Notice or the accompanying letter, that had the SITA findings been followed up it was certain that the degraded condition of 3LPSW–78 would have been discovered. Rather, the NRC stated in its letter that "it is likely that the plant staff would have been in a much better position to have identified the flow degradation caused by 3LPSW–78" if adequate actions had been taken to address the SITA findings.

The calculations presented to the inspectors in September 1992 represented the licensee's assurance that the LPSW system was operable and were provided in response to the initial concern expressed by the inspector witnessing the test in June 1992. Prior to the September, the inspectors had repeatedly requested either that flow testing be performed or a formal, documented evaluation be performed to resolve the concerns with LPSW flow indications during valve stroke testing in general and specifically the June 1992 test. When the calculations were presented to the inspectors, the licensee contended that the calculations proved that the system was able to meet its design objectives and obviated the need for actual flow testing. The inspectors reviewed the calculations and found numerous errors in the calculations and the assumptions used. When the inspectors pointed out the errors, the licensee still did not agree that testing was required. Rather, licensee management informed the inspectors that the Unit 3 startup would continue without such testing being performed. The inspectors then informed the site management that the issue was of such a level of concern that it would necessitate contacting senior NRC Region II management for help in resolving the issue. The licensee only then agreed to perform actual system flow testing.

The licensee's point that, because of possible restrictions on testing, the problem may not have been identified even if the licensee had agreed to the testing earlier, is not well supported. The plant conditions that existed at the time the licensee is referring to did not present great difficulty in testing and would not have precluded detection of the problem. The Unit 3 LPSW system is independent of the shared Unit 1 and Unit 2 LPSW system. A system flow test could have been performed on the Unit 3 LPSW system during any refueling outage without any impact on the safety of the unit and without any effect on Units 1 and 2. When the licensee finally decided to perform the testing, the requisite procedures were written without significant problems, the system aligned in a fairly expeditious manner, and there was not an extreme degree of difficulty in performing this test. Testing of the Unit 3 LPSW system at power was also feasible. In fact, a flow test was performed by the licensee at power to benchmark the system flow model calculations performed by design engineering.

5. The NRC staff does not agree with the licensee's position that it was equally responsible for identifying the problem. As discussed above, the licensee did not concede that a problem existed, or that flow testing was necessary until NRC staff forced the issue. The licensee should have been more responsive to the issue. The response to the SITA findings regarding a lack of flow testing, the response to the problems initially identified by the operators, and the initial response to the NRC staff concerns all support the conclusion that, absent NRC staff involvement, the problem would likely not have been identified. The testing which identified the failed valve was, in effect, performed reluctantly, and does not warrant consideration as licensee identification of the problem. While the licensee is correct that NRC Inspection Report 92–13 does not document the inspectors' concerns about the LPSW system, licensee management was well aware of the concerns. As early as June 10,

1992 (the day after the concern was identified) the inspectors met with the plant staff to attempt to resolve the issue. The concern was periodically discussed in subsequent meetings with the licensee in which plant personnel maintained that they could demonstrate the acceptability of the flow indications. Finally, after giving the licensee ample opportunity to make its case and only after the licensee was unable to demonstrate through the use of calculations that the condition was not a problem, did the inspectors document the issue in an inspection report.

6. The NRC staff disagrees with the licensee's contention that the root cause of the violation was a lack of system performance testing. The violation is based on the fact that a condition adverse to quality was not actively and aggressively pursued. Therefore, the primary root cause of the violation was the inadequate response of the plant operations and engineering staffs to a potential problem. In addition, a lack of flow testing and other deficiencies in the LPSW system had been identified as early as 1987 in the licensee's SITA evaluation. The failure of licensee management to follow up on those findings, as well as management's acceptance of the informal and undocumented method of analysis used to resolve the identified LPSW flow reduction, make inadequate management oversight of the resolution of LPSW deficiencies a very significant contributing root cause.

The licensee's argument that escalation of the civil penalty should not be applied for licensee performance because the violation at issue is not similar to previous violations and the root cause of this violation differs from that of previous enforcement actions reflects a misunderstanding of the application of that factor. Assessment of the licensee performance factor is based on a broad view of performance, including all enforcement actions over a two-year period, and is not limited to similar violations or violations with similar root causes.

NRC Staff Conclusion

NRC staff concludes that the violation occurred as written. The NRC staff also concludes that the licensee has not provided an adequate basis for its request for mitigation of the proposed civil penalty and that the civil penalty adjustment factors were appropriately applied. Consequently, the NRC staff concludes that the proposed civil penalty in the amount of $100,000 should be imposed.

[FR Doc. 93–12091 Filed 5–20–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Reclearance of Form RI 25–15

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 25–15, Survey of Student's Eligibility to Receive Benefits, is used to collect information from adult children of deceased Federal employees or annuitants to assure that the child continues to be eligible for payments from OPM.

Approximately 12,000 RI 25–15 forms are completed annually. It takes approximately 15 minutes to complete this form. The total annual burden is 3,000 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0616.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–12045 Filed 5–20–93; 8:45 am]

BILLING CODE 6325–01–M

Request for Clearance of Revised Forms RI 20–7 and RI 30–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. Form RI 20–7, Representative Payee Application, is used by CSRS and FERS to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30–3, Information Necessary for a Competency Determination, collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

Approximately 12,480 RI 20–7 forms will be completed per year. The form requires approximately 30 minutes to complete. The annual burden is 6,240 hours. Approximately 250 RI 30–3 forms will be completed per year. The form requires approximately 1 hour to complete. The annual burden is 250 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received by June 21, 1993.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0616.

U.S. Office of Personnel Management

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–12047 Filed 5–20–93; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

Notice of Commission Visit

May 17, 1993.

Notice is hereby given that on May 17, 1993, certain Commission advisory staff personnel and Frank Pieper of the German Wissenschaftliches Institute will visit the Advo plant in Columbia, Maryland.

A report of the visit will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93–12044 Filed 5–20–93; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32307; File No. SR–BSE–93–6]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to Chapter II, Section 15 of the BSE Rules—G.T.C. Order Confirmation

May 14, 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 March 8, 1993, the Boston Stock Exchange, Inc. ("BSE" 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 BSE seeks to amend its rule regarding the confirmation of open orders to provide introducing brokers with the ability to confirm orders left with a specialist at any time.[1]

As amended, Chapter II, Section 15 of the BSE Rules would provide:

All orders entrusted to a specialist will be eligible for execution for as long as they remain open until cancelled by the entering firm or floor broker. Any entering firm or introducing floor broker may confirm the status of any open order at any time.

All open orders confirmed or renewed in the manner of their original entry, including partial executions or reductions in shares, are entitled to retain the same order of priority on the specialist's book. If the entering firm and/or the floor broker fails to correct any open orders that are in error and these open orders are executed according to their terms, the executions must be accepted by the entering firm or introducing floor broker.[2]

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 of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to bring the BSE's current order confirmation rule into line with the technology of the Exchange's BEACON System.[3]

Under the BSE's current rule, specialists are required to maintain open orders on the book and to periodically confirm the orders with the introducing broker. As a result of BEACON capabilities, the introducing brokers have immediate access to all of their open orders.[4] The Exchange seeks to place the onus of open order confirmation on the brokers.

The basis under the Act for the proposed rule change is Section 6(b)(5) in that the rule is designed to foster cooperation and coordination with persons engaged in regulating, clearing, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. By placing the onus of confirming open orders on the introducing brokers, the Exchange market will function more efficiently. The introducing floor brokers have the ability to review their open orders on a daily basis to confirm their accuracy, and, if necessary, to correct any errors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

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 period 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

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[1] BSE Rules of the Board of Governors, Chapter II, Section 15—Record of Orders from Offices to Floor—"G.T.C." Orders Confirmation—currently provides that:

G.T.C. (good-till-cancelled) orders must be confirmed or renewed with the specialist on the last business day of the confirmation period. The confirmation period will be determined by the Exchange. It shall be the specialist's responsibility to notify the introducing broker, in writing, of all G.T.C. orders held by him prior to the expiration of the confirmation period. Notwithstanding confirmation periods prescribed by the Exchange, any member firm, at its discretion, may request and receive confirmations no more frequently than once per calendar month.

G.T.C. orders properly confirmed or renewed in the manner of their original entry, except as to partial execution or reduction in shares, are entitled to retain the same order of precedence on the specialists book, and the specialist will be responsible for their proper entry. G.T.C. orders are not confirmed or renewed shall be retained on the specialist's book. However, if executed according to their terms, these orders must be accepted by the entering firm.

[2] The BSE also would change the name of its rule from "G.T.C. Orders Confirmation" to "Open Order Confirmation".

[3] BEACON, the Boston Exchange Automated Communications Order Routing Network, routes orders in eligible stocks from member firms to the BSE. BEACON allows orders to be transmitted from member firms to a BSE specialist's post where they are displayed on the specialist's terminal together with the automatically assigned BEACON quote at which the order would be automatically executed. The order is displayed on the specialist's terminal for up to 15 seconds to permit the specialist to intervene in the automatic execution of the order should he wish to improve on the BEACON quotation. When the specialist does not intervene, the order automatically will be executed at the BEACON quotation. When the specialist does not intervene, the order automatically will be executed at the BEACON quote. See Securities Exchange Act Release No. 27012 (July 10, 1989), 54 FR 30487 (approving File No. SR–BSE–87–1).

[4] BEACON was interfaced with the Base System (a computerized back office system that processes all orders executed on the Exchange floor) allowing Base to generate a report immediately confirming the execution of a BEACON order. The combined system is also able to provide BSE specialists with continuous updates of their positions, average costs, concentrations (short or long), a computerized limit order book, and provide brokers with their open order positions. See Securities Exchange Act Release No. 27012 (July 10, 1989), 54 FR 30487 (approving File No. SR–BSE–87–1).

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 BSE. All submissions should refer to File No. SR–BSE–93–6 and should be submitted by June 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–12121 Filed 5–20–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32313; File No. SR–NASD–93–16]

Self-Regulatory Organizations; Notice of Amendment of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Small Order Execution System

May 17, 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 May 13, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 3 to the proposed rule change as described in Item I below, which Item has been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons.

[1] Amendments Nos. 1 and 2 were previously incorporated in the Notice of Proposed Rule Change issued by the Commission in Securities Exchange Act Release No. 32143 (April 14, 1993), 58 FR 21484 (April 21, 1993).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Department of Economic Research Impact of SOES Active Trading Firms on Nasdaq Market Quality

1. Introduction

The NASD's review looked at both the actual trading behavior and patterns of SOES active trading firms and the effects such trading practices are having on the quality of the Nasdaq Market. In the rule proposal, SOES "active trading firms" (or "SAT" firms) are described as order entry firms where the majority of trading activity of the firm occurs using SOES and SelectNet and where the trades consistently represent the maximum size permitted in SOES. Using this definition, 29 current SAT firms were identified. The NASD found that the average size trade executed by these firms equals 995 shares, as compared to 366 shares by all other order-entry firms using SOES. The activity in these firms occurs in quick brusts of heavy concentrations, sometimes resulting in several thousand shares of a single security being traded in a few seconds. Further, in the 50 most active Nasdaq issues for the month of February 1993, aggregate SAT firms volume was found to have accounted for over 80% of total SOES share volume. On average, 85% of SAT firms' total volume is executed in SOES or SelectNet, with SOES accounting for approximately 51% of the firms total activities. This compares with the three largest retail order entry firms' use of SOES and SelectNet that averages only 13% of their daily volume, only 5% of which takes place in SOES volume. To obtain perspective on comparable trading practices, the NASD compared the trading activity of the largest SAT firm with the largest retail order entry firm for one day, February 22, 1993. The NASD found that despite the large amount of activity by the SAT during the day, 1,474,100 shares, the net change in inventory amounted to only 4,000 shares. This compares with the total volume by the order entry firm of 799,290 shares, with a net change in inventory of 588,236 shares. Furthermore, the average end-of-day inventory for the three largest order-entry firms using SOES was 1,242,204 shares while the average end-of-day inventory per SAT firm was only 9,095 shares. Thus, the largest order entry firms displayed the trading characteristics traditional of customers that take long-term investment positions in securities while SAT firms show no such client characteristics.

After identifying the patterns of these concentrated bursts of trading in SOES, the NASD sought to analyze the effects of these trading practices on bid-ask spreads in Nasdaq, on price volatility and on liquidity. The NASD found a significant relationship between concentrated SOES activity and wider spreads, and also found significant increases in bid price and execution price volatility that correlates to concentrated SOES activity.

The review and analysis of trading performed for this study utilized the NASD Equity Audit Trail daily trading data from the month of February 1993, and for certain detailed analyses, focused on the week of February 22, 1993 through February 26, 1993, and March 24–26. Equity Audit Trail daily trading data was also used for sample trading days from September and October 1992 to gain a longer term perspective of the problem as well as to test for consistency across different market conditions.

2. Summary of Findings

- SAT firm activity occurs in quick bursts of heavy concentrations, sometimes resulting in several thousand shares being traded in a few seconds; for the 50 most active Nasdaq issues, SAT firm volume accounted for over 80% of total SOES share volume for the month of February 1993;
- SAT firm average size order equals 995 shares as compared to all other order entry firms size of 366 shares;
- SAT firm concentration of activity frequently results in a decline in the bid price and a widening of the bid-ask spread;
- A significant positive relationship was found to exist between increases in spread and SAT firms' volume as it related to total SOES volume per security; and
- SAT firm activity resulted in higher price volatility and less liquidity—higher price changes are associated with high active trading firm volume, even after controlling for normal price fluctuations.

3. Detailed Results

A. *SOES Active Trading Firm Volume Negatively Impacts Nasdaq Bid-Ask Spreads.* A regression analysis was performed to measure the impact of a high proportion of SAT firm volume relative to total SOES share volume on the spreads of Nasdaq securities. As seen in Exhibit 1, a significant positive relationship was found to exist between percent spread and the percentage of SAT firm volume to total SOES share

volume. In other words, the higher the SAT firm volume relative to total SOES share volume per security, the higher the percent spread is expected to be. It follows from the regression equation that as SAT firm volume is reduced, spreads would correspondingly decrease, thereby reducing costs paid by investors.

Three different sample periods were examined to measure the consistency of results. Sample periods under study were composed of: (1) September 30, October 14, and October 28, 1992; (2) February 22–25, 1993; and (3) March 24–26, 1993. Two tests were made with regard to the selected periods of study. Regression equations, 1, 3 and 5 measure the impact of the SAT firms on percent spreads over the entire day of trading. In each of three periods, SAT firm activity significantly impacts the percent spreads of securities. The lowest significance level occurs in time period (1). Thus, it can be inferred that the impact of SAT firm activity on percent spreads has increased from 1992 levels. However, the SAT firm variable is significant at the 99% level for all three periods.

Because a large time frame (the entire day) will be more heavily influenced by market conditions rather than individual trades, it may confound the analysis since it will include many trades that are not associated with SOES activity. Thus, a more focussed and reflective time frame was utilized for analysis to isolate and identify the SAT firm impact on percent spreads in Nasdaq securities. Since the SAT firms participate in short bursts of activity during the day, representative five minute periods of concentrated activity were also analyzed.

Nasdaq stocks exhibited wider spreads in five-minute time periods with high SAT firm concentration than during five-minute periods in which SAT firm volume was small or nonexistent. Regressions 2, 4 and 6 examine the impact over five-minute time periods during the day. The results of these regressions demonstrate the increasing impact of the SAT firms on percent spreads. In period (1), SAT firm activity is significant at the 89% level. In the two most recent periods, SAT firm activity significantly impacted the width of spreads at the 99% level.

Over the entire day, SAT firm volume relative to total SOES volume has remained stable with averages of 11–12% for all SOES securities[2] in all three time periods. However, SAT firm volume relative to total SOES volume during these five-minute time periods has increased historically from an average of 10% in period (1) to 20% in period (2) and 22% in period (3). This implies that the SAT firm activity in 1993 is more concentrated than the SAT firm activity in 1992.

Holding everything else constant and using regression 4, if the SAT firm volume were reduced to 0, the average percent spread in these stocks would be reduced by .02%. This would result in an average spread reduction of four cents on the average priced stock, or a savings of $200,000 a day over these time intervals to investors (based on total activity in these stocks of 66 million shares per day during these intervals and the assumption that 75% of volume is occurring at the bid or ask quotes.) The impact on the quotation spreads of individual securities often can be even more excessive. As noted in the rule proposal, in one security, SAT firm executions accounted for 100% of total SOES volume on 9/30/92 and the average percent spread for the stock on that day was 2.2%. On 10/28/92, SAT firm volume declined to 32.3% and the average percent spread for the day declined to 1.4%. On 10/14/92, SAT firm volume was 21.5% and the average percent spread for the day was 1.1%.

Further, in analyzing transaction data from February 1993, the NASD found that stocks with high concentrations of SAT firm activity, as measured by over 50% of the trades in an interval of consecutive trades, experienced an adverse impact on their bid price and spread. This high concentration of SAT firm trading resulted in the bid price falling and spreads widening in several instances. Sample data from February 1993 reveals a total of 222,000 shares traded in a total time of 1,828 seconds. The average high concentration period had a share volume of 9,000 shares traded on 9 trades in 73 seconds. This is an average of 7,397 shares traded per minute. Additionally, the bid/ask spread increased in 15 of the 25 samples (60%) at an average of 113% (13 increased $0.25, and 2 increased $0.50). For these periods, SAT firms traded 137,000 shares, an average of 9,133 shares per stock. The bid price declined in 18 of the 25 samples (72%) by an average of 0.54%. For these high concentration intervals, SAT firms traded 169,000 shares, an average share volume of 9,389 shares.

The relationship does not exist for every stock for every day. However, there is a significant correlation between high SAT firm concentration and high percent spreads in most stocks for the sample periods studied. Not only is there an adverse impact on spreads during short time periods in the day, the adverse impact is replicated over the entire day of trading.

The entire day regressions (1,3 and 5) encompass 253,275 trades of 6,369 securities in September—October 1992, 514,600 trades in 9,515 securities for the sample days in February 1993, and 287,858 trades in 6,886 securities for sample days in March 1993. All securities with at least five trades during a day were included in these regressions resulting in one observation per day for most securities. To prevent biases associated with the use of unchanging variables such as beta or number of market makers, only trading-specific variables were employed.

The five-minute time periods regressions (2, 4 and 6) encompass 102,758 trades during 10,402 separate five-minute periods in September—October 1992, 265,684 trades during 21,412 separate five-minute time periods for the sample days in February 1993, and 124,384 trades during 12,121 separate five-minute time periods for sample days in March 1993. All five-minute time periods with at least five trades were included in these regressions.

A short term volatility measure, trade to trade absolute percent price change, was used because it more accurately reflects the supply-demand conditions of the trading that day than long-term volatility measures such as beta or daily price change. Price and volatility were averaged over every trade during these sample periods. Neutral logarithms are taken for average trade price and daily share volume.

B. *SOES Active Trading Firm Volume Results in an Adverse Impact on Nasdaq Price Volatility and Liquidity.* On average, SAT firms' trades are more likely to drive quote changes, thereby increasing volatility in the stock, than other firms. Although these firms account for only 10% of total trading activity prior to a quote change on average, they are twice as likely to be participating in the market prior to the inside quote change than during the rest of the day. One minute prior to a quote change, SAT firms SOES trades and volume as a percent of total trades and total volume are 10.5% and 5.7%, respectively, compared to full day trading statistics of 4.8% and 2.7%, respectively. Thus, this type of activity has a significant effect on the movement of the inside quotes of a stock and its volatility.

[2] It should be noted, however, that the SAT averages of 11–12% take into account all Nasdaq issues trading in SOES, a universe of over 2,000 issues. For securities that had SAT volume greater than zero, the percentage of SAT SOES volume to total SOES share volume averaged over 93%.

The NASD reviewed selected stocks with greater than normal volatility and large closing price declines (over $3.00) from February 1993 and found a high correlation of SAT firms volume associated with them. Exhibit 2 sets out data from the nine securities reviewed and shows that between 53% and 89% of total SOES volume involved SAT firms, with an average of 71%. The average trade size was 993 shares per SAT firms trade, more than twice the average trading size of non-active SAT firms SOES trades of 426 shares for these securities.

SAT firm activity in SOES and SelectNet has a significant impact on the percent change in the price of a security. Higher price changes are associated with high SAT firm volume, even after controlling for normal fluctuations in prices during the day. Since it has been demonstrated that high SAT firm volume is associated with subsequent increases in the bid-ask spreads of individual stocks, this result leads to an explanation as to why spreads are greater subsequent to SAT firm activity.

Since higher price volatility leads to higher spreads and lower volatility will reduce bid-ask spreads, one can conclude that eliminating the highly concentrated SAT firm activity will reduce bid-ask spreads, reduce volatility in the stocks, and reduce resultant costs paid by investors. Exhibit 3 shows that, from a comparison of time periods with high and low SAT firm volume, price volatility would be reduced by 0.2–0.3% per security during these time periods if the concentrated effects of SAT firm volume were eliminated. These results were obtained from a t-test[3] measuring the difference between average absolute price changes during periods of high and low SAT firm activity per stock over a period from 2/16/93 to 2/26/93.

For the average-priced stock this translates into an increase in volatility of 6–8 cents per share over an average of 10,000 shares traded by SAT firms. Since these periods of high SAT firm concentration occurred 2,075 times over the ten-day sample period, this impact becomes very significant. If a stock experienced ten intervals of high SAT firm volume during the time period of study (which occurred in 97 securities over this time frame), one would expect the increase in volatility to be on the order of 10 times 6 cents or 60 cents per share per stock. This result implies these securities experience a loss of liquidity (the ability to trade without impacting the price of a security) both during these individual time frames and over the entire sample period. Accordingly, the NASD found that SAT firm volume had an adverse impact on the market quality of individual stocks over the time periods reviewed.

The impact on volatility during periods of active trading is underestimated. All things being equal, one would expect that higher volume would be associated with greater price fluctuations. However, this was not found to be the case. The activity of SAT firms has a greater impact on price volatility despite having lower average share volume that the trading activity seen in control groups (comprised of order-entry, non-SAT firms). For nine sample days reviewed, the SAT firms' SOES and SelectNet volume averaged 9,900 shares compared the to the control group's SOES and SelectNet volume of 10,300 shares. Despite greater share activity than the SAT firms, the control group trading activity had significantly less impact on prices.

To measure the reliability of results, an alternative measure of low SAT firm activity versus high SAT firm activity was also tested. This measure gave similar results and confirmed the original findings. Under the alternative, the control group trading volume averaged 23,400 shares, which represented more than twice the share activity in the SAT firms. Despite this fact, the control group trading activity had significantly less impact on prices than did the activity of the SAT firms.

The range of values shows that the distribution of price changes is larger during periods of high SAT firm activity. The price changes range from −8.2% to 7.0% during periods of high SAT firm activity compared to −4.0% to 2.8% during periods of low SAT firm activity. Even trimming 5% off the highest and lowest extreme values from the range computation, the price change range during high SAT firm activity is demonstrably larger (−2.3% to 2.3 for the active periods compared to −1.4% to 1.7% for the low periods). Accordingly, the results are not biased by a few extreme observations. not only are the average absolute price changes greater, but the dispersion of these price changes is also wider during periods of high SAT firm activity than during periods of low SAT firm activity.

The relationships examined do not exist for every stock for every day. However, on average, the price impact of SAT firm activity is greater than the price impact of comparable order entry firm activity in the same stock. The trading practices exhibited by the SAT firms are associated with excessive price changes as compared to the trading of non-SAT firms in the stocks studied. This exaggerated price impact causes greater volatility and lower market liquidity than would otherwise exist if these SAT firms traded similarly to other order entry firms. Thus, a reduction in this type of trading activity would have a positive impact on the market quality of these securities.

This volatility analysis compares the average volatility of the periods of low trading activity with the average volatility of the periods of high SAT activity on a stock by stock basis. This eliminates any deviations associated with comparing different securities. In addition, volatility associated with different time periods was reduced by the use of consecutive trading days in February. The short term volatility measure used (the percent change in price over a ten minute time period) more accurately reflects the supply and demand conditions of that day's trading than long-term volatility measures such as beta or daily price change. Volatility was averaged over every time period with at least five trades.

Finally, paired t-tests (Exhibit 4) were used to determine the difference in liquidity of the most actively traded securities between February 1992 and February 1993. Of the top fifty share volume leaders for the month of February 1993, 27 were determined to have high SAT firm activity. (This was determined based on SAT firms accounting for 70% or more of SOES volume and total SAT firms volume of 10,000 or more shares for ten or more trading days.) Due to the higher than usual level of trading in February 1993, the average daily volume was compared for each security to determine an adjustment factor to be applied to the February 1992 liquidity values to make liquidity for the two periods more comparable. After adjusting the February 1992 liquidity values, there is no statistically significant difference between the liquidity ratios for the two periods. Therefore, despite higher share volume, liquidity did not change significantly; however, the percent bid range (defined as the range of bid prices around the average bid price) shows a significant increase, and was more volatile in February 1993. Assuming that everything else remains the same except average daily volume, one could predict liquidity (as measured by the dollar volume associated with a 1% change in price) to be $34,876,627 instead of the actual $28,064,773. It is not possible to determine absolutely whether this reduction is the result of

[3] A "t-test" is a statistical measurement of the differences between two population means, in this case between periods of high SAT activity and low SAT activity.

the activity of SAT firms or general market conditions. However, it is probable that if SAT firm activity were not as prevalent, then overall price volatility may not have increased to the extent that it did. This would have resulted in higher liquidity in these securities during the month of February 1993.

4. Conclusion

The NASD believes that the results of this study demonstrate that the concentrated activities of the SAT firms, as described in detail in the rule proposal, result in discernable degradation to the quality of the Nasdaq market. The NASD believes that this study provides ample research and analysis of trading patterns and practices of the SAT firms, and effectively demonstrates the negative impact that this type of activity is having on the market. Furthermore, it is evident that this activity has been growing in the past several months. Since SOES was designed to facilitate executions of small, investor orders and market makers agreed to accept only the risks associated with automated executions for small-sized investor orders, the NASD believes that the rule proposals will address many of the substantial harms outlined in the study.

EXHIBIT 1.—ENTIRE DAY—REGRESSION 1

[September 30, October 14, and October 28, 1992]

	Coefficient	T	Prob.
Price	−2.111	−34.52	.00
Share Volume	−.434	−10.27	.00
Percentage Trade to Trade Volatility	1.617	51.22	.00
Percentage SelectNet Share Volume	−.010	−1.71	.09
Percentage SOES Activist Volume	.008	3.97	.00

Dependent Variable: Percent Spread
N=6,369
R^6=.59
Constant=11.60
Standard error=4.42

FIVE-MINUTE INTERVALS—REGRESSION 2

[September 30, October 14, and October 28, 1992]

	Coefficient	T	Prob.
Price	−1.190	−54.63	.00
Share Volume	−.203	−12.38	.00
Percentage Trade to Trade Volatility	1.164	52.51	.00
Percentage SelectNet Share Volume	−.006	−4.81	.00
Percentage SOES Activist Volume	.001	1.61	.11

Dependent Variable=Percent Spread
N=10,402
R^2=.54
Constant=6.67
Standard Error=1.63

ENTIRE DAY—REGRESSION 3

[February 22–25, 1993]

	Coefficient	T	Prob.
Price	−1.830	−49.44	.00
Share Volume	−.428	−17.39	.00
Percentage Trade to Trade Volatility	1.526	75.36	.00
Percentage SelectNet Share Volume	−.011	−2.67	.01
Percentage SOES Activist Volume	.007	5.24	.00

Dependent Variable: Percent Spread
N=9,515
R^6=.66
Constant=11.13
Standard error=3.14

FIVE-MINUTE INTERVALS—REGRESSION 4

[February 22–25, 1993]

	Coefficient	T	Prob.
Price	−1.202	−82.24	.00
Share Volume	−.136	−13.19	.00
Percentage Trade to Trade Volatility	1.163	74.67	.00
Percentage SelectNet Share Volume	−.002	−3.21	.00

FIVE-MINUTE INTERVALS—REGRESSION 4—Continued

[February 22–25, 1993]

	Coefficient	T	Prob.
Percentage SOES Activist Volume	.001	3.44	.00

Dependent Variable=Percent Spread
N=21,412
R^2=.56
Constant=6.13
Standard Error=1.47

ENTIRE DAY—REGRESSION 5

[March 24–26, 1993]

	Coefficient	T	Prob.
Price	−1.791	−41.98	.00
Share Volume	−.455	−15.66	.00
Percentage Trade to Trade Volatility	1.500	60.21	.00
Percentage SelectNet Share Volume	−.013	−1.52	.13
Percentage SOES Activist Volume	.009	5.67	.00

Dependent Variable: Percent Spread
N=6,886
R^2=.66
Constant=11.15
Standard Error=3.04

FIVE-MINUTE INTERVALS—REGRESSION 6

[March 24–26, 1993]

	Coefficient	T	Prob.
Price	−.976	−53.26	.00
Share Volume	−.128	−9.27	.00
Percentage Trade to Trade Volatility	1.552	74.60	.00
Percentage SelectNet Share Volume	−.004	−4.14	.00
Percentage SOES Activist Volume	.001	3.19	.00

Dependent Variable=Percent Spread
N=12,121
R^2=.60
Constant=5.13
Standard Error=1.41

EXHIBIT 2.—"ACTIVIST" SOES ANALYSIS

TSEC	Price decline	Date (all 1993)	Total volume	Total trades	Activist SOES volume	Activist SOES trades	Total SOES volume	Total SOES trades	Activist volume as a % of total SOES volume	Activist trades as a % of total SOES trades
AMGN	9.25	Feb. 25	22,614,022	15,899	501,400	507	791,179	1,283	63.4	39.5
INTC	5.125	Feb. 16	6,102,556	4,925	379,500	384	484,041	599	78.4	64.1
SYGN	28.625	Feb. 22	21,032,403	9,513	259,400	261	490,067	790	52.9	33.0
USHC	3.75	Feb. 22	4,412,972	2,359	246,000	246	276,467	309	89.0	79.6
DELL	6.125	Feb. 24	9,541,370	4,592	243,500	244	319,290	409	76.3	59.7
CSCO	4.625	Feb. 16	3,173,027	1,727	122,600	124	144,505	177	84.8	70.1
CHIR	5.125	Feb. 22	2,319,428	1,445	122,500	123	156,305	185	78.4	66.5
NOBE	5.875	Feb. 23	2,771,229	1,277	91,000	91	112,800	118	80.7	77.1
BGEN	4.5	Feb. 16	1,720,832	1,059	47,000	47	56,050	70	83.9	67.1
Total			73,687,839	42,796	2,012,900	2,027	2,830,704	3,940	71.1	51.4

EXHIBIT 3. —IMPACT OF SOES ACTIVIST VOLUME ON NASDAQ PRICE VOLATILITY SUMMARY OF STATISTICAL ANALYSIS

	Average volatility	T	Prob
N=63:			
Low Activist activity (in SOES and SelectNet)	.667	.....	.....
High Activist activity	.983	.....	.....
Difference	.317	2.08	.042
N=176:			
Low Activist activity (All reported trades)	.625	.....	.....
High Activist activity	.828	.....	.....
Difference	.203	2.31	.022

Notes to Data:

Nine sample days from February 16, 1993 to February 26, 1993 were selected. All Nasdaq securities with at least 10 trades SOES or SelectNet trades over a ten minute interval were used to identify activity periods eligible for use in the study. An absolute percent price change was then computed for every time period identified and two averages over the entire span of days were computed—an average absolute percent change in price during periods in which high Activist activity and average absolute percent change in price during periods of low Activist activity. High Activist activity is defined as a consecutive time period in which Activist trades in SOES and SelectNet accounted for at least 5,000 shares of total activity (over a ten trade time span not to exceed 10 minutes).

Low Activist activity was measured in two distinct ways. In the first measure, low activist activity in SOES and SelectNet is defined as a consecutive time period in which non-Activist trades in SOES and SelectNet accounted for more than 5,000 shares of total activity (over a ten trade span not to exceed 10 minutes). Alternatively, since low Activist SOES and SelectNet activity periods were very infrequent in February 1993, low Activist activity is defined as a consecutive time period in which non-Activist activity was between 9,000 and 11,000 shares in all reported activity (over a ten trade span not to exceed 10 minutes). These criteria resulted in a final sample of 63 securities under the first t-test and 176 securities under the alternative t-test. Volatility within time periods is assumed to be equivalent over the sample days studied.

EXHIBIT 4.—PAIRED T-TEST

Variables	Mean	Std deviation	N
Liquidity 2/92	16,503,983	22,317,269	27
Liquidity 2/93	28,064,773	40,633,553	27
T-statistic: 2.26433			
One-tailed probability: 0.0161			
Two-tailed probability: 0.0321			
Liquidity 2/92	34,876,627	42,761,070	27
Adjusted Liquidity 2/93	28,064,773	40,633,553	27
T-statistic: −1.17808			
One-tailed probability: 0.1247			
Two-tailed probability: 0.2494			
Average Daily Volume 2/92	729,550	491,411	27
Average Daily Volume 2/93	1,590,404	10,355,146	27
T-statistic: −1.17808			
One-tailed probability: 0.1247			
Two-tailed probability: 0.2494			
Percent Bid Range 2/92	3.49640	0.864637	27
Percent Bid Range 2/93	5.19764	1.64867	27
T-statistic: 5.95818			
One-tailed probability: 0.0000			
Two-tailed probability: 0.0000			

Exhibit 5

Department of Economic Research—Methodology of SOES Review

Most of the analyses use NASD Equity Audit Trail daily trading data for the trading period of February 16, 1993 through February 26, 1993, and March 24, 1993 through March 26, 1993. Equity Audit Trail daily trading data was also used for the entire month of February for the 50 securities with the most share volume for the month. Sample trading days from September and October 1992 were also used to give some historical perspective of the problem as well as test for consistency in the results across different market conditions.

Statistical analyses performed included:

—Regression analyses to determine the effect of a high proportion of SAT firm volume relative to total SOES share volume on the percent spreads;

—Paired t-tests to determine the difference in average absolute price changes during periods of high and low SAT firm activity per stock over the period of 2/16/93–2/26/93; and

—Paired t-tests to determine the difference in liquidity of the most actively traded securities between February 1992 and February 1993.

Other analyses included:

—Concentration analyses of SAT firms examining the high level of SOES trading relative to total SOES trading for several different time periods including full day, five minute time periods, and SAT firm trading waves;

—Concentration analyses by security examining the high proportion of SAT firm trades and volume relative to total SOES trades and volume for each day;
—Comparison of top three SAT firm trading activity with top three retail order-entry firm trading activity; and
—SAT firm SOES and SelectNet trading activity focusing on net daily inventory, including a comparison with the top three retail order-entry firm inventory.

II. 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 period 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 such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–12116 Filed 5–20–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32309; File No. SR–PHLX–93–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Position and Exercise Limits for Equity Options and Certain Index Options

May 14, 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 March 2, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx, pursuant to Rule 19b–4, proposes to raise position limits [1] applicable to (1) equity options, contained in Phlx Rule 1001; (2) narrow based index options, contained in Phlx Rule 1001A(b)(1); and (3) National Over-the-Counter ("OTC") Index options, contained in Phlx Rule 1001A(a)(2). Exchange exercise limits,[2] which are contained in Phlx Rules 1002 and 1002A, are established by reference to position limits, such that any increase in position limits would also increase exercise limits. Accordingly, the Phlx is proposing to increase its exercise limits to correspond to the proposed increase in position limits.

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and 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 statutory 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 Exchange 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

The Phlx proposes to amend Exchange Rules 1001 and 1001A to raise position limits for both equity options and narrow-based index options traded on the Phlx. Specifically, Commentary .05 to Phlx Rule 1001 would be amended to increase position limits to 4,500, 7,500, or 10,500 contracts and Rule 1001A(b)(1) would reflect narrow-based index option position limits of 5,500, 7,500, or 10,500 contracts. In addition, a corresponding change to Phlx Rules 1002 and 1002A would increase exercise limits, which are based on position limits.

The current equity option position limits are expressed in three tiers. Commentary .05 to Rule 1001 provides that position limits for Phlx equity options are 3,000, 5,500, or 8,000 contracts, depending upon the volume in the underlying stock, the number of shares outstanding of the underlying stock, or a combination of both the trading volume and the number of shares outstanding of the underlying stock. These position limits, which are standard among all of the options exchanges, have been in place since 1985.[3] In recent years, the Exchange has been encouraged by its members and customers to propose an increase in position limits.

The Exchange believes that the proposed limits of 4,500, 7,500, or 10,500 contracts should increase the depth and liquidity of the markets for individual equity options. Based on member and customer requests, the Exchange has realized that the current position limit levels discourage market participation by large investors and the institutions that compete to facilitate the trading interests of large investors. Accordingly, the Phlx is proposing to raise position limits to accommodate the liquidity and hedging needs of large investors and the facilitators of those investors. The Phlx also believes that higher position limits would accommodate the hedging needs of Exchange market makers and

[1] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert.

[2] Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[3] See Securities Exchange Act Release No. 21907 (March 29, 1985), 50 FR 13440.

specialists, who are also restricted by current levels.

The Exchange has considered the effects of increased position limits on the marketplace recognizing the purposes of these limits in (1) preventing manipulation; (2) capping the amounts illegal insider traders could accumulate; and (3) protecting against disruption of the markets for both the option as well as the underlying security. In this regard, a recent review conducted by the Phlx concluded that there have been no reported formal disciplinary actions by any national options exchange which serve to link, as a contributing factor, current position and exercise levels to a charge of manipulation or mini-manipulation.[4] In addition, the review concluded that there have been no reported instances by national exchanges or the Commission to evidence that insiders established positions at or near existing position limits in connection with alleged illegal insider activity.

Of related support, a Phlx survey of national options exchanges concluded that customers and firms routinely establish positions at or near current limits in connection with bona fide trading and hedging strategies and often file exemption requests with the exchanges to permit higher limits. The Phlx notes that it is the policy of each of the options exchanges, however, not to provide equity option position limit exemptions to customers or firms, and to only provide exemptions to floor traders where the obligation to maintain fair and orderly markets for the execution of customer orders takes precedence. The Phlx also notes that it nevertheless continues to monitor the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits, and maintain, that the new limits will not diminish the surveillance function of the Exchange.

Position limits were increased in 1980, 1983, and 1985. However, since the 1985 changes, there have been no further increases in position limits, despite substantial changes in the marketplace. Most notable among the changes is an appreciable growth in equity options trading. In addition, surveillance procedures have become increasingly sophisticated and automated.

With respect to the position limits proposed on narrow-based index options, the Phlx currently trades options on three narrow-based indexes: the Gold-Silver Index ("XAU"), the Utility Index ("UTY"), and the KBW/PHLX Bank Index ("BKX"). The existing three-tiered system for index options is based on the degree of concentration of a component stock of the index.[5] The three levels of position limits are currently 4,000, 6,000, or 8,000 contracts. For the same reasons enumerated above respecting equity options, the Exchange proposes to increase these limits to 5,500, 7,500, or 10,500 contracts.

In addition, the Exchange notes that the position limits for its broad-based index options, the Value Line Index ("VLE") option, and the National OTC ("XOC") options, are subject different, higher limits pursuant to Rule 1001A(a).[6] The Phlx is proposing to increase position and exercise limits for XOC options to 15,000 contracts. Currently, Rule 1001A(a)(2) provides that the position limit for XOC is 10,000 contracts. This proposal recognizes a recent increase in trading interest in XOC options.

In its release approving the current position limits, the Commission acknowledged that a gradual, evolutionary approach has been adopted by the Commission and the exchanges in increasing position and exercise limits.[7] At this time, the Phlx is proposing a 50% increase in the lowest tier of 3,000 contracts; a 37% increase for options currently at the 5,500 contract limit; and a 31% increase in the highest tier, currently at 8,000 contracts. With respect to narrow-based index options, the proposed increases represent a 38% increase over the current 4,000 contract level; a 25% increase from 6,000 to 7,500 contracts; and a 31% increase from the current 8,000 contract level. The Phlx is also proposing a 50% increase in XOC position and exercise limits. The Exchange believes that these proposed increases are consistent with the gradual evolution cited by the Commission, because the proposed levels represent reasonable increases which are in line with prior changes.[8]

The Exchange notes that by increasing position limits, the automatic hedge exemption contained in Phlx Rule 1001, Commentary .07 would also be affected. This provision permits certain transactions to exceed established equity option position and exercise limits up to double those levels.[9] Accordingly, under this proposal, the maximum levels would increase to 9,000, 15,000, or 21,000 contracts. The Exchange believes that increasing the maximum levels of the automatic hedge exemption should provide greater depth and liquidity, hence, greater protection against market declines, to institutional customers seeking to hedge stock portfolios by trading stock options.

The Exchange believes 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. Specifically, the Phlx believes that the proposal to increase equity option and narrow-based index option position and exercise limits are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest consistent with Section 6(b)(5) of the Act. The Exchange further believes that the proposed rule change should remove impediments to and perfect the mechanism of a free and open market by providing market opportunity to investors constricted by current position limit levels. The Phlx also believes that by stimulating market participation and thereby increasing option market depth and liquidity, the proposed rule change should promote just and equitable principles of trade. At the same time, the Phlx believes that the proposed position limits should continue to prevent fraudulent and manipulative acts and practices as well

[4] On January 6, 1993, a survey was conducted by Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, which included Jeffrey Shroer, Chicago Board Options Exchange, Inc. ("CBOE"); George Peckman, American Stock Exchange, Inc. ("Amex"); David Semak, Pacific Stock Exchange, Inc. ("PSE"); and Agnes Gautier, New York Stock Exchange, Inc. ("NYSE").

[5] See Phlx Rule 1001A.

[6] Phlx Rule 1001A(a)(1) provides that the position limit for VLE is 25,000 contracts total, with no more than 15,000 contracts in the nearest expiration month, aggregating positions in VLE options, which are European style, as well as longterm XVL contracts.

[7] See *supra* note 3.

[8] The most recent position limit changes in 1985 represented a 20% increase for those options that remained in the lowest tier; a 37% increase for options that moved from the 4,000 to the 5,500 contract level; a 100% increase for options in the highest tier, for which limits increased from 4,000 to 8,000 contracts; and a 120% increase for the few options for which position limits may have increased from 2,500 to 5,500 contracts. Previously, when all options were governed by a 2,000 contract position limit, the 1983 changes represented increases of 25% and 100%.

[9] Specifically, the following types of options positions where each option contract is "hedged" by 100 shares of stock are eligible for the automatic hedge exemption: (1) long call and short stock; (2) short call and long stock; (3) long put and long stock; and (4) short put and short stock. This exemption was intended to accommodate certain positions that are hedged, without jeopardizing market manipulation and disruption concerns. Such concerns are greatly reduced under the hedge exemption because any options positions in excess of the established limits must be fully hedged.

as protect investors and the public interest by limiting the ability to disrupt and manipulate the markets for options as well as the underlying securities.

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

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 period 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 such 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 within 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. 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 June 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–12118 Filed 5–20–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32312; File No. SR–NASD–93–3]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Limited Partnership Rollup Transactions

May 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission"), and amended on May 14, 1993,[1] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

Following is the text of a proposed rule change to Appendix F to Article III, section 34 of the Rules of Fair Practice ("Appendix F") and Schedule D to the By-Laws ("Schedule D"). New language is italicized; deleted language is in brackets.

Appendix F to Article III, Section 34 of the Rules of Fair Practice

Sec. 1

No member or person associated with a member shall participate in a public offering of a direct participation program or a *limited partnership* rollup *transaction* [of a direct participation program] except in accordance with this Appendix.

Sec. 2

Definitions

* * * * *

(b) The following terms shall have the stated meaning when used in this Appendix:

(1) Cash Available For Distribution—cash flow less amount set aside for restoration or creation of reserves.

(2) Cash Flow—cash funds provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements.

(3) Dissenting Limited Partner—a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction who casts a vote against the transaction and, during the period in which the offer is outstanding, registers a dissent from the terms of the transaction with the party responsible for tabulating the votes or tenders.

[(1)] *(4)* Fair Market Net Worth—(no change)

(5) Limited Partner or Investor in a Limited Partnership—the purchaser of an interest in a direct participation program that is a limited partnership who is not involved in the day-to-day management of the limited partnership and bears limited liability.

(6) Limited Partnership—an unincorporated association that is a direct participation program organized as a limited partnership whose partners are one or more general partners and one or more limited partners, which conforms to the provisions of the Revised Uniform Limited Partnership Act or the applicable statute that regulates the organization of such partnership.

(7) [Rollup or] *Limited Partnership Rollup Transaction* [of a Direct Participation Program] a transaction involving [an acquisition, merger or consolidation of at least one direct participation program, not currently listed on a registered national securities exchange or the NASDAQ System, into another public direct participation program or a public corporation or a public trust.] *the combination or reorganization of one or more limited partnerships, directly or indirectly, in which some or all investors in the limited partnership(s) receive new securities or securities in another entity where:*

(A) the investors' limited partnership securities are not reported under a transaction reporting plan declared effective before January 1, 1991, by the Securities and Exchange Commission

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[10] 17 CFR 200.30–3(a)(12) (1992).

[1] Amendment No. 1 superseded the original rule filing. Amendment No. 2 amended the rule language under Item 1 of Form 19b–4 and the NASD's Statement of Purpose of the Proposed Rule Change under Item 3 of Form 19b–4 in response to comments of SEC staff. Amendments 3 and 4 made technical changes to the rule.

*under Section 11A of the Securities Exchange Act of 1934;***

(B) the investors receive new securities or securities in another entity that are reported under a transaction reporting plan declared effective before January 1, 1991, by the Securities and Exchange Commission under Section 11A of the Securities Exchange Act of 1934;

(C) investors in any of the limited partnerships are subject to a significant adverse change unrelated to the business form of the new entity with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; and

(D) each limited partner is not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue, as determined pursuant to the standards applicable to dissenting limited partners set forth below in subparagraph (c)(1)(ii) to Section 6 hereof;

Provided, however, that for purposes of this subsection, a limited partnership rollup transaction does not include a transaction involving:

(i) securities to be issued or exchanged that are not required to be and are not registered under the Securities Act of 1933;

(ii) only limited partnership(s) having a pre-existing operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets;

(iii) a proposal by an independent, non-affiliated third party to succeed to the interest of a general partner(s) or sponsor(s) interest that is approved by 66⅔% of the investors in each limited partnership, provided, however, that as a result of the transaction the existing general partner(s) are entitled to receive only compensation expressly provided for in the pre-existing partnership agreements of the limited partnerships; or

(iv) only limited partnerships where the interests of the limited partners are repurchased, recalled or exchanged pursuant to the terms of the pre-existing limited partnership agreement for securities in an operating company specifically identified at the time of the formation of the original limited partnership.

(8) *Management Fee—a fee paid to the sponsor, general partner(s), their affiliates, or other persons for management and administration of a direct participation program.*

[(2)] *(9)* Organization and Offering Expenses—(no change)

[(3)] *(10)* Participant—(no change)

[(4)] *(11)* Person—(no change)

[(5)] *(12)* Prospectus—(no change)

[(6)] *(13)* Registration Statement—(no change)

(14) Solicitation Expenses direct marketing expenses incurred by a member, in connection with a rollup of a direct participation program or a limited partnership rollup transaction, such as telephone calls, broker/dealer fact sheets, members' legal and other fees related to the solicitation, as well as direct solicitation compensation to members.

(15) Transaction Costs—costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business or solicitation expenses.

* * * * *

Sec. 6 Participation In Rollups

(a) No member *or person associated with a member* shall *participate in the solicitation of* [receive compensation for soliciting] votes or tenders from participants in connection with a rollup of a direct participation program or programs, irrespective of the form of the entity resulting from the rollup (i.e., a partnership, real estate investment trust or corporation), unless [such] *any* compensation *received by the member:*

(1) is payable and equal in amount regardless of whether the participant votes affirmatively or negatively in the proposed rollup;

(2) in the aggregate, does not exceed 2% of the exchange value of the newly-created securities; and

(3) is paid regardless of whether the participants reject the proposed rollup.

(b) No member or person associated with a member shall participate in the solicitation of votes or tenders in connection with the rollup of a direct participation program unless the general partner(s) or sponsor(s) proposing the rollup agrees to pay all solicitation expenses related to the rollup, including all preparatory work related thereto, in the event the rollup is [not approved] *rejected.*

For purposes of paragraphs (a) and (b), a rollup of a direct participation program shall mean a transaction involving an acquisition, merger or consolidation of at least one direct participation program, not currently listed on a registered national securities exchange or traded on the Nasdaq System, into another public direct participation program or a public corporation or a public trust.

(c) No member or person associated with a member shall participate in any capacity in a limited partnership rollup transaction if the transaction is unfair or unreasonable.

(1) A limited partnership rollup transaction will be presumed not to be unfair or unreasonable if the limited partnership rollup transaction provides for the right of dissenting limited partners:

(i) to receive compensation for their limited partnership units based on an appraisal of the limited partnership assets performed by an independent appraiser unaffiliated with the sponsor or general partner of the program which values the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of sale or refinancing and in a manner consistent with the appropriate industry practice. Compensation to dissenting limited partners of limited partnership rollup transactions may be cash, secured debt instruments, unsecured debt instruments, or freely-tradeable securities; provided, however, that:

(A) limited partnership rollup transactions which utilize debt instruments as compensation must provide for a trustee and an indenture to protect the rights of the debt holders and provide a rate of interest equal to at least 120% of the applicable federal rate as determined in accordance with Section 1274 of the Internal Revenue Code of 1986;

(B) limited partnership rollup transactions which utilize unsecured debt instruments as compensation, in addition to the requirements of subparagraph (A), must limit total leverage to 70% of the appraised value of the assets;

(C) all debt securities must have a term no greater than 8 years and provide for prepayment with 80% of the net proceeds of any sale or refinancing of the assets previously owned by the partnership entities subject to the limited partnership rollup transaction or any part thereof; and

(D) freely-tradeable securities utilized as compensation to dissenting limited

***Transaction reporting plans under Section 11A were declared effective prior to January 1, 1991 for the Nasdaq National Market System, the New York Stock Exchange, and the American Stock Exchange.*

partners must be previously listed on a national securities exchange or previously traded on the Nasdaq System prior to the limited partnership rollup transaction, and the number of securities to be received in return for limited partnership interests must be determined in relation to the average last sale price of the freely-tradeable securities in the 20-day period following the effective date of the limited partnership rollup transaction. If the issuer of the freely-tradeable securities is affiliated with the sponsor or general partner, newly issued securities to be utilized as compensation to dissenting limited partners shall not represent more than 20 percent of the issued and outstanding shares of that class of securities after giving effect to the issuance. For purposes of the preceding sentence, a sponsor or general partner is "affiliated" with the issuer of the freely tradeable securities if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the limited partnership rollup transaction or the purchase of the general partner's interest; provided, however, that nothing herein shall restrict the ability of a sponsor or general partner to receive any payment for its equity interests and compensation as otherwise provided by this section;

(ii) to receive or retain a security with substantially the same terms and conditions as the security originally held. Securities received or retained will be considered to have the same terms and conditions as the security originally held if:

(A) there is no material adverse change to dissenting limited partners' rights with respect to the business plan or the investment, distribution and liquidation policies of the limited partnership; and

(B) the dissenting limited partners receive substantially the same rights, preferences and priorities as they had pursuant to the security originally held; or

(iii) to receive other comparable rights including, but not limited to:

(A) approval of the limited partnership rollup transaction by 75% of the outstanding units of each of the individual participating limited partnerships and the exclusion of any individual limited partnership from the limited partnership rollup transaction which fails to reach the 75% threshold. The third-party appointed to tabulate votes and dissents pursuant to subparagraph (c)(2)(ii)(D) to Section 6 shall submit the results of such tabulation to the NASD;

(B) review of the limited partnership rollup transaction by an independent committee of persons not affiliated with the general partner(s) or sponsor. Whenever utilized, the independent committee:

a. shall include fair representation of the interests of all limited partners subject to the limited partnership rollup transaction;

b. shall have access to the books and records of the partnerships;

c. shall prepare a report to the limited partners subject to the limited partnership rollup transaction that presents its findings and conclusions, including any minority views;

d. shall have the authority to negotiate the proposed transaction with the general partner or sponsor on behalf of the limited partners, but not the authority to approve the transaction on behalf of the limited partners;

e. shall not deliberate for a period longer than 60 days, although extensions will be permitted if unanimously agreed upon by the members of the independent committee or if approved by the NASD;

f. may be compensated and reimbursed by the limited partnerships subject to the limited partnership rollup transaction and shall have the ability to retain independent counsel and financial advisors to represent all limited partners at the limited partnerships' expense provided the fees are reasonable; and

g. shall be entitled to indemnification to the maximum extent permitted by law from the limited partnerships subject to the limited partnership rollup transaction from claims, causes of action or lawsuits related to any action or decision made in furtherance of their responsibilities; provided, however, that general partners or sponsors may also agree to indemnify the independent committee; or

(C) any other comparable rights for dissenting limited partners proposed by general partners or sponsors, provided, however, that the general partner(s) or sponsor(s) demonstrates to the satisfaction of the NASD or, if the NASD determines appropriate, to the satisfaction of an independent committee, that the rights proposed are comparable.

(2) Regardless of whether a limited partnership rollup transaction is in compliance with Subsection 6(c)(1), a limited partnership rollup transaction will be presumed to be unfair and unreasonable:

(i) if the general partner(s):

(A) converts an equity interest in any limited partnership(s) subject to a limited partnership rollup transaction for which consideration was not paid and which was not otherwise provided for in the limited partnership agreement and disclosed to limited partners, into a voting interest in the new entity (provided, however, an interest originally obtained in order to comply with the provisions of Internal Revenue Service Revenue Proclamation 89–12 may be converted);

(B) fails to follow the valuation provisions in the limited partnership agreements of the subject limited partnerships when valuing their limited partnership interests; or

(C) utilizes a future value of their equity interest in the limited partnership rather than the current value of their equity interest, as determined by an appraisal conducted in a manner consistent with paragraph (c)(1)(i) of Section 6, when determining their interest in the new entity;

(ii) as to voting rights, if:

(A) the voting rights in the entity resulting from a limited partnership rollup transaction do not generally follow the original voting rights of the limited partnerships participating in the limited partnership rollup transaction; provided, however, that changes to voting rights may be effected if the NASD determines that such changes are not unfair or if the changes are approved by an independent committee;

(B) a majority of the interests in an entity resulting from a limited partnership rollup transaction may not, without concurrence by the sponsor, general partner(s), board of directors or trustee, depending on the form of entity, vote to:

a. amend the limited partnership agreement, articles of incorporation or by-laws, or indenture;

b. dissolve the entity;

c. remove management and elect new management; or

d. approve or disapprove the sale of substantially all of the assets of the entity;

(C) the general partner(s) or sponsor(s) proposing a limited partnership rollup transaction does not provide each limited partner with a document which instructs the limited partner on the proper procedure for voting against or dissenting from the transaction; or

(D) the general partner(s) or sponsor(s) does not utilize an independent third party to receive and tabulate all votes and dissents in connection with the limited partnership rollup transaction, and require that the third party make the tabulation available to the general partner and any limited partner upon request at any time during and after voting occurs;

(iii) as to transaction costs, if:

(A) transaction costs of a rejected limited partnership rollup transaction are not apportioned between general and limited partners of the subject limited partnerships according to the final vote on the proposed transaction as follows:

a. the general partner(s) or sponsor(s) bear all transaction costs in proportion to the total number of abstentions and votes to reject the limited partnership rollup transaction; and

b. limited partners bear transaction costs in proportion to the number of votes to approve the limited partnership rollup transaction; or

(B) individual limited partnerships that do not approve a limited partnership rollup transaction are required to pay any of the transaction costs, and the general partner or sponsor is not required to pay the transaction costs on behalf of the non-approving limited partnerships, in a limited partnership rollup transaction in which one or more limited partnerships determines not to approve the transaction, but where the transaction is consummated with respect to one or more approving limited partnerships; or

(iv) as to fees of general partners, if:

(A) general partners are not prevented from receiving both unearned management fees discounted to a present value (if such fees were not previously provided for in the limited partnership agreement and disclosed to limited partners) and new asset-based fees;

(B) property management fees and other general partner fees are inappropriate, unreasonable and more than, or not competitive with, what would be paid to third parties for performing similar services; or

(C) changes in fees which are substantial and adverse to limited partners are not approved by an independent committee according to the facts and circumstances of each transaction.

Schedule D to the NASD By-Laws

Part I

Definitions

For purposes of Schedule D, unless the context requires otherwise:

* * * *

(5) "Cash available for distribution" means cash flow of a limited partnership less amount set aside for restoration or creation of reserves.

(6) "Cash flow" means cash funds provided from limited partnership operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements.

[(5)] *(7)* "Capital and surplus" (no change)

[(6)] *(8)* "Consolidated Quotations Service" (no change)

(9) "Dissenting Limited Partner"—a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction who casts a vote against the transaction and, during the period in which the offer is outstanding, registers a dissent from the terms of the transaction with the party responsible for tabulating the votes or tenders.

[(7)] *(10)* "Firm commitment offering" (no change)

(11) "Limited partner" or "investor in a limited partnership" means the purchaser of an interest in a direct participation program, as defined in Article III, Section 34 of the Rules of Fair Practice, that is a limited partnership who is not involved in the day-to-day management of the limited partnership and bears limited liability.

(12) "Limited partnership" means an unincorporated association that is a direct participation program, as defined in Article III, Section 34 of the Rules of Fair Practice, organized as a limited partnership whose partners are one or more general partners and one or more limited partners, which conforms to the provisions of the Revised Uniform Limited Partnership Act or the applicable statute that regulates the organization of such partnership.

(13) "Limited Partnership Rollup Transaction" means a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which some or all investors in the limited partnership(s) receive new securities or securities in another entity where:

*(A) the investors' limited partnership securities are not reported under a transaction reporting plan declared effective before January 1, 1991, by the Securities and Exchange Commission under Section 11A of the Securities Exchange Act of 1934;**

(B) the investors receive new securities or securities in another entity that are reported under a transaction reporting plan declared effective before January 1, 1991, by the Securities and Exchange Commission under Section 11A of the Securities Exchange Act of 1934;

(C) investors in any of the limited partnerships are subject to a significant adverse change unrelated to the business form of the new entity with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; and

(D) each limited partner is not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue, as determined pursuant to the standards applicable to dissenting limited partners set forth below in subparagraph (a)(2) of Part III, Section 3 hereof;

Provided, however, that for purposes of this subsection, a limited partnership rollup transaction does not include a transaction involving:

(i) securities to be issued or exchanged that are not required to be and are not registered under the Securities Act of 1933;

(ii) only limited partnership(s) having a pre-existing operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets;

(iii) a proposal by an independent, non-affiliated third party to succeed to the interest of a general partner(s) or sponsor(s) interest that is approved by 66⅔% of the investors in each limited partnership, provided, however, that as a result of the transaction the existing general partner(s) are entitled to receive only compensation expressly provided for in the pre-existing partnership agreements of the limited partnerships; or

(iv) only limited partnerships where the interests of the limited partners are repurchased, recalled or exchanged pursuant to the terms of the pre-existing limited partnership agreement for securities in an operating company specifically identified at the time of the formation of the original limited partnership.

(14) "Management fee" means a fee paid to the sponsor, general partner(s), their affiliates, or other persons for management and administration of a limited partnership.

[(8)] *(15)* "Member" (no change)

[(9)] *(16)* "NASDAQ Market Maker" (no change)

[(10)] *(17)* "NASDAQ National Market System security" (no change)

[(11)] *(18)* "NASDAQ System" (no change)

[(12)] *(19)* "Net Tangible Assets" (no change)

[(13)] *(20)* "Normal unit of trading" (no change)

[(14)] *(21)* "Penalty bid" (no change)

** Transaction reporting plans under Section 11A were declared effective prior to January 1, 1991 for the Nasdaq National Market System, the New York Stock Exchange, and the American Stock Exchange.*

[(15)] *(22)* "Pre-effective stabilizing bid" (no change)

[(16)] *(23)* "Reported security" (no change)

(24) "Solicitation expenses" means direct marketing expenses incurred by a member in connection with a limited partnership rollup transaction such as telephone calls, broker/dealer fact sheets, members' legal and other fees related to the solicitation, as well as direct solicitation compensation to members.

[(17)] *(25)* "Stabilizing bid" (no change)

(26) "Transaction costs" means costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business or solicitation expenses.

* * * * *

Part III

* * * * *

Designation of NASDAQ National Market System Securties

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Sec. 3. Limited Partnership Rollup Designation Criteria

In addition to meeting the quantitative criteria for Nasdaq/NMS inclusion, an issuer that is formed as a result of a limited partnership rollup transaction, as defined in Part I, Section (13) hereof, must meet the criteria set forth below in order to be designated.

(a) The limited partnership rollup transaction must provide for the right of dissenting limited partners:

(1) to receive compensation for their limited partnership units based on an appraisal of the limited partnership assets performed by an independent appraiser unaffiliated with the sponsor or general partner of the program which values the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of sale or refinancing and in a manner consistent with the appropriate industry practice. Compensation to dissenting limited partners of limited partnership rollup transactions may be cash, secured debt instruments, unsecured debt instruments, or freely-tradeable securities; provided, however, that:

(i) limited partnership rollup transactions which utilize debt instruments as compensation must provide for a trustee and an indenture to protect the rights of the debt holders and provide a rate of interest equal to at least 120% of the applicable federal rate as determined in accordance with Section 1274 of the Internal Revenue Code of 1986;

(ii) limited partnership rollup transactions which utilize unsecured debt instruments as compensation, in addition to the requirements of subparagraph (i), must limit total leverage to 70% of the appraised value of the assets;

(iii) all debt securities must have a term no greater than 8 years and provide for prepayment with 80% of the net proceeds of any sale or refinancing of the assets previously owned by the partnership entities subject to the limited partnership rollup transaction or any part thereof; and

(iv) freely-tradeable securities utilized as compensation to dissenting limited partners must be previously listed on a national securities exchange or previously traded on the Nasdaq System prior to the limited partnership rollup transaction, and the number of securities to be received in return for limited partnership interests must be determined in relation to the average last sale price of the freely-tradeable securities in the 20-day period following the effective date of the limited partnership rollup transaction. If the issuer of the freely-tradeable securities is affiliated with the sponsor or general partner, newly issued securities to be utilized as compensation to dissenting limited partners shall not represent more than 20 percent of the issued and outstanding shares of that class of securities after giving effect to the issuance. For purposes of the preceding sentence, a sponsor or general partner is "affiliated" with the issuer of the freely tradeable securities if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the limited partnership rollup transaction or the purchase of the general partner's interest; provided, however, that nothing herein shall restrict the ability of a sponsor or general partner to receive any payment for its equity interests and compensation as otherwise provided by this section;

(2) to receive or retain a security with substantially the same terms and conditions as the security originally held. Securities received or retained will be considered to have the same terms and conditions as the security originally held if:

(i) there is no material adverse change to dissenting limited partners' rights with respect to the business plan or the investment, distribution and liquidation policies of the limited partnership; and

(ii) the dissenting limited partners receive substantially the same rights, preferences and priorities as they had pursuant to the security originally held; or

(3) to receive other comparable rights including, but not limited to:

(i) approval of the limited partnership rollup transaction by 75% of the outstanding units of each of the individual participating limited partnerships and the exclusion of any individual limited partnership from the limited partnership rollup transaction which fails to reach the 75% threshold. The third-party appointed to tabulate votes and dissents pursuant to subparagraph (b)(2)(iv) to Section 3 shall submit the results of such tabulation to the NASD;

(ii) review of the limited partnership rollup transaction by an independent committee of persons not affiliated with the general partner(s) or sponsor. Whenever utilized, the independent committee:

a. shall include fair representation of the interests of all limited partners subject to the limited partnership rollup transaction;

b. shall have access to the books and records of the partnerships;

c. shall prepare a report to the limited partners subject to the limited partnership rollup transaction that presents its findings and conclusions, including any minority views;

d. shall have the authority to negotiate the proposed transaction with the general partner or sponsor on behalf of the limited partners, but not the authority to approve the transaction on behalf of the limited partners;

e. shall not deliberate for a period longer than 60 days, although extensions will be permitted if unanimously agreed upon by the members of the independent committee or if approved by the NASD;

f. may be compensated and reimbursed by the limited partnerships subject to the limited partnership rollup transaction and shall have the ability to retain independent counsel and financial advisors to represent all limited partners at the limited partnerships' expense provided the fees are reasonable; and

g. shall be entitled to indemnification to the maximum extent permitted by law from the limited partnerships

subject to the limited partnership rollup transaction from claims, causes of action or lawsuits related to any action or decision made in furtherance of their responsibilities; provided, however, that general partners or sponsors may also agree to indemnify the independent committee; or

(iii) any other comparable rights for dissenting limited partners proposed by general partners or sponsors, provided, however, that the general partner(s) or sponsor(s) demonstrates to the satisfaction of the NASD or, if the NASD determines appropriate, to the satisfaction of an independent committee, that the rights proposed are comparable.

(b) Regardless of whether a limited partnership rollup transaction meets the requirements set forth in Subsection 3(a) above, a limited partnership rollup transaction will not be designated:

(1) if the general partner(s):

(i) converts an equity interest in any limited partnership(s) subject to a limited partnership rollup transaction for which consideration was not paid and which was not otherwise provided for in the limited partnership agreement and disclosed to limited partners, into a voting interest in the new entity (provided, however, an interest originally obtained in order to comply with the provisions of Internal Revenue Service Revenue Proclamation 89–12 may be converted);

(ii) fails to follow the valuation provisions in the limited partnership agreements of the subject limited partnerships when valuing their limited partnership interests; or

(iii) utilizes a future value of their equity interest in the limited partnership rather than the current value of their equity interest, as determined by an appraisal conducted in a manner consistent with subparagraph (a)(1) of Part III, Section 3 hereof, when determining their interest in the new entity;

(2) as to voting rights, if:

(i) the voting rights in the entity resulting from a limited partnership rollup transaction do not generally follow the original voting rights of the limited partnerships participating in the limited partnership rollup transaction; provided, however, that changes to voting rights may be effected if the NASD determines that such changes are not unfair or if the changes are approved by an independent committee;

(ii) a majority of the interests in an entity resulting from a limited partnership rollup transaction may not, without concurrence by the sponsor, general partner(s), board of directors or trustee, depending on the form of entity, vote to:

a. amend the limited partnership agreement, articles of incorporation or by-laws, or indenture;

b. dissolve the entity;

c. remove management and elect new management; or

d. approve or disapprove the sale of substantially all of the assets of the entity;

(iii) the general partner(s) or sponsor(s) proposing a limited partnership rollup transaction does not provide each limited partner whose equity interest is subject to the transaction with a document which instructs the limited partner on the proper procedure for voting against or dissenting from the rollup; or

(iv) the general partner(s) or sponsor(s) does not utilize an independent third party to receive and tabulate all votes and dissents in connection with the limited partnership rollup transaction, and require that the third party make the tabulation available to the general partner and any limited partner upon request at any time during and after voting occurs;

(3) as to transaction costs, if:

(i) transaction costs of a rejected limited partnership rollup transaction are not apportioned between general and limited partners of the subject limited partnerships according to the final vote on the proposed transaction as follows:

a. the general partner(s) or sponsor(s) bears all transaction costs in proportion to the total number of abstentions and votes to reject the limited partnership rollup transaction; and

b. limited partners bear transaction costs in proportion to the number of votes to approve the limited partnership rollup transaction; or

(ii) individual limited partnerships that do not approve a limited partnership rollup transaction are required to pay any of the transaction costs, and the general partner or sponsor is not required to pay the transaction costs on behalf of the non-approving limited partnerships, in a limited partnership rollup transaction in which one or more limited partnerships determines not to approve the transaction, but where the transaction is consummated with respect to one or more approving limited partnerships; or

(4) as to fees of general partners, if:

(i) general partners are not prevented from receiving both unearned management fees discounted to a present value (if such fees were not previously provided for in the limited partnership agreement and disclosed to limited partners) and new asset-based fees;

(ii) property management fees and other general partner fees are inappropriate, unreasonable and more than, or not competitive with, what would be paid to third parties for performing similar services; or

(iii) changes in fees which are substantial and adverse to limited partners are not approved by an independent committee according to the facts and circumstances of each transaction.

Sec. [3.] *4.* Registration Standards

In addition to meeting the quantitative criteria *and the limited partnership rollup criteria, if applicable,* for Nasdaq/NMS inclusion, the issue must also be:

* * * * *

Sec. [4.] *5.* Quantitative Maintenance Criteria

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Sec. [5.] *6.* Non-Quantitative Designation Criteria For Issuers Excepting *Limited* Partnerships

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Sec. [6.] *7.* Non-Quantitative Designation Criteria for Issuers That Are *Limited* Partnerships

(a) Applicability

No provision of this Section [6] *7* shall be construed to require any foreign issuer that is a *limited* partnership to do any act that is contrary to a law, rule, or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in the issuer's country of domicile. The Association shall have the ability to provide exemptions from applicability of these provisions as may be necessary or appropriate to carry out this intent.

(b) Distribution of Annual and Interim Reports

(1) Each NASDAQ/NMS issuer that is a *limited* partnership shall distribute to limited partners copies of an annual report containing audited financial statements of the *limited* partnership. The report shall be distributed to limited partners within a reasonable period of time after the end of the *limited* partnership's fiscal year end and shall be filed with the Association at the time it is distributed to limited partners.

(2) (i) Each NASDAQ/NMS issuer that is a *limited* partnership which is subject to SEC Rule 13a–13 shall make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the

partnership's filing of its Form 10–Q with the Securities and Exchange Commission. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. If the form of such quarterly report differs from the Form 10–Q, the issuer shall file one copy of the report with the Association in addition to filing its Form 10–Q pursuant to Section 1(c)(12) of Part II. The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or nonrecurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(ii) Each NASDAQ/NMS issuer that is a *limited* partnership which is not subject to SEC Rule 13a–13 and which is required to file with the Securities and Exchange Commission, or another federal or state regulatory authority, interim reports relating primarily to operations and financial position, shall make available to limited partners reports which reflect the information contained in those interim reports. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Such reports shall be distributed to limited partners either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to limited partners differs from that filed with the regulatory authority, the issuer shall file one copy of the report to limited partners with the Association in addition to the report to the regulatory authority that is filed with the Association pursuant to Section 1(c)(12) of Part II.

(c) Corporate General Partner/ Independent Directors

Each NASDAQ/NMS issuer that is a *limited* partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership. Such corporate general or co-general partner shall maintain two independent directors on its board of directors. An issuer that is a *limited* partnership may be designated for inclusion in NASDAQ/NMS upon demonstrating that it has one independent director and undertaking to elect a second such director within 12 months of designation. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

(d) Audit Committee

The corporate general partner or co-general partner of each NASDAQ/NMS issuer that is a *limited* partnership shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors.

(e) *Limited* Partner Meetings

A NASDAQ/NMS issuer that is a *limited* partnership shall not be required to hold an annual meeting of limited partners unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(f) Quorum

In the event that a meeting of limited partners is required pursuant to paragraph (e), the quorum for such meeting shall be not less than 33⅓ percent of the limited partnership interests outstanding.

(g) Solicitation of Proxies

In the event that a meeting of limited partners is required pursuant to paragraph (e), the issuer shall provide all limited partners with proxy or information statements and if a vote is required shall solicit proxies thereon.

(h) Listing Agreement

Each NASDAQ/NMS issuer that is a *limited* partnership shall execute a Listing Agreement in the form designated by the Association.

(i) Conflicts of Interest

Each NASDAQ/NMS issuer which is a *limited* partnership shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the Audit Committee or a comparable body for the review of potential material conflict of interest situations where appropriate.

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Sec. [7.] *8.* Termination Procedure

(1) Failure to maintain compliance with the provisions of Sections [4] *5* and [5] *6 or 7* of this Part III will result in the termination of an issue's designation unless an exception is granted as provided in this Section. Termination shall become effective in accordance with the terms of notice by the Association.

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 NASD 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 NASD 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

Background

The NASD is proposing to amend Appendix F under Article III, Section 34 of the Rules of Fair Practice and Schedule D to the NASD By-Laws to limit NASD member participation in unfair limited partnership rollup transactions and to restrict listing of the securities of entities resulting from unfair rollups on the Nasdaq System ("Nasdaq"). The proposed rule change responds to ongoing legislative initiatives originally introduced in the 102nd session of Congress, the most recent of which is House Bill 617, which was introduced in the current session of the 103rd Congress (the "Rollup Reform Act").[2] Final action has not been taken on the Rollup Reform Act to date.

The Rollup Reform Act is the legislative response to abuses that have occurred in recent years with rollup transactions. The legislation would require the SEC to amend its rules relating to the proxy process and disclosure to include provisions that protect limited partners subject to a rollup. The legislative initiatives and a request to the NASD from the U.S. Senate Committee on Banking, Housing and Urban Affairs can be read as a strong expression of Congressional interest for reform with respect to limited partnership rollup transactions.[3]

[2] House Bill 617 is titled "Limited Partnership Rollup Reform Act of 1993."

[3] *See*, letter dated October 8, 1992 to Joseph R. Hardiman, President, NASD, from the U.S. Senate Committee on Banking, Housing, and Urban Affairs urging the NASD to move quickly to adopt rules to address abuses associated with limited partnership rollup transactions.

While the Rollup Reform Act would provide the NASD with an 18-month period to enact rules, prompt action appears to be necessary in order to respond to the concerns identified by Congress and so that sponsors and general partners considering rollup transactions will not be precluded from participating in the rollup market due to the absence of the rules mandated by the legislation. The state legislature of California has recently passed a rollup bill, which was signed by the Governor on September 30, 1992. California's legislation and the prospect of additional state action underscore the immediate need for a uniform regulatory framework in this area. The NASD believes that the proposed rule will result in a comprehensive, uniform set of rollup guidelines which respond to the potential abuses attendant in certain limited partnership rollup transactions. The proposed rule change to Appendix F and Schedule D will supplement the NASD's recent action prohibiting the receipt of differential compensation in rollup transactions.[4]

Description of Proposed Rule Change

An initial version of the proposed rule change modeled primarily on the 1991 House version of the Rollup Reform Act in the 102nd session of Congress was published for comment in Notice to Members 91–78 (December, 1991) ("Notice to Members 91–78") in the form of an amendment to Appendix F. The language of this proposed rule change is based on the language of the Rollup Reform Act as introduced in the 102nd session of Congress,[5] and includes a number of modifications to the rule language in response to the comments received. A description of the comments received in response to Notice to Members 91–78 has been included in this filing in connection with the discussion below of each provision, where appropriate, and under item 5 below.

Proposed Rule Change to Appendix F

Definitions:

The NASD is proposing to amend section 2(b) to appendix F to add as new definitions the following terms: cash available for distribution, cash flow, dissenting limited partner, limited partner, limited partnership, limited partnership rollup transaction, management fee, solicitation expenses and transaction costs. The current term "rollup of a direct participation program" in subsection 2(b)(7) of appendix F is proposed to be included under subsections 6(a) and 6(b) as it would apply only to those provisions. A new definition of "limited partnership rollup transaction" is proposed to be adopted to be applicable to section 6(c). The following defined terms in section 2(b) remain unchanged: fair market net worth, organization and offering expenses, participant, person, prospectus, and registration statement.

Cash Available for Distribution: The NASD is proposing to adopt a definition of the term "cash available for distribution" in new subsection 2(b)(1) of appendix F as cash flow less amounts set aside for restoration or creation of reserves. The definition is the same as that published for comment in Notice to Members 91–78.

Cash Flow: The NASD is proposing to adopt a definition of the term "cash flow" in new subsection 2(b)(2) of appendix F as cash provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay allbother expenses, debt payments, capital improvements and replacements. The definition is the same as that published for comment in Notice to Members 91–78.

Dissenting Limited Partner: The NASD is proposing a two part test to define the term "dissenting limited partner" in new subsection 2(b)(3) of appendix F. A dissenting limited partner is one who has cast a vote against a limited partnership rollup transaction and who has filed a dissent from the terms of a proposed exchange or tender offer with the party responsible for tabulating the votes or tenders during the period in which the offer is outstanding.

The language of this definition was published for comment in Notice to Members 91–78. In response to comments, the NASD modified the original version of the definition to provide that, in order to be deemed a dissenting limited partner, an investor must complete two steps: (1) Vote against the transaction, and (2) perfect his position as a dissenter by registering with the general partner as a dissenter. A limited partner who fails to register with the general partner as a dissenter will be included in a limited partnership rollup transaction that is approved. This modification recognizes that the act of dissenting is different than being opposed to the proposed terms of the limited partnership rollup transaction and that two decisions must be made by an investor. This requirement also conforms the act of dissenting to a limited partnership rollup transaction to that generally required by state law when dissenting in a corporate transaction. The NASD believes that the proposed definition of "dissenting limited partner" appropriately identifies those limited partners that should be protected by the proposed rule change. A person who abstains from voting will not be able to qualify as a dissenting limited partner.

Limited Partner: The NASD is proposing to define the term "limited partner" in new subsection 2(b)(5) of appendix F as the purchaser of an interest in a direct participation program that is a limited partnership who is not involved in the day-to-day management of the limited partnership and bears limited liability. The first part of this definition was included in Notice to Members 91–78 and the second part was added to incorporate the usual limitations on management participation and liability that characterize a limited partner.

Limited Partnership: The NASD is proposing to define "limited partnership" in new subsection 2(b)(6) of appendix F as an unincorporated association that is a direct participation program organized as a limited partnership, whose partners are one or more general partners and one or more limited partners, which conforms to the provisions of the Revised Uniform Limited Partnership Act or the applicable state statute that regulates the organization of such partnership.

Limited Partnership Rollup Transaction: The NASD is proposing to include the current definition of "rollup of a direct participation program" in subsection 2(b)(7) under section 6(a) and 6(b), as the definition will apply only to those provisions. The "rollup of a direct participation program" definition is broader than the proposed new definition of "limited partnership rollup transaction," which would only apply to limited partnerships and includes a number of additional criteria and exceptions.

The NASD is proposing to adopt the definition of a "limited partnership rollup transaction" in new subsection 2(b)(7) of appendix F. The new definition would encompass certain combinations or reorganizations of one or more limited partnerships, directly or indirectly, in which some or all investors in the original limited partnership(s) receive new securities or securities in another entity in exchange for their limited partnership interests. The NASD believes that the definition of "limited partnership rollup transaction," would only include those transactions that are within the scope of

[4] See, rule filing SR–NASD–91–24 approved in Securities Exchange Act Release No. 29582 (August 19, 1991).

[5] House Bill H.R. 1885 and Senate Bill S. 1423.

appendix F and require regulation under the NASD's proposed rollup rules to prevent unfair limited partnership rollup transactions.

In order to qualify as a limited partnership rollup transaction under the proposed definition, all of the following criteria must be met:

1. The current securities of limited partners cannot be traded on the NMS, the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX");

2. The new securities to be received by limited partners must be approved for trading on the NMS, the NYSE or the AMEX;

3. Investors in any of the limited partnerships must be subject to a significant adverse change unrelated to the business form of the new entity with respect to voting rights, the term of existence of the entity, management compensation or investment objectives; and

4. The limited partners are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

A similar definition of "rollup or rollup of a limited partnership" was published in Notice to Members 91–78 based on the legislative initiatives in the 102nd Congress. The first and second requirements are intended to include those limited partnership rollup transactions where the current limited partners are not able to dispose of their interests in an active trading market prior to the rollup transaction and receive new securities that are accepted for trading in the NMS, NYSE or AMEX, where it is likely that such securities will trade at a significantly diminished market value in comparison to their appraisal value. The third and fourth requirements are intended to exclude limited partnership rollup transactions that do not require NASD review under section 6 to appendix F of the proposed rule because the investors are not subject to significant adverse change or have the option to retain a similar security. The third requirement has been modified from that published for comment in Notice to Members 91–78 to clarify that the investors may not be subject to any significant adverse change that is unrelated to the business form of the new entity. The fourth requirement has been modified from that published for comment in Notice to Members 91–78 to incorporate the addition that the standards for determining whether the security to be received by all investors are substantially the same as the standards that are included in the requirements applicable to the rights of dissenting limited partners in Subsection (c)(1)(ii) to section 6.

The failure of any of the four criteria will result in the transaction not coming within the definition of a limited partnership rollup transaction and, therefore, not subject to review under the substantive requirements applicable to rollups set forth under section 6 to appendix F.

The NASD intends that the definition of limited partnership rollup transaction include indirect rollup transactions, such as those in which a single non-traded partnership first undergoes a simple reorganization and then, in a subsequent transaction or series of transactions the successor entity is either reorganized or merged with other business entities and, as a consequence of this reorganization or merger, there is a publicly traded security with a significant adverse change in voting rights, the term of existence of the entity, management compensation, or investment objectives. Multiple-step transactions are also covered by the definition of limited partnership rollup transaction. For example, in those instances where a general partner may first acquire a number of partnership units through a tender offer, thereby gaining effective voting control, and then implements a rollup, it is considered a limited partnership rollup transaction.

The definition of "limited partnership rollup transaction" also incorporates four exclusions. First, the NASD is proposing to exclude from the definition of "limited partnership rollup transaction" any transaction involving securities to be issued or exchanged that are not required to be and are not registered under the Securities Act of 1933 ("1933 Act"). This provision would exclude public issuances of securities, therefore, under Sections 3(a)(9) and (10) of the 1933 Act as well as Section 1145 of the Bankruptcy Code.[6]

The NASD is, second, proposing to specifically exclude from the definition of "limited partnership rollup transaction," transactions involving partnerships with a pre-existing policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing or refinancing of assets. This exception is similar to the exclusion recognized by the SEC in adopting a definition of "finite-life" in Item 901(b) of Regulation S-K.[7] The NASD believes that transactions involving combinations of reinvesting limited partnerships should not be subject to the new rules proposed herein as such partnerships closely resemble ordinary operating businesses. Business combinations involving such reinvesting partnerships have not been subject to the criticism associated with limited partnership rollup transactions. Investors in such partnerships, like investors in other operating businesses, have no expectation that the partnership will distribute its cash from operations or sell its assets and distribute the proceeds to investors. Moreover, rollups of reinvesting partnerships do not involve many of the fundamental changes associated with finite-life partnerships, such as changes in management compensation and investor voting rights.[8]

The NASD is, third, proposing an exclusion from the definition of limited partnership rollup transaction for transactions involving a proposal by an independent, non-affiliated third party to succeed to a general partner or sponsor interest only if the transaction is approved by 66⅔% of the limited partners of each partnership and the general partner is limited to receiving only compensation expressly provided for in the pre-existing partnership agreements of the partnerships. The last provision is intended to prohibit payments to the general partners to secure their approval of the transaction. The NASD believes that such a transaction in which new securities are issued is closer to a hostile or "white knight" acquisition by a third party without the help or consent of the current general partner, than to a limited partner rollup transaction as intended to be covered by the proposed rule change. In such situations, the limited partners have a bona fide choice of retaining current management or tendering or exchanging their shares in a limited partner rollup transaction that changes the management of the current general partners.

The NASD is proposing a fourth exclusion from the definition of limited partnership rollup transaction for transactions involving an exchange of limited partnership interests for shares in an operating company pursuant to the terms of the pre-existing partnership agreement, where the securities in the operating company are specifically identified at the time of the formation of the original limited partnership and are registered under the Securities Act of 1933. Such partnerships with a pre-

[6] This provision would also exclude securities issued pursuant to Sections 3(a)(11), 3(b), 4(2) and 4(6) of the 1933 Act.

[7] See, Securities Act Release No. 6922 (October 30, 1991); 56 FR 217 (November 8, 1991).

[8] See, discussion related to Notes 19 and 20 in Securities Act Release No. 6922 (October 30, 1991); 56 FR 217 (November 8, 1991).

existing agreement would include, for example, limited partnerships (1) established solely for the purpose of conducting research and development, and (2) which were always intended to be merged with a parent or other affiliate and are generally not available to the retail public. The NASD believes that it should exclude from the rules those transactions to which the investor agreed at the time of the investor's original investment decision. Further, these are not the types of transactions where abuses have been reported

Management Fee: The NASD is proposing to adopt a definition of the term "management fee" in new subsection 2(b)(8) of appendix F as a fee paid to a sponsor,[9] general partner, its affiliates, or other persons for management and administration of a direct participation program. The definition is the same as that published for comment in Notice to Members 91–78 except that the term "direct participation program" has been substituted for "limited partnership" because the term "management fee" is used elsewhere in Appendix F.

Solicitation Expenses: The NASD is proposing to adopt the definition of the term "solicitation expenses" in new subsection 2(b)(14) of appendix F as direct marketing expenses, incurred by a member in connection with a limited partnership rollup transaction, such as telephone calls, broker/dealer fact sheets, legal and other fees related to the solicitation, and direct solicitation compensation to members. The definition is the same as that published for comment in Notice to Members 91–78 with the clarification that these are expenses incurred by a member. Thus, the proposed definition would not cover solicitation expenses incurred by general partners or proxy solicitation firms which are not NASD members. These expenses would be included, however, in transaction costs.

Transaction Costs: The NASD is proposing to adopt a definition of the term "transaction costs" in new subsection 2(b)(15) as costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus and other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and, all other fees related to the preparatory work of the transaction. As set forth in the definition, the total costs related to a limited partnership rollup transaction are comprised of solicitation expenses and transaction costs. The definition is the same as that published for comment as part of proposed subsection 6(c)(2)(iii) in Notice to Members 91–78.

[9] The term "sponsor" is defined in Article III, Section 34(d)(4) of the Rules of Fair Practice as "a person who directly or indirectly provides management services for a direct participation program whether as a general partner, pursuant to contract or otherwise."

Participation in Rollups

Section 6 of Appendix F was adopted on August 19, 1991 to regulate the receipt of compensation by members in connection with a rollup of a direct participation program.[10] The NASD is proposing to amend section 6 to expand the scope of that provision to prohibit the participation of members and persons associated with members in a limited partnership rollup transaction unless the transaction includes provisions designed to protect the rights of limited partners.

Amendments to Current Provisions of Section 6

Amendments are proposed to subsections 6 (a) and (b) that clarify that members may not participate in the solicitation of votes or tenders except in compliance with the provisions of those paragraphs, and to replace the words "not approved" with "rejected" in order to ensure that the rule language of subsections 6 (a) and (b) is consistent with the terms used in new subsection 6(c). The term "rollup of a direct participation program" has been moved from subsection 2(b)(7) to follow subsections 6(a) and 6(b) to clarify that it would only be applicable to these two provisions.

With this rule change, the NASD is proposing to adopt (as set forth below) new subsection 6(c) which would establish standards in connection with a member's participation "in any capacity" in a "limited partnership rollup transaction," including solicitation, advisory activities or the writing of a fairness opinion. In comparison, subsections 6(a) and 6(b) only relate to a member's participation in the solicitation of votes or tenders in a "rollup of a direct participation program," which is a broader category of rollup transactions than "limited partnership rollup transactions." Therefore, subsections 6(a) and 6(b) will limit a member's receipt of compensation and the allocation of members' solicitation expenses when a rollup transaction is rejected with respect to a rollup of any direct participation program, regardless of whether the transaction is also considered a "limited partnership rollup transaction" subject to subsection 6(c). Moreover, in cases where subsections 6(a) and 6(b) are not applicable to a rollup of a direct participation program, because a member is not participating in a soliciting capacity, subsection 6(c) may nonetheless be applicable to the transaction if it meets the definition of a "limited partnership rollup transaction" and a member is participating as a financial advisor or consultant, in order to render a fairness opinion, or in any other capacity.

[10] See, Footnote 5, supra.

Proposed New Subsection 6(c)

The NASD is proposing to adopt new Subsection 6(c) to prohibit a member or person association with a member from participating in a limited partnership rollup transaction in any capacity if the transaction is unfair and unreasonable. The language of this provision is modified from that published for comment in Notice to Members 91–78, which proposed to prevent members from participating in any limited partnership rollup transaction unless such transaction is conducted in accordance with procedures designed to protect the rights of limited partners.

The NASD has, however, determined that the language published for comment is not consistent with the structure of the NASD rules related to the review of underwriting terms and arrangements set forth in the Corporate Financing Rule in Article III, section 44 of the Rules of Fair Practice and Appendix F (collectively, "underwriting rules"). Rather, the NASD's underwriting rules are generally structured to delineate terms and arrangements considered "unfair or unreasonable." The rule language published for comment would set forth an NASD standard of offering terms considered to protect dissenting limited partners and terms considered not to protect dissenting limited partners which is inconsistent with the usual structure of other underwriting rules. The NASD determined, therefore, to modify the rule language in Subsection 6(c) and paragraphs (1) and (2) thereof to conform to the standard structure of the NASD's underwriting rules. Further, the language of Subsection 6(c) clarifies that it establishes standards in connection with the participation of members in "any capacity" in a limited partnership rollup transaction including participation in a solicitation, financial advisory or consulting capacity, or to provide a fairness opinion on the transaction.

When a Limited Partnership Rollup Transaction is Presumed Not To Be Unfair and Unreasonable

Pursuant to new paragraph 6(c)(1), the NASD proposes to define a series of circumstances with respect to limited partnership rollup transactions which are presumed not to be unfair and unreasonable. It is presumed not to be unfair or unreasonable if dissenting limited partners are offered: (1) The right to receive compensation for their partnership units based on an independent appraisal of partnership assets; (2) the right to receive or retain a security with substantially the same terms and conditions as the security originally held; (3) approval of the transaction by 75% of the investors in each limited partnership involved in the transaction and exclusion of any limited partnership that fails to reach the 75% threshold; (4) review of the transaction by an independent committee; or (5) other comparable rights. Thus, if a limited partnership rollup transaction is subject to compliance with appendix F, the transaction must include one of the provisions set forth in subsection 6(c)(1)(i), (ii), (iii) (A), (B) or (C).

Compensation Based on Appraisal

The NASD is proposing to adopt new Subsection 6(c)(1)(i) to provide that dissenting limited partners may receive compensation based on the appraisal of an independent appraiser, unaffiliated with the sponsor or general partner of the program, who values the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of sale or refinancing. The requirements applicable to the appraisal are intended to insure that the appraisal accurately reflects the current value of the assets. In response to members' comments to the version of the proposed rule change published in Notice to Members 91–78 (December, 1991), an additional provision was added to this subsection which would require that the appraisal be done in a manner consistent with appropriate industry practice.

The methodology for valuing partnership assets should be that methodology which is appropriate for a particular industry, so that partnerships in real estate, oil and gas, and equipment leasing, for example, may use different valuation models. The professionals in each industry should use whatever appraisal methods are appropriate to that industry. The requirement that the appraisal be performed "in a manner consistent with industry practice" implies that the appraiser must meet certain logical qualifications for the performance of the appraisal. Such qualifications would include consideration of the experience and financial stability of the appraiser, as well as whether the appraiser meets the standards of a qualifying organization.

Forms of compensation based on appraisal include cash, secured or unsecured debt instruments, and freely-tradable securities. All debt instruments must provide for a trustee and an indenture, and provide for prepayment with 80% of the net proceeds of any sale or refinancing of the assets of the entity. The version of the proposed rule change published in Notice to Members 91–78 additionally required that all debt instruments provide the holders with a market rate of interest based upon the federal funds rate, have a term no greater than 10 years, and allow for the use of unsecured debt instruments only when the entity issuing the unsecured debt has a limitation on total leverage of 80% of the appraised value of the assets. In response to members' comments to the version of the proposed rule change published in Notice to Members 91–78, the proposed rule change was modified to require that all debt instruments provide the holders with a market rate of interest equal to at least 120% of the applicable federal rate, have a term no greater than 8 years, and allow for the use of unsecured debt instruments only when the entity issuing the debt has a limitation on total leverage of 70% of the appraised value of its assets.

Freely-tradable securities utilized as compensation must be previously listed on a national securities exchange or previously traded on Nasdaq prior to the transaction. The version of the proposed rule change published in Notice to Members 91–78 restricted the availability of freely tradable securities to exchange listed or NMS securities. As a result of subsequent amendments to NASD rules that extended last sale reporting to all Nasdaq securities, the NASD has amended the provision to include all securities traded in the Nasdaq System, thus permitting freely tradable securities of any Nasdaq-listed company to be utilized as compensation to dissenting limited partners.

The number of freely-tradable securities offered in return for partnership interests would be determined in relation to the average last sale price of the securities in the 20-day period following the transaction. If the issuer of the freely-tradable securities and the sponsor or general partner are affiliated, and the securities issued as compensation are new securities, such securities must not represent more than 20% of the issued and outstanding securities of that class after the issuance. A definition solely for purposes of that provision provides that a sponsor or general partner is deemed affiliated with the issuer if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the rollup transaction or the purchase of the general partner's interest. The 20% limitation on the amount of securities offered as compensation by an affiliate helps to establish a threshold below which significant dilution could be presumed to have not occurred.

Receipt of a Security With Substantially the Same Terms and Conditions

The NASD is proposing to adopt new subsection 6(c)(1)(ii) to provide that dissenting limited partners may receive or retain a security with substantially the same terms and conditions as the original issue. Subsection 6(c)(1)(ii) provides that the issuance of such a security must entail no material adverse change as to the business plan or the investment, distribution and liquidation policies of the partnership and must ensure that dissenting limited partners receive or retain a security with substantially the same rights, preferences and priorities as their current security. Where reliance on this provision is proposed, the NASD's Corporate Financing Department will review the terms of a new security to determine if it has substantially the same terms and conditions as the original issue.

Other Comparable Rights: Supermajority Approval and Review by Independent Committee

The proposed rule change under proposed subsection 6(c)(1)(iii) includes other comparable rights intended to provide flexibility for sponsors and general partners to propose other protections for limited partners. The comparable rights options include, but are not limited to, the right to supermajority approval of the transaction and the right to review of the transaction by an independent committee.

Supermajority Approval

The premise which underlies many of the objections to limited partnership rollups is that a simple majority of limited partners voting for the rollup can deprive other limited partners of the business and financial opportunities they bargained for when they originally invested. However, this objection is addressed where limited partners owning 75% of the partnership interests

(a "supermajority") take affirmative action to approve the transaction. The NASD believes that such an overwhelming approval of the transaction provides an indication of its fairness and beneficial nature, and that such approval would constitute an "other comparable right."

The version of the proposed rule change relating to supermajority approval published for comment in Notice to Members 91–78 would have: (1) Required that for supermajority approval to constitute another comparable right, the sponsor or general partner must reasonably believe that 75% of the outstanding units of each of the participating partnerships in a limited partnership rollup transaction will vote to approve the transaction, and (2) deemed the failure to obtain supermajority approval as a rejection of the transaction with the consequent presumption that limited partners would not be protected. The NASD has eliminated these provisions and simplified the proposal without changing its intended effect by requiring that the limited partnership rollup transaction be approved by 75% of the outstanding units of each of the individual participating partnerships. In response to member comments recommending that the failure to obtain approval of the transaction by 75% of the outstanding units of any partnership participating in the transaction ought to result only in each such partnership not being included in the transaction, rather than rejection of the transaction, the NASD has further modified the provision to require exclusion from the transaction of any limited partnership that fails to reach the 75% threshold. The NASD believes that the more stringent requirements of its proposal should be broadened to permit a particular limited partnership transaction to be consummated even though individual partnerships did not approve the transaction.

Review by Independent Committee

Another proposed comparable right is review by an independent committee. The version of the rule change published for comment in Notice to Members 91–78 relating to review by an independent committee would have required that the committee: (1) Be established by the NASD if deemed necessary for the protection of limited partners; (2) be approved by the NASD; (3) be composed of at least three persons; (4) contain, if practicable, representation from each entity subject to the limited partnership rollup transaction, the majority of whom would represent the largest equity holders and the minority of whom may be recommended by the general partner or sponsor; (5) be unanimous in all of its determinations; (6) have the authority to negotiate the proposed transaction with the general partner or sponsor on behalf of the limited partners, but not the authority to approve the transaction on behalf of the limited partners; (7) deliberate for a period no longer than 60 days unless unanimously extended; (8) be compensated and reimbursed by the partnerships subject to the limited partnership rollup transaction and have the ability to retain independent counsel and financial advisors to represent all limited partners at the limited partnerships' expense; and (9) be entitled to indemnification to the maximum extent permitted by law from the general partners, sponsors, limited partnerships and rolled up entities against claims, causes of action or lawsuits initiated by any party in interest, including limited partnerships or limited partners, related to any action or decision made in furtherance of their responsibilities.

In response to members' comments, the following modifications concerning the rights and duties of the independent committee were made to the proposed rule change: (1) The provision requiring a three-person committee was deleted; (2) the provision relating to committee representation of limited partner interests now simply requires that such representation be "fair;" (3) the provision requiring unanimous determinations has been deleted; (4) a provision has been added requiring committee access to the books and records of the partnerships; and (5) a provision has been added requiring the committee to prepare and present a report concerning its findings and conclusions, including minority views, to the limited partners.

In addition to modifications based on members' comments, NASD modified the independent committee requirements as follows: (1) The requirement that the independent committee be established by the NASD if deemed necessary for the protection of limited partners has been deleted; (2) the requirement that the independent committee be approved by the NASD has been deleted; and (3) the provision relating to compensation paid to the committee by the partnerships now makes such payment permissive rather than mandatory, and may include reimbursement. The NASD believes this modification removes what appears to be an unnecessary mandate while preserving the ability of the independent committee to negotiate with the limited partnerships for the compensation and reimbursement necessary to conduct the business of the independent committee. The proposed rule change would continue to entitle the independent committee to indemnification from the limited partnerships subject to the rollup and permits general partners or sponsors involved in the limited partnership rollup transaction to provide additional indemnification.

Other Comparable Rights

Comparable rights for dissenting limited partners are not limited to supermajority approval or the establishment of an independent committee, but include any other comparable right proposed by general partners or sponsors, provided that the general partners or sponsors demonstrate to the satisfaction of the NASD or, if the NASD determines appropriate, to the satisfaction of an independent committee, that the rights proposed are comparable. The composition of such independent committee to review proposed alternative comparable rights under this provision may be different than the independent committee formed as an other comparable right. Additionally, the criteria utilized by the independent committee to review proposed alternative comparable rights under this provision may also differ from that required by the independent committee formed as an other comparable right.

Infeasibility Test

The NASD proposed in Notice to Members 91–78 that the supermajority approval, independent committee and other comparable rights provisions could not be relied upon unless the NASD made a finding that it is infeasible for the transaction to be structured to provide dissenters with the right of appraisal and compensation or the right to retain a security with the same rights as the original security ("infeasibility test"). The NASD determined to eliminate the infeasibility provision because, as a practical matter (except in the most unusual circumstances), a limited partnership rollup transaction should be able to be structured in compliance with either subparagraph (i) or (ii), thereby rendering the alternative protections in subparagraph (iii) moot, since they would be infrequently used in any case. The NASD believes that the supermajority approval and independent committee review provisions provide substantive protections to dissenting limited partners and should be available as

alternatives to the protections in subparagraphs (i) and (ii). Moreover, the imposition of an infeasibility test would tend to prevent the development of new alternative rights under the third comparable right in subparagraph (iii) that may provide greater protections to dissenting limited partners than those enumerated in subparagraphs (i), (ii) or (iii).

When a Rollup Transaction Is Presumed To Be Unfair or Unreasonable

Pursuant to new subsection 6(c)(2), a limited partnership rollup transaction, regardless of compliance with subsection 6(c)(1), is presumed to be unfair or unreasonable [11] if: (1) Certain actions taken by the general partner result in the unfair conversion and valuation of general partner interests in a limited partnership rollup transaction; (2) a limited partnership rollup transaction fails to protect the voting rights of the limited partners; (3) the transaction costs of a rejected limited partnership rollup transaction are unfairly apportioned or allocated; or (4) the payment of fees to general partners in connection with limited partnership rollup transactions are unfair, unreasonable or inappropriate.

Actions Taken by the General Partner

The provision in the proposed rule change for protection against actions taken by general partners under 6(c)(2)(i) provides that it is presumptively unfair and unreasonable for general partners, when determining their interest in the new entity resulting from a limited partnership rollup transaction, to: (1) Convert an equity interest for which consideration has not been paid into a voting interest in the new entity and where such equity interest was not otherwise provided for in the limited partnership agreement and disclosed to limited partners; (2) fail to follow the valuation methods indicated in the partnership agreements when valuing their partnership interests; or (3) utilize a projected value of their equity interest rather than the appraised current value of their equity interest when determining their interest in the new entity.

Voting Rights

The NASD is proposing four provisions for the protection of investors with respect to voting rights under 6(c)(2)(ii). The first proposed provision provides that it is presumptively unfair if the voting rights in the entity resulting from the limited partnership rollup transaction do not follow the original voting rights of the limited partnerships participating in the transaction. However, the NASD recognizes that certain material changes to voting rights may be necessary to conform disparate rights that may exist among participating partnerships. Material changes may be effected only if the NASD determines that such changes are not unfair or if an independent committee approves such changes. The composition of such independent committee to review such material changes under this provision may be different than the independent committee formed as an other comparable right. Additionally, the criteria utilized by the independent committee to review such material changes under this provision may also differ from that required by the independent committee formed as an other comparable right.

The second provision proposes that it is presumptively unfair if a majority of the interests in an entity resulting from a limited partnership rollup transaction may not, without concurrence by the sponsor, general partner(s), board of directors or trustee, vote to: amend the limited partnership agreement, articles of incorporation, by-laws or indenture; dissolve the entity; remove and elect new management; or approve or disapprove the sale of substantially all the assets of the entity.

The third provision provides it will be presumed to be unfair with respect to voting rights if the sponsor or general partner proposing a limited partnership rollup transaction does not provide a document which clearly delineates instructions and procedures of voting against or dissenting from a proposed transaction.

Finally, under the fourth provision it will be presumptively unfair if the general partner or sponsor fails to utilize an independent third party to receive and tabulate all votes and dissents and fails to require the third party to make the tabulation available to the general partner and any limited partner upon request at any time during and after voting occurs.

Transaction Costs

The provision in the proposed rule change for protection against failure to fairly apportion or allocate transaction costs under 6(c)(2)(iii) provides that it is presumptively unfair if transaction costs of a rejected limited partnership rollup transaction are not apportioned between the general and limited partners in accordance with the final vote as follows: (1) in the case of a limited partnership rollup transaction which is not approved, the general partner/sponsor bears transaction costs in proportion to the total number of abstentions and votes to reject the transaction, and the limited partners bear transaction costs in proportion to the number of votes to approve the transaction; or (2) in the case of a rollup transaction which is approved, but where some individual partnerships do not approve and are not included in the approved transaction, the general partner is not required to pay costs on behalf of the limited partnerships who have voted not to approve the transaction.

With respect to determining total costs for a rejected limited partnership rollup transaction, the NASD believes that subsections 6(b) and 6(c)(2)(iii) taken together make it clear that the general partner must pay all the solicitation expenses in addition to transaction costs in proportion to the total number of abstentions and votes to reject the transaction. Additionally, limited partnerships which vote to reject and are not included in a limited partnership rollup transaction which is ultimately consummated, may not be assessed any transaction costs.

Fees of the General Partners

The provision in the proposed rule change for protection against the unfair assessment of fees under 6(c)(2)(iv) provides that it is presumptively unfair for general partners to receive or convert unearned management fees discounted to a present value while also proposing to receive new asset-based fees. A similar presumption of unfairness applies if property management fees and other fees are inappropriate, unreasonable, more than, or not competitive with, what would be paid to third parties for performing similar services. Substantial and adverse changes in fees are presumed unreasonable if not submitted to and approved by an independent committee. The composition of such independent committee to review such material changes in fees under this provision may be different than the independent committee formed as an other comparable right. Additionally, the criteria utilized by the independent committee to review such material changes in fees under this provision may differ from that required by the independent committee formed as an other comparable right.

[11] Where a limited partnership rollup transaction is determined by NASD staff to include one of the arrangements considered to be unfair or unreasonable, the burden of proof is borne by the member to rebut the presumption by demonstrating that the arrangement is not unfair or unreasonable or that the arrangement does not come within one of the enumerated unfair and unreasonable arrangement provisions.

Proposed Rule Change to Schedule D

The NASD is proposing to amend parts I and III to Schedule D to the NASD By-Laws to establish listing standards for the Nasdaq National Market System for securities issued in a rollup transaction. The rule language is the same as that proposed for inclusion in appendix F with two minor exceptions. When the term "direct participation program" is used in the definition section, a cross-reference is provided to the definition of that term in Article III, section 34 of the Rules of Fair Practice. In addition, the term "management fee" is modified to refer only to such fees related to a "limited partnership." In comparison, the definition in appendix F substituted the term "direct participation program" because the term "management fee" is used elsewhere in appendix F and the definition, therefore, should be applicable to any direct participation program.

The new listing criteria for limited partnership rollups are included in new section 3 to Part III of Schedule D. Current section 3 is redesignated as section 4 and is amended to reference the limited partnership rollup criteria. Current section 4 is redesignated section 5. Section 6 is proposed to be amended to insert the word "limited" in front of "partnership" to conform to the applicable definition of this rule filing. Finally, current section 6, titled Termination Procedure, is proposed to be redesignated section 8 and amended to permit the NASD to terminate an issue's designation if it no longer complies with the requirements in redesignated sections 5 and 6 or 7.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which require that the rules of the association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade in that the proposed rule change will restrict member participation in unfair rollup transactions and prohibit listing on the Nasdaq National Market System of any securities resulting from an unfair rollup transaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in Notice to Members 91–78 (December, 1991). Forty-two comments were received in response. Copies of the comment letters are attached as Exhibit 3 of the rule filing. Of the 42 comment letters received, 42 were in favor of the proposed rule change, 0 were opposed; 10 offered no changes, 31 offered modifications and suggestions and one stated it was too late for the proposed rule to have any effect.

Comments were received from twenty-seven members, three states, four sponsors, and a number of organizations such as the American Association of Limited Partners, the American Bar Association, and the Investment Program Association. All of the commenters agreed that the NASD's proposed rules were a forward step toward protecting investors from unfair rollup transactions and applauded the NASD for its efforts to prevent rollup abuses. Ten commenters agreed with the proposed rule without any specific comment (See comments 1, 7, 8, 11, 16, 17, 19, 26, 30, 40.) With respect to general comments, some commenters indicated that the proposed rules are the minimum that should be adopted and urged the NASD either not to dilute the proposed rule's provisions or to make them stronger in the face of any negative comments received. (See comments 1, 2, 6, 7, 8, 11, 14, 16, 19, 22, 26, 27, 30, 34, 38, 39, 42.) Other general comments included the suggestion that adoption of any NASD rules should be postponed until passage of a Rollup Reform Act bill by the U.S. Congress. (See comment 3.) One commentor stated that the NASD is too late in proposing rules since a number of abusive rollup transactions have already occurred (See comment 41).

Specific comments were received in the areas of the definition of dissenting limited partner, definition of limited partnership rollup transaction, standards for appraisals, rule construction, right of compensation, the use of a supermajority approval provision as a comparable right, the structure and function of the independent committee, indemnification, the valuation of a general partner's interest, voting rights, and the allocation of transaction costs.

In response to member comments, the current version of the proposed amendments incorporates the following modifications, none of which is inconsistent with the proposed legislation:

Rule language [12] was modified to clarify that:

Sec. 2(b)(3)

- in order to be deemed a dissenting limited partner, an investor must vote against the transaction and perfect his position as a dissenter by registering with the general partners as a dissenter (See comment 4);

Sec. 6(c)(1)(i)

- the appraisal methodology for valuing partnership assets should be appropriate for the particular industry (See comments 4, 20);
- entities issuing debt instruments as compensation to dissenting limited partners should be limited to a maximum of 70% leverage, the debt should have a term no longer than 8 years, and the interest rate should be a market rate of interest equivalent to at least 120% of the applicable federal funds rate (See comments 34, 39);

Sec. 6(c)(1)(ii)

- the word "or" should be added after subsection 6(c)(1)(ii)(B) to clarify that the rights of limited partners will be presumed protected if the requirements of subsection 6(c)(1)(i), subsection 6(c)(1)(ii) *or* subsection 6(c)(1)(iii) are satisfied (See comments 3, 4);

Sec. 6(c)(1)(iii)(A)

- when the 75% supermajority approval of the transaction is used as a comparable right, individual partnerships will not be included in the transaction unless at least 75% of the limited partners approve (See comment 23);

Sec. 6(c)(1)(iii)(B)a

- the conclusions of the independent committee and any subsequent report to limited partners should not be required to be unanimous so that minority members of the committee have a voice (See comments 18, 21, 34);
- the independent committee should include a fair representation of the interests of all limited partners without being specific on the exact makeup of the committee (See comments 6, 22, 24, 34);

Sec. 6(c)(1)(iii)(B)b

- the independent committee shall have access to the books and records of the partnerships and shall prepare a report to the limited partners subject to the rollup (See comment 2);

[12] The section to which each identified modification refers is taken from the language of this proposed rule change.

Sec. 6(c)(1)(iii)(B)g

• indemnification from legal action shall be made available to any independent committee by the partnerships affected by the rollup, but such indemnification should not be required of the general partners (See comments 2, 13);

• general partners should be permitted, but not required, to indemnify or contribute to the defense or settlement of actions taken against the independent committee (See comments 13, 21, 23, 36); and,

Sec. 6(c)(2)(iii)

• abstentions should be counted as a "no" vote for purposes of allocating transaction costs between general and limited partners (See comments 2, 3, 18, 22, 33, 34, 39).

In addition to the specific comments incorporated as modifications into the proposed rule language, the NASD received a large number of additional comments covering a wide range of issues relating to the proposed rule change. These comments include the following:

General Comments

Commenters stated that reorganizations based on a court ordered settlement requiring a rollup transaction should not warrant review under the rollup rules (See comment 3); that the general partner should be responsible for a legal opinion that the rollup complies with all NASD and SEC rules (See comment 12); that no "mandate" exists from Congress for the passage of rollup rules (See comment 13); and, that any comparable right applicable under subsection 6(c)(1) obviates the need to apply the provisions of 6(c)(2) of appendix F (See comment 20).

The NASD believes that the first situation is sufficiently rare to permit the NASD to respond to any request for an exception to the proposed rollup rules in a court ordered settlement situation on a case-by-case basis. The NASD has not found a regulatory need to require, in addition to compliance with the proposed rollup rules, that a legal opinion should be provided to the NASD that the rollup transaction is in compliance with NASD rules. NASD staff will conduct a review of the transaction under appendix F or under Schedule D to determine compliance with the rules in accordance with its standard procedures. With respect to the comment regarding a mandate from Congress, since the issuance of Notice to Members 91–78, the NASD received a letter from the U.S. Senate Committee on Banking, Housing, and Urban affairs requesting the NASD to move quickly to adopt rules to address abuses associated with limited partnership rollup transactions.[13]

With respect to those comments that compliance with any of the criteria in proposed subsection 6(c)(1) of appendix F obviates the need to comply with subsection 6(c)(2), the NASD believes that, regardless of the presence of an arrangement protecting dissenting limited partners, limited partners should be protected by rules that prohibit the structuring of a limited partnership rollup transaction with any arrangement presumed to be unfair and unreasonable.

Dissenting Limited Partner

Concerning dissenting limited partners' rights, commenters stated that there should be a minimum threshold of dissenters, say 5%, before dissenters rights are made available (See comments 4, 36); and, that those limited partners who do not vote in a limited partnership rollup transaction should still be allowed to preserve their rights to appraisal or an equivalent security (See comment 25).

The NASD believes all dissenting limited partners should have the benefit of the protections proposed in this rule change, not just those in a transaction where the dissenters comprise at least 5% of the shareholders. The NASD believes that the mechanism for limited partners to perfect their dissent status in order to preserve their rights is consistent with state corporate law. The NASD believes that investors who wishes to dissent must provide notice of their intentions by first voting against the rollup.

Definition of Limited Partnership Rollup Transaction

Concerning the definition of a limited partnership rollup transaction, commenters stated that exchange offers that permit investors to remain in their existing partnerships should not be considered a limited partnership rollup transaction (See comment 20); and, that the definition should include Real Estate Investment Trusts, Limited Liability Companies, Equipment Leasing Grantor Trusts and any other surviving entity of a rollup transaction where the potential for harm to the limited partners exists (See comments 10, 18, 25, 32, 34, 38).

The definition of a limited partnership rollup transaction provides that if partners have the right to obtain a security under substantially the same terms as the original issue or if the transaction does not materially and adversely affect limited partners, the transaction should be excluded from the definition. Thus, if the exchange offer can meet these requirements, the limited partnership rollup transaction rules will not apply to the transaction. With respect to the second comment, the NASD is proposing to only apply the definition to those situations which have given rise to concerns regarding abusive arrangements. Such concerns have, thus far, arisen in connection with limited partnership rollup transactions—not those of other products.

Solicitation Fees

Commenters stated that fees paid to a soliciting firm should be based on the success of the soliciting firm as a form of inducement to successfully solicit the rollup transaction; and that general partners should not have to pay for all solicitation costs of a failed transaction (See comment 20).

The NASD believes that a soliciting firm should be free to provide independent advice to investors and that payments only for successful solicitations would not be in the interest of investors. The NASD, therefore, adopted amendments to Appendix F to prohibit NASD members from obtaining compensation for soliciting only "yes" votes in a rollup transaction.

Right of Appraisal

Commenters stated that appraisers should meet standards of professional conduct, independence and financial strength (See comments 2, 22, 31, 32); should be subject to experience, net worth and reliability tests (See comment 14); should meet a minimum definition of independent appraisal which would be set forth by the proposed rule (See comment 34); should conform to NASAA guidelines defining "independent appraiser" (See comment 25); should be members of the Appraisal Institute (See comments 5, 15, 27); and, should not be used for all types of partnerships, such as oil and gas partnerships, which should use, for example, petroleum engineer reports in lieu of appraisals (See comments 4, 20).

In the area of appraisals the NASD agrees that the methodology for valuing partnership assets should be that methodology which is appropriate for a particular industry. The NASD also believes that an appraisal performed "in a manner consistent with industry practice" implies that the appraiser must meet certain logical qualifications for the performance of the appraisal, such as the experience and financial stability of the appraiser and whether

[13] See, Footnote 4, supra.

the appraiser meets the standards of a qualifying organization.

Right of Compensation Based on an Appraisal

Concerning the right of compensation based on an appraisal, commenters stated that the issuance of unsecured debt was either inappropriate (See comment 10) or tantamount to the issuance of junk bonds (See comment 6); that the payment of interest and some amortization of principal should be required over the term of an unsecured debt instrument (See comment 38); that the federal funds rate was not an appropriate benchmark for the issuance of unsecured debt (See comment 6); that only cash should be used as compensation (See comment 25); that unsecured should debt have an interest rate of the federal funds rate plus 3%, a floor of 8% and a ceiling of 14% (See comment 34); that secured debt instruments issued by the new entity to dissenting limited partners should be repaid only by the net proceeds of the sales or refinancing of the assets of the contributing partnerships, since limited partners previously had only an interest in the assets of their particular partnership (See comments 13, 21, 23, 36); that debt instruments issued have a shorter maturity date, perhaps of no more than four to five years (See comments 34, 39); and, that potential dilution was involved in the issuance of a freely tradable security, but that such dilution could be avoided by requiring either that the market capitalization of the issuer of the freely tradable security be at least 4 times the equity of the proposed rollup, or, alternatively, that the issuance of freely tradable securities be available only when less than 20% of the limited partners have dissented from the transaction (See comments 5, 6, 15, 25, 27, 28, 33, 38). The NASD believes that debt instruments, while necessary for providing general partners with a method of compensating dissenting limited partners, should be carefully structured to minimize the risks to limited partners accepting such debt. Entities issuing debt should be limited to a maximum of 70% leverage, the debt should have a term no longer than 8 years, the debt instrument, whether secured or unsecured, should provide for prepayment to the debt-holders of a minimum of 80% of the value of the assets previously owned by the partnerships which are sold or refinanced, and the interest rate should be a market rate of interest equivalent to comparable debt instruments that are at least 120% of the applicable federal rate. Such provisions are intended to provide protection for dissenting limited partners who become secured or unsecured debt-holders. The proposed rule change makes clear that secured debt issued to dissenting limited partners as compensation is secured by all of the assets previously owned by the partnerships subject to the limited partnership rollup transaction, rather than by the assets of the particular partnership in which the dissenter was a limited partner. The NASD believes securitization by this larger asset pool enables greater access to a larger pool of lenders which encourages the formation of limited partnership rollup transactions that might otherwise not occur if securitization were limited to individual partnerships. Additionally, the NASD believes the accelerated prepayment provisions of the proposed rule change, which apply to both secured and unsecured debt issued as compensation to dissenting limited partners, will further minimize the risk to dissenting limited partners who are issued secured debt. The NASD discussed other comments relating to potential problems when freely-tradable securities are utilized as a means of compensating dissenting limited partners. In particular, the NASD believes that limited partners should negotiate at arms-length, without collusion with the general partner or sponsor. Additionally, if the issuer of the freely-tradable securities and the sponsor or general partner are affiliated, and the securities issued as compensation are new securities, the NASD believes that such securities must not represent more than 20% of the issued and outstanding securities of that class after the issuance. A sponsor or general partner is deemed affiliated with the issuer if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the rollup transaction or the purchase of the general partner's interest. The 20% limitation on the amount of securities offered as compensation by an affiliate helps to establish a threshold below which significant dilution could be presumed to have not occurred. The NASD is concerned that the publicly traded entity be sufficiently capitalized so as to avoid a shell or small, inactive company being used to effect a rollup.

Right of Review by an Independent Committee

Commenters stated that the independent committee should make its analysis available to interested parties (See comment 33); should not be required if independent counsel and an investment banker provide advice as to the fairness of the transaction (See comments 21, 23); should not be compensated (See comment 24); should be mandatory when general partners offer comparable rights (See comments 2, 5, 6, 22, 32, 34, 39); should always represent the largest equity holders (See comments 5, 7, 34); should be composed of the nine largest limited partners in descending size (See comment 2); should be funded by the partnership (see comment 2); should have access to proxy votes to verify the vote (See comment 2); should be indemnified by the assets of the limited partners rather than the assets of the general partners or sponsors (See comments 13, 21, 23, 35); should contain representation from members of the broker-dealer community who are unaffiliated with the transaction (See comment 18); should be nominated from a list of all limited partners made available for at least 45 to 60 days prior to the selection and should include no general partners (See comment 6); and, should be selected from limited partners who purchased in the initial offerings of the partnerships rather than from those who purchased in the secondary market (See comment 24).

With respect to the independent committee, the NASD believes it should not require that the independent committee make its analysis available to third parties. The availability of an opinion of counsel and an investment banker on the fairness of the transaction may be submitted to the NASD for review as another comparable right, but the NASD determined not to adopt such a specific alternative. The NASD does not believe that the independent committee should be mandatory for all situations where comparable rights are being provided as an alternative to appraisal and compensation or retaining the same security. The suggestion that the independent committee should always represent the largest shareholders appears contrary to the concept of protecting minority shareholder interests. The NASD also believes that the independent committee does need appropriate indemnification in order to ensure that there are partners willing to serve on the independent committee who can objectively carry out their responsibilities without fear of lawsuit or other action.

The NASD determined that the independent committee should have access to the books and records of the partnerships and should prepare a report to the limited partners subject to the rollup prior to the vote. With respect to the makeup of the independent committee, the NASD believes that it

may not be appropriate for the NASD to be too specific on the makeup of the committee but simply to indicate that the NASD believes that the independent committee should fairly represent the interests of all limited partners.

Right of Supermajority Approval

Concerning the right of supermajority approval, commenters stated that supermajority approval should have an approval threshold of 66⅔% of all partnership interests outstanding (See comments 3, 20); should have an approval threshold of 66⅔% of all partnership interests outstanding or 75% of those voting (See comments 13, 21, 23, 35); should have a minimum approval threshold of 75% (See comments 30, 39); and, should have a minimum approval threshold of 80% (See comments 2, 9, 14, 25, 27, 34).

With respect to the use of a supermajority vote approving the rollup as a comparable right, the NASD carefully considered all of the suggestions for various benchmarks that would indicate a supermajority approval of the transaction and believes that the 75% level originally proposed is the appropriate level. The NASD did, however, change the provision in response to member comments, as set forth above in Item 3, to permit a rollup transaction to go forward so long as any individual limited partnership that did not reach the 75% threshold is excluded from the transaction.

Actions of General Partners

Concerning the actions of general partners, commenters stated that the disclosure requirement in Subsection 6(c)(2)(i) pertaining to general partners who convert an equity interest into a voting interest should not be necessary to limited partners who have purchased their interests in the secondary market; and, that it should be clarified that the negative implication that it is permissible to convert an equity interest to a non-voting interest may not be drawn from Subsection 6(c)(2)(i) (See comment 20).

In connection with limited partnerships, where the limited partners have purchased their interests in the secondary market, the definition of limited partnership rollup transaction would exclude from the rules limited partnerships that are traded on the Nasdaq/NMS, NYSE, or AMEX. With respect to other limited partnerships subject to the rules, disclosure must be made regarding the rollup transaction in any event to all current limited partners—regardless of whether the limited partner was an original investor or a purchaser in the secondary market. With respect to the second comment, the NASD agrees that it is not permissible under the proposed rule change to convert an equity interest to a non-voting interest.

Valuation of Partnership Interests

Concerning valuation of partnership interests under Section 6(c)(2)(i) of appendix F, commenters stated that such valuations should take into account revenue increases typical in oil and gas programs (See comment 4); that "current value" should mean "going concern" rather than "liquidation" value (See comments 4, 21); that being required to follow valuation models in partnership agreements could be unfair (See comment 4); and, that general partner interests should be valued on their revenue share rather than their capital contribution (See comment 4).

With respect to the evaluation of general partnership interests, the NASD believes that carried interests in oil and gas programs and other interests provided for in limited partnership agreements are covered by the language in the proposed rules. The NASD agrees that the valuation of partnership interests should be appropriate to the particular industry, i.e. that "current value" is considered to permit valuation on a "going concern" or "liquidation" basis.

Voting Rights

Concerning voting rights, commenters stated that voting rights accorded investors in the rolled up entity may be inconsistent with the laws of the state in which the entity is organized when such laws do not permit amendment of articles of incorporation and by-laws, dissolutions, or sales of substantially all the assets of the corporation to be effected solely by stockholders (See comments 4, 20); that there should be a fixed vote date to avoid extending the vote to allow proxy solicitors to pressure fence sitters to change their vote (See comment 6); and, that the rules should contain a requirement that voting rights may not be diminished (See comment 25).

With respect to the first comment, it is important to make clear that proposed paragraph 6(c)(2)(ii)(B) does not apply to the rollup transaction; it applies only to the future operation of the resulting entity. The NASD believes that the proposed provision is not contrary to state corporate law and that state corporate law establishes minimum standards which may be modified by the articles of incorporation. With respect to the second comment, the NASD does not believe it is appropriate for the rules to include a fixed voting date. With respect to the third comment, the NASD believes that the provisions under Section 6(c)(2)(ii) provide sufficient protections to investors with respect to voting rights. The only circumstance under which voting rights can be modified significantly is where the NASD determines such changes are not unfair or if the changes are approved by an independent committee.

Transaction Costs

Concerning transaction costs under Section 6(c)(2)(iii) of Appendix F, commenters stated that when allocating transaction costs in a rejected transaction, it should be clarified that a rejected transaction is one where all partnerships have voted not to participate in the transaction (See comment 3); that all costs should be borne by the sponsor (See comment 25); that "dissenting limited partnership" should be defined (See comment 4); and, that costs for dissenting partnerships should be borne all or in part by the rolled up entity, not the general partner or sponsor (See comments 23, 36).

With respect to the allocation of transaction costs, the NASD believes that a rollup is considered rejected under Subsection 6(c)(2)(iii)(A) when, pursuant to the terms of the rollup transaction, the rollup transaction is not consummated. Subsection 6(c)(2)(iii)(B) addresses the allocation of transaction costs in rollup transactions that are consummated, but individual participating limited partnerships have rejected the rollup transaction and will not be included in the consummated rollup transaction.

General Partner Fees

Concerning fees of the general partners under Section 6(c)(2)(iv) of Appendix F, commenters stated that a general partner's carried interest received as part of the promotion of the original transaction should not be included in the term "unearned management fees" and, thus, not subject to any restrictions and treated just like a limited partner's interest (See comment 23).

A carried interest in the profits, losses and distributions of a limited partnership would not ordinarily be considered an unearned management fee unless the percentage interest is contingent upon the performance of future services or upon the repayment to limited partners of a stated return on their capital contribution which has not yet been met. Similarly, any limited partnership interests purchased by a general partner or allocated to the general partner as a "carried interest"

would be treated like any limited partnership interest and is not included in "unearned management fees."

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 period 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 such 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. Specifically the Commission requests comment regarding any potential conflicts between the NASD's proposed rule and state contract or corporate law. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-32316; File No. SR-NASD-93-13]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Filing Requirements of the Corporate Financing Rule

May 17, 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 March 10, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") and amended on May 4, 1993 the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

The Corporate Financing Rule Underwriting Terms and Arrangements

Sec. 44

* * * * *

(b) Filing Requirements

* * * * *

(7) Offerings Exempt From Filing

* * * * *

(C) *offerings of* securities:

(i) registered with the Securities and Exchange Commission on registration statement Forms S-3 or F-3 *pursuant to the standards for those Forms prior to October 21, 1992* and offered pursuant to Rule 415 adopted under the Securities Act of 1933, as amended: [,] or

(ii) of a foreign private issuer incorporated or organized under the laws of Canada or any Canadian province or territory, and registered with the Securities and Exchange Commission on Form F-10 [(only with respect to Canadian issuers)] *pursuant to the standards for that Form approved in Securities Act Release No. 6902 (June 21, 1991)* and offered pursuant to [the home jurisdiction's] *Canadian* shelf prospectus offering procedures;

* * * * *

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 NASD 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 NASD 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

Background

The Interpretation of the Board of Governors—Review of Corporate Financing ("Corporate Financing Interpretation") was adopted in the early 1970s as an interpretation of the NASD basic ethical rule contained in Article III, Section 1 of the Rules of Fair Practice. That provision requires that "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." The purpose of the Corporate Financing Interpretation was to determine whether the offering terms and arrangements of public offerings filed with the NASD for review were fair and reasonable in accordance with Article III, Section 1 of the Rules of Fair Practice and required that the NASD issue an opinion as to the fairness and reasonableness of the underwriting terms and arrangements.

Although not defined in the Corporate Financing Interpretation, the term "public offering" was defined in Schedule E to the NASD By-Laws [1] to include any primary or secondary distribution of securities made pursuant to a registration statement or offering circular, except for offerings pursuant to section 4(2) of the Securities Act of 1933. Pursuant to the terms of the Corporate Financing Interpretation as of 1981, exemptions from the filing requirements of the Corporate Financing Interpretation were provided for certain specified classes of offerings that were regulated by other rules of the NASD or under a specific scheme of regulation by other entities such as the Securities and

[1] The Corporate Financing Interpretation provided that definitions in the By-Laws or the Rules of Fair Practice shall have the meaning defined therein for purposes of the Interpretation unless the context requires otherwise. The discussion is based on the definition as of 1981.

Exchange Commission or the Treasury Department. In addition, an exemption was provided with respect to certain offerings of debt securities in recognition of the presence of market forces that would assure the fairness and reasonableness of underwriting terms and arrangements.

In 1982, the SEC adopted the Integrated Disclosure System, including new Form S–3 [2] *inter alia*. Form S–3, the SEC's short-form registration statement, permits the issuer to incorporate many of the disclosure items by reference to the disclosure in filings under the Act. On March 8, 1983, the NASD simultaneously issued Notice to Members 83–12 (March 8, 1983) ("1983 Notice to Members") and filed with the SEC Rule Filing SR–NASD–83–3 [3] (1983 rule filing") for immediate effectiveness to clarify the availability of an exemption from the filing requirements of the Corporate Financing Interpretation with respect to shelf offerings pursuant to new Rule 415 regardless of whether the offering was to be made pursuant to an underwriting arrangement.

The experience of the Corporate Financing Committee at that time was, to a large extent, based on shelf offerings of debt securities (primarily investment grade) of large, public reporting companies that were considered "seasoned." Thus, it was anticipated that Rule 415 offerings would generally not involve traditional underwriting arrangements, with the securities usually offered in brokered transactions that are virtually indistinguishable from ordinary secondary trades in the after-market.

The NASD stated in the 1983 Notice to Members and 1983 rule filing that exemptions to the Corporate Financing Interpretation filing requirements had previously been available where market forces or other constraints are present to assure the fairness and reasonableness of underwriting terms and arrangements, including specifically the amount of underwriting compensation. It was further stated that a prior exemption with respect to shelf offerings on SEC registration Form S–16 previously set forth in Notice to Members 81–17 (April 15, 1981) was adopted because it was believed that NASD advance review of such transactions would serve little regulatory purpose, as no underwriting arrangement was present and the distribution was expected to be made in a series of brokerage transactions. The 1983 Notice to Members and 1983 rule filing further stated that market pressures in connection with Rule 415 transactions registered on Form S–3 often result in the amount of underwriting compensation being determined through a competitive bidding process which helps to achieve its reasonableness. Finally, the NASD stated it had concluded that even in transactions which eventually include a traditional underwriting agreement, competitive pressures come into play in the negotiations preceding the execution of the agreement that can be relied upon to achieve the overall fairness of the agreements. An important clarification was provided in the 1983 Notice to Members and 1983 rule filing that offerings subject to the exemption were only exempt from the filing requirements of the Corporate Financing Interpretation and remained subject to the substantive requirements of the Interpretation. In addition, such offerings were required to be filed with the NASD for review if subject to the provisions of Schedule E to the NASD By-Laws, which rule regulates conflicts-of-interest which are present when a member offers its own securities or those of an affiliate.

In 1984, the NASD responded to a request by the staff of the SEC for an interpretation of the filing requirements under the Corporate Financing Interpretation with respect to foreign private issuers and governments issuing securities in the United States on registration statement Forms F–1, F–2 and F–3. The NASD determined to treat offerings on Form F–3 in the same manner as offerings on Form S–3 by providing an exemption to the filing requirements if the offering is made pursuant to Rule 415 on the basis that the scheme of regulation on Form F–3 paralleled that for a company registering on Form S–3.

In 1986, the NASD filed with the SEC rule filing SR–NASD–86–6 which proposed to significantly amend the Filing Requirements section of the Corporate Financing Interpretation. The rule filing proposed, *inter alia*, to amend the Filing Requirements to: (1) Differentiate between offerings exempt from compliance with the Corporate Financing Interpretation and Appendix F to Article III, section 34 of the Rules of Fair Practice and those offerings merely exempt from filing; and (2) codify the exemptions to the filing requirements set forth in Notice to Members 81–17 (April 15, 1981) and approved by the SEC in SR–NASD 83–3. The rule filings included an exemption for:

> securities registered with the Securities and Exchange Commission on registration statement Form S–3 and offered pursuant to Rule 415 adopted under the Securities Act of 1933, as amended.

No further rationale was provided for the codification of this exemption as it had previously been adopted pursuant to SR–NASD–83–3. However, in proposing a new exemption for mortgage pass-through securities, the NASD's justification looked to the presence of regulatory issues with respect to suitability, due diligence or underwriting compensation which would require NASD review.[4]

Subsequently, in 1988, the NASD issued Notice to Members 88–101 (December 1988) in response to inquiries of members and their counsel for clarification regarding the Corporate Financing Department's review procedures with respect to offerings conducted pursuant to Rule 415. The Notice includes the following statement regarding the view of the Corporate Financing Committee as to the continuing rationale for the availability of the exemption for offerings registered on Form S–3 and offered pursuant to Rule 415:

> In connection with Rule 415 offerings, the Committee determined to exempt from the filing requirements securities registered on Form S–3 because an issue able to satisfy Form S–3's "registrant requirements" would be followed closely by investors and market professionals. The Committee also felt that the securities markets would efficiently determine a fair price for the securities being offered and that any underwriting compensation received by members ordinarily would be determined under very competitive circumstances (generally limited to normal brokerage transactions). The Committee did not believe that the same facts were present in Rule 415 offerings where the securities are registered on any form other than S–3.[5]

Consistent with this position, the Notice went on to note that the Rule 415/S–3

[2] The financial criteria for Form S–3 was modified from that in Form S–16, with the other requirements with respect to reporting history and default on debt remaining the same. To use Form S–3, the issuer was required to have at least $150 million aggregate market value of voting stock held by non-affiliates or, alternatively, $100 million aggregate market value of voting stock held by non-affiliates and an annual trading volume of at least three million shares, except in the case of an offering of investment grade debt (i.e., debt rated in one of the four highest generic rating categories by a nationally recognized statistical rating organization).

[3] Securities Exchange Act Release No. 19648 (April 4, 1983); 48 FR 15358 (April 8, 1983).

[4] SR–NASD–86–6, at 9.

[5] Notice to Members 88–101 (December 1988), at 222. Consistent with the Corporate Financing Committee's rationale for adoption of the Rule 415/S–3 exemption, the exemption would not be available to offerings where, even though the Rule 415 box on the registration statement is checked, the securities are distributed in a single traditional underwriting arrangement shortly after effectiveness and not "pursuant to Rule 415."

exemption from filing is not available when an offering is otherwise required to be filed because it is subject to Schedule E, i.e., because the offering should be reviewed by the Corporate Financing Department to ensure compliance with Schedule E.

In 1991, the NASD withdrew SR–NASD–83–27 and filed SR–NASD–91–19 which included a completely revised version of the proposed codification of the Corporate Financing Interpretation as the new Corporate Financing Rule.[6] The Rule 415/S–3 exemption was included in the new Rule at Subsection (b)(7)(C) and specified that the exemption was also available for shelf offerings on Form F–3 consistent with the Corporate Financing Committee's earlier interpretation. Subsequent to the filing of SR–NASD–91–19, the SEC adopted the Multi-Jurisdiction Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers ("MJDS") which adopted new forms for offerings in the U.S. by Canadian issuers.[7] Consistent with the views of the Committee set forth in Notice to Members 88–101, the NASD filed with the SEC Amendment No. 1 to SR–NASD–91–19 to amend the Corporate Financing Rule and rule filing SR–NASD–91–62 to amend the Corporate Financing Interpretation to provide an exemption for offerings filed on new Form F–10 by Canadian private and crown corporations and offered pursuant to Canadian shelf offering rules. Form F–10 may be used by Canadian issuers with outstanding equity with an aggregate market value of at least (CN) $360 million and a public float of at least (CN) $75 million, where the issuer has a reporting history with Canadian authorities of at least 36 months. In requesting member comment on the proposed amendments in Notice to Members 91–34 (June 1991), the NASD stated that the requirements of Form F–10 would ensure:

> that the Canadian company utilizing the form will be a seasoned company with experience in raising capital from the public market. Additionally, such issuers are likely to be followed by a number of research analysts and have a number of investment banking relationships with NASD members. These factors should act to ensure that an issuer will be able to negotiate fair and reasonable terms with an underwriter in connection with any public distribution.[8]

[6] The Corporate financing Rule was adopted on April 15, 1992, at which time the Corporate Financing Interpretation was rescinded. Securities Exchange Act Release No. 30587 (April 15, 1992); 57 FR 14597 (April 21, 1992).

[7] Securities Act Release No. 6902 (June 21, 1991).

[8] Notice to Members 91–34 (June 1991), at 180. This notice was included as an exhibit to Amendment No. 1 to SR–NASD–91–19 and to SR–NASD–91–62.

SEC Adoption of Amendments to Form S–3 and Rule 415

On October 21, 1992, the Securities and Exchange Commission approved an amendment to expand the availability of Form S–3 and to make Rule 415 registrations available to additional issuers as part of an effort to reduce the cost of financing through the securities markets.[9] The SEC's amendment to form S–3 has reduced the reporting history requirement of Form S–3 from 36 to 12 months for most issuers, reduced the public float test from $150 million to $75 million, and eliminated the three million share volume requirement. Finally, no reporting history is required in order to rely on Form S–3 to register investment grade asset-backed securities. At the same time, the SEC amendments permitted the registration of a single shelf registration statement covering debt, equity and other classes of securities without a specific allocation of offering amounts among the classes of securities being registered.

The Commission's action to amend Form S–3 was in recognition of the success of the integrated disclosure system and the shelf registration process under Rule 415 that were adopted in 1982. It is believed that these amendments will significantly facilitate the ability of public companies to access the U.S. capital markets at a lower cost and with increased efficiency and flexibility. The SEC is therefore, to be commended for responding to the needs of public companies to lower the cost of raising capital in the public markets.

Description of Proposed Rule Change

The NASD has reviewed the SEC's amendments to Form S–3 in keeping with its prior history of considering amendments to the NASD's Corporate Financing Filing Requirements in order to coordinate with the SEC's amendments to this registration forms and rules. The NASD believes that its obligation to ensure the fairness of underwriting terms and arrangements as a self-regulatory organization registered under section 15A of the Securities Exchange Act of 1934 is distinct from the SEC's obligation to ensure the adequacy and accuracy of disclosure pursuant to the Securities Act of 1933. The NASD determined that investment grade non-convertible debt and investment grade non-convertible securities registered on amended Form S–3 should continue to be exempt from the Corporate Financing Rule Filing Requirements, regardless of the registration form relied on, under a separate exemption set forth in section (b)(7)(B) of the Corporate Finance Rule. The NASD determined, however, that it does not have sufficient information at this time with respect to the issuers now eligible to file on Form S–3 to reach a determination that the Rule 415/S–3 exemption should be extended to the newly-qualified issuers.[10] Therefore, the NASD has determined not to change its Filing Requirements at this time to provide an exemption for offerings by companies that meet the new requirements of Form S–3. The NASD will undertake a review of offerings filed with the NASD on registration statement Form S–3 that are offered pursuant to Rule 415 by companies that would not meet the prior criteria for Form S–3 to determine whether the market forces related to such offerings result in the presence of fair and reasonable underwriting terms and arrangements.

Accordingly, in order to clarify the Filing Requirements of the Corporate Financing Rule for issuers that now qualify to register on amended Form S–3, the NASD is proposing to amend section (b)(7)(C) of the Corporate Financing Rule to provide that the exemption is only available with respect to offerings that comply with Form S–3 pursuant to the requirements for that Form prior to October 21, 1992, i.e., the date of SEC approval of the amendments to Form S–3.[11] The NASD believes the proposed rule change will continue to ensure that compliance with the NASD's Corporate Financing Rule is effectively monitored.

The exemption currently provided for shelf offerings on Form F–3 is also proposed to be modified to reference the requirements for that Form prior to October 21, 1992 and the exemption for Form F–10 is proposed to be modified to reference the SEC release approving the MJDS. Although the SEC did not

[9] Securities Act Release No. 6964 (October 22, 1992).

[10] In this connection, the NASD conducted a preliminary review of filings of issuers who would meet the new Form S–3 standards, and determined that Corporate Financing staff identified compensation or regulatory issues in a number of the filings.

[11] The NASD indicated that it will publish the prior version of Form S–3 in a Notice to Members, and will include a reference to that Notice to Members, following subsection (b)(7)(C) of the Corporate Financing Rule in the NASD Manual, specifying that the notice includes a copy of Form S–3 as in effect prior to October 21, 1992. NASD staff will provide determinations to members and their counsel as to whether an offering would meet the objective criteria of Form S–3 as in effect prior to October 21, 1992. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Division of Market Regulation SEC (April 14, 1993).

adopt amendments to these forms at the time it amended Form S–3, the NASD believes it should clarify all of these exemptions in the event amendments are adopted by the SEC in the future.

In determining not to expand the exemption from the Corporate Financing Rule at this time, the NASD recognizes its responsibility to ensure that application of the Rule does not impose a substantial burden on issuers. In this connection, it is important to note that the Corporate Financing Department has procedures to facilitate the expeditious review of shelf offerings.[12] If the Commission determines to approve this proposed rule change, the NASD will clarify these special procedures in its Notice to Members announcing approval of the rule change. The NASD believes that publication of this information will assist issuers, members and their counsel to avail themselves of procedures that will expedite review of an offering pursuant to Rule 415 that is registered on SEC Form S–3 and avoid additional reviews of arrangements entered into in connection with separate offerings off the shelf.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act in that the proposed rule change will promote just and equitable principles of trade and in general protect investors and the public interest by clarifying for issuers, members and their counsel the public offerings registered on Form S–3 that are subject to review of underwriting terms and arrangements under the Corporate Financing Rule and, thereby, effectively monitoring compliance by such offerings with the requirements of the Corporate Financing Rule in the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments 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 period 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 such 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–12120 Filed 5–20–93; 8:45 am]

BILLING CODE 8010–01–M

[12] The procedures previously approved by the Corporate Financing Committee are as follows:

1. Where the participating NASD members(s) have not been determined, the issuer may file the offering with the NASD on behalf of potential NASD member participants.

2. All necessary documents should be filed as set forth in section (b)(5) of the Corporate Financing Rule.

3. The cover letter to the filing should include all information in response to the items set forth under "Information Required to Be Filed" contained in subsection (b)(6) of the Corporate Financing Rule requiring, *inter alia*, estimates of the maximum underwriting compensation, maximum price per share, and maximum amounts of any other underwriting compensation, as well as a statement of any affiliations between the issuer, any NASD member, and any purchases of securities of the issuer made by any NASD member in the prior twelve months.

4. The Corporate Financing Department staff will render an opinion of no objections to the underwriting terms and arrangements if undertakings are received with respect to the compensation and disclosure of the compensation in the offering document and that the Corporate Financing Department would be notified of any changes of issuer-member affiliation or purchases of the issuer's securities by a member.

5. In recognition of the market timing issues that are associated with shelf offerings, the staff of the Corporate Financing Department are authorized to grant priority to the review of shelf offerings. In order to determine the timetable for a shelf proposed offering, NASD staff routinely contact counsel on the date the offering is filed. NASD staff believe that in every case where the SEC staff grants "no review" status to an offering, NASD review is completed within the underwriter's time constraints. The average length of time for review of all offerings on a Form S–3 is currently 4.7 days.

[Release No. 34–32310; File No. SR–PSE–92–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Position and Exercise Limits for Equity and Stock Index Options

May 14, 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 November 1, 1992, as amended on December 4, 1992 and January 14, 1993,[1] 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, pursuant to Rule 19b–4, a proposed rule change to amend its rules for the purpose of increasing position and exercise limits[2] applicable to equity and stock index options. The Exchange also proposes to amend the equity hedge

[1] On December 4, 1992, the PSE submitted Amendment No. 1 with the Commission, and further, filed Amendment No. 2 on January 14, 1993. Both of these amendments are intended to revise existing position and exercise limits. See File No. SR–PSE–92–38.

[2] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

exemption by allowing securities that are convertible into the underlying stocks to be a basis for the exemption. In addition, the Exchange is also proposing editorial and clarifying changes to the relevant rules.

The text of the proposed rule change is available at the Office of the Secretary, PSE, and 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 statutory 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 of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to amend its existing position and exercise limits for standardized equity option and stock index option contracts in order to provide uniform increases in such limits at the Exchange. Specifically, the PSE proposes that the current position and exercise limits for equity options of 3,000 contracts, 5,500 contracts and 8,000 contracts be increased to 4,500 contracts, 7,500 contracts and 10,500 contracts, respectively.[3] In addition, the Exchange proposes to increase the existing position and exercise limits for narrow-based index option contracts from 4,000, 6,000 and 8,000 contracts to 5,500, 7,500 and 10,500 contracts, respectively.[4] Finally, the Exchange proposes to increase the general position and exercise limits for options on broad-based indices from 15,000 contracts to 19,500 contracts.[5]

The Exchange believes that the proposed increases in options position and exercise limits are warranted for the following reasons. First, the proposed increases would encourage greater liquidity in the Exchange's markets that is necessary in order to compete effectively with upstairs customized options trading. Second, such increases would enhance the Exchange's Market Makers' and Lead Market Makers' abilities to trade successfully in the upcoming further implementation of multiple options trading. In addition, the proposed increases would also allow public customers, institutions and broker-dealers to employ larger positions in connection with their investment strategies.

Moreover, the Exchange believes that the adoption of increased position and exercise limits for equity and index options will have no adverse regulatory impact. In particular, the Exchange maintains that the investing public will continue to be protected because of the application of the PSE's strict monitoring procedures. The Exchange states that it has had no significant compliance problems under the existing rules and a negligible number of disciplinary cases involving position and exercise limit violations.

The Exchange also proposes to amend Rule 6.8, Commentary .07 by adding "securities convertible into [the underlying] stock" to the securities eligible to serve as the underlying basis for the exemption. The Exchange believes that such convertible securities are an appropriate hedge against equity options because they have the same economic interest, *i.e.*, 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 some future date.

Finally, the Exchange proposes to make two additional clarifying changes to the position and exercise limit rules. First, the last paragraph of Rule 6.8(a), relating to procedures in disciplinary cases involving position limit violations, would be deleted because such procedures will be superseded pursuant to proposed amendments to the Exchange's Minor Rule Plan.[6] In addition, a cross reference to Rule 7.6 (index option position limits) would be added to Rule 6.8 (equity option position limits).

The Exchange believes that 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 prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and the national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 period 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 such 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

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[3] See PSE Rule 6.8, Commentary .05 for the existing position and exercise limits applicable to equity options.

[4] See PSE Rule 7.6(a) for existing position and exercise limits applicable to narrow-based index options.

[5] In a separate rule filing, the Exchange requested position limits for options on the Wilshire Small Cap Index, a broad-based index, of 25,000 contracts on the same side of the market, with no more than 15,000 of such contracts in the series with the nearest expiration date. See Securities Exchange Act Release No. 31043 (August 14, 1992), 57 FR 38078 (notice of File No. SR–PSE–92–12). The Commission approved this proposal in Securities Exchange Act Release No. 31397 (November 3, 1992), 57 FR 53368. The PSE has pending a proposal to increase position limits for the Wilshire to 37,500 contracts on the same side of the market, with no more than 22,500 contracts in the series with the nearest expiration date. See Securities Exchange Act Release No. 31793 (February 5, 1993), 58 FR 7283.

[6] See Securities Exchange Act Release No. 31226 (September 23, 1992), 57 FR 45105 (notice of File No. SR–PSE–92–15).

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. 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 June 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–12117 Filed 5–20–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

May 17, 1993

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f1–1 thereunder for unlisted trading privileges in the following securities:

Chieftain International Incorporated
Common Stock, No Par Value (File No. 7–10677)
E.W. Blanch Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7–10678)
Interpool, Inc.
Common Stock, $.001 Par Value (File No. 7–10679)
MuniVest California Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–10680)
MuniVest New Jersey Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–10681)
MuniVest Michigan Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–10682)
Munivest Florida Fund, Inc.
Shares Beneficial Interest, $.10 Par Value (File No. 7–10683)
MuniVest New York Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–10684)
Royal Carribbean Cruises
Common Stock, $.01 Par Value (File No. 7–10685)
Reinsurance Group of America, Inc.
Common Stock, $.01 Par Value (File No. 7–10686)
Sundowner Offshore Services, Inc.
Common Stock, $1.00 Par Value (File No. 7–10687)
Tofutti Brands, Inc.
Common Stock, $.01 Par Value (File No. 7–10688)
Cross Timbers Oil Company
Common Stock, $.01 Par Value (File No. 7–10689)
Zurich Reinsurance Centre Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7–10690)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 7, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–12124 Filed 5–20–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

May 17, 1993

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Detroit Edison Company
Depositary Shares Cum. Pfd. Stock, $100 Par Value (File No. 7–10654)
Interpool, Inc.
Common Stock, $.001 Par Value (File No. 7–10655)
Public Service Electric and Gas Company
5.97 Cum. Pfd. Stock $100 Par Value (File No. 7–10656)
Barclays Bank Plc
American Depositary Note Receipts, 8 pc Conv. Capital Notes Units (File No. 7–10657)
Norcen Energy Resources Ltd.
Common Stock, $.01 Par Value (File No. 7–10658)
MuniVest California Insured Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–10659)
MuniVest Florida Fund
Shares of Beneficial Interest, $.10 Par Value (File No. 7–10660)
MuniVest Michigan Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–10661)
MuniVest New Jersey Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–10662
MuniVest New York Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–10663)
USG Corporation
Warrants (File No. 7–10664)
Reinsurance Group of America, Inc.
Common Stock, $.01 Par Value (File No. 7–10665)
E.W. Blanch Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7–10666)
Intersystems, Inc.
Common Stock, $.01 Par Value (File No. 7–10667)
Intersystems, Inc.
Warrants, Expiring December 31, 1996 (File No. 7–10668)
Buckeye Partners L.P.
Common Stock, $.01 Par Value (File No. 7–10669)
Merchants Groups, Inc.
Common Stock, $.01 Par Value (File No. 7–10670)
Samuel Goldwyn Co.
Common Stock, $.10 Par Value (File No. 7–10671)
Cross Timbers Oil Company
Common Stock, $.01 Par Value (File No. 7–10672)
Long Island Lighting Co.
7.05 Pfd Stock (File No. 7–10673)
Providence Energy Corporation
Common Stock, $.01 Par Value (File No. 7–10674)
Consolidated-Tomoka Land Company
Common Stock, $1 Par Value (File No. 7–10675)
Zurich Reinsurance Centre Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7–10676)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 7, 1993, written data, views and arguments concerning the above-reference application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve

the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Johathan G. Katz,

Secretary.

[FR Doc. 93–12123 Filed 5–20–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25811; International Series Release No. 546]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 14, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 7, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declaration(s) at the address(es), specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Broken Hill Proprietary Company Ltd. (31–837)

The Broken Hill Proprietary Company Ltd. ("Broken Hill"), an international resources company, BHP House, 140 William Street, Melbourne, Victoria 3000, Australia, has filed an application for an order granting an exemption under section 3(a)(5) from all provisions of the Act, except section 9(a)(2). Alternatively, Broken Hill requests an order of exemption under section 3(a)(3).

Broken Hill, Australia's largest company, is engaged in three principal areas of business: (1) Mineral exploration and production; (2) oil exploration, production and refining; and (3) steel production. Broken Hill's total revenues for the fiscal year ended May 31, 1991 were approximately $13 billion and total assets, as of May 31, 1991, were approximately $16 billion.

Broken Hill owns all of the outstanding shares of BHP Petroleum Americans (Hawaii) Inc. ("PRI"), an Hawaiian public-utility holding company exempt from registration under section 3(a)(1) pursuant to rule 2. The Hawaii Public Utility Commission approved Broken Hill's acquisition of PRI in 1989.

PRI, which is primarily engaged in the refining and marketing of petroleum products, also conducts gas distribution activities through a wholly owned subsidiary, Gasco, Inc. ("Gasco"). Gasco sells synthetic natural gas ("SNG") and propane, to 32,573 customers through underground mains and to 35,236 customers in portable containers in Hawaii. It is the only gas utility company in Hawaii. In 1991, Gasco's total revenues from sales of SNG and propane were $74.1 million, of which approximately $45.6 million, or 61.5%, was attributable to utility sales.[1] As of December 31, 1992, Gasco's total assets were $74,881,000.

Gasco manufactures all of the SNG used in its operations at its SNG plant on Oahu. The feedstock for the manufacture of SNG is principally naphtha, although some propane is used for enrichment purposes. Gasco purchases all its naphtha and propane from the refinery on Oahu operated by a wholly-owned subsidiary company of PRI, Hawaiian Independent Refinery, Inc. ("HIRI"). Virtually all of the propane produced by the HIRI refinery is sold to Gasco for its utility and nonutility gas distribution business.

Gasco is a "public-utility company" within the meaning of the Act. Because of its indirect ownership of Gasco through PRI, Broken Hill is a "holding company" within the meaning of the Act. In 1991, Gasco's total utility revenues represented 0.35% of Broken Hill's total revenues.

The application states that Broken Hill is not a company the principal business of which within the United States is that of a public utility, and that it will not derive any material part of its income, directly or indirectly, from any one or more subsidiary companies the principal business of which within the United States is that of a public utility. The application further asserts that Broken Hill is primarily engaged in a business other than that of a public utility company and that the operation of Gasco's utility activities is incidental to Broken Hill's and PRI's oil production and refining operations.

[1] The distribution of SNG and propane in enclosed portable containers, unlike the distribution of SNG and propane through underground mains, is not included in the business of a gas utility company under section 2(a)(4).

Petrolane Gas Service Limited Partnership (31–898)

Petrolane Gas Service Limited Partnership ("Petrolane"), 99 Park Avenue, New York, New York 10016, a Delaware limited partnership, whose sole general partner is Petrolane Incorporated, which is a wholly owned subsidiary of QFB Partners, has filed an application under section 2(a)(4) of the Act for an order declaring it not to be a gas utility company.

Petrolane is engaged in the domestic retail and wholesale distribution of liquified petroleum gas, predominantly propane, for residential, commercial, industrial and agricultural uses. Petrolane is also engaged in other activities related to the sale of propane, such as equipment and appliance sales and servicing. As of December 31, 1992, Petrolane distributed propane from approximately 420 sales and services centers serving approximately 820,000 retail customers in 42 states. In 1992, Petrolane sold approximately 747 gallons of propane and had total operating revenues of $624.7 million. It sold approximately 543 million and 204 million gallons of propane to retail and wholesale customers, respectively, in 1992. Approximately 37% of 1992 retail sales were to residential customers, with 21% to commercial customers, 2% to industrial customers, 14% to engine fuel customers, 10% to agricultural customers and 16% to other customers.

Section 2(a)(4) defines a gas utility company as "any company which owns or operates facilities used for distribution at retail (other than distribution only in enclosed portable containers * * *) of natural or manufactured gas for heat, light, or power." That section also provides that the Commission may declare a company operating such facilities not to be a gas utility company if it "finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the

public interest or for the protection of investors or consumers that such company be considered a gas utility company for purposes of [the Act] * * *."

For purposes of section 2(a)(4), metered gas sales are considered gas distributed at retail. During 1992, Petrolane had approximately 19,000 metered accounts ("Metered Accounts") representing 2.3% of its customer base. Although Petrolane does not maintain separate records for sales of its Metered Accounts, it estimates that in 1992, less than five percent of its total revenues was derived from its Metered Accounts, and that total revenues derived from its Metered Accounts (excluding industrial accounts) were less than $16 million. Petrolane anticipates that the volume of propane sold by it to Metered Accounts will remain relatively stable into the foreseeable future. The applicant asserts that it is regulated by various state, federal and local laws, especially in matters related to the transportation, storage and distribution of propane, but not as to price.

The Columbia Gas System, Inc. (70–7903)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807–0020, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a), 7 and 12(d) of the Act and rule 44 thereunder.

Columbia, a debtor in possession under Chapter 11 of the Bankruptcy Coce, was authorized to enter into a secured revolving credit agreement (Agreement) with a syndicate of lenders ("Lenders") in the amount of $275 million by prior Commission order dated September 20, 1992 (HCAR No. 25380).[2] The Agreement expires on September 23, 1993.

Columbia now proposes to enter into an amendment to the Agreement which will extend the maturity date of the Agreement to December 31, 1994 and reduce the total commitment to $100 million. The amended Agreement also requires Columbia to pay a structuring fee of $75,000, an annual administration fee of $100,000, a renewal fee of $625,000 and a commitment fee of ½% per annum of the unused commitment. Letter of credit costs will be reduced to 2% per annum.

Interest on all outstanding balances will be charged at Chemical Bank's alternative reference rate (the higher of the Chemical Bank's announced reference rate or the federal funds rate plus 50 basis points) plus 1%, or the Eurodollar rate plus 2¼%. Assuming full use of the commitment and including the various fees associated with the Agreement, these interest rates would currently result in an effective annual cost of 7.65% for the Eurodollar option and 9.27% for the alternate reference rate option. Borrowing will be evidenced by a grid note.

As security for the borrowings, the Lenders will receive a superpriority claim in the Chapter II proceedings, as well as a lien of all property of Columbia except the voting securities of subsidiaries which are gas public-utility companies as defined under section 2(a)(4) of the Act.

Columbia will use the proceeds of the loans to fund the operating needs of its non-bankrupt subsidiaries in accordance with the terms and conditions of, a previous order of the Commission dated December 23, 1991 (HCAR No. 25438) authorizing Columbia to acquire installment promissory notes or common stock issued by its subsidiaries and Columbia's issuance of short-term advances to its subsidiaries through September 30, 1993 and, future orders of the Commission.

System Energy Resources, Inc., et al. (70–7946)

System Energy Resources, Inc. ("SERI"), 1340 Echelon Parkway, Jackson, Mississippi 39213, Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 317 Baronne Street, New Orleans, Louisiana 70112, Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39205 and New Orleans Public Service Inc, 317 Baronne Street, New Orleans, Louisiana 70112, electric public-utility subsidiary companies of Entergy Corporation ("Entergy"), P.O. Box 61005, New Orleans, Louisiana 70161, a registered holding company, and Entergy, have filed a post-effective amendment to their application-declaration under Sections 6(a), 7, 12(b) and 12(c) of the Act and Rules 42, 45, 50 and 50(a)(5) thereunder. A notice of the initial application-declaration ("Initial Application") was issued on April 10, 1992 (HCAR No. 25513) ("April 1992 Release").

In the Initial Application, SERI proposed to issue and sell, in one or more series, through December 31, 1994, up to $500 million aggregate principal amount of first mortgage bonds ("Bonds"). Furthermore, SERI's Initial Application requested authorization for the Bonds to be placed pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. The April 1992 Release authorized SERI to begin negotiations with respect to the issue and sale of its Bonds by means of negotiated public offering or private placement.

By order dated July 7, 1992 (HCAR No. 25577) ("July 1992 Order"), SERI was authorized to issue and sell $45 million principal amount of Bonds, 8.04% Series due 2002. The July 1992 Order reserved jurisdiction over the issuance and sale of $455 principal amount of Bonds.

By order dated October 28, 1992 (HCAR No. 25661) ("October 1992 Order"), SERI was authorized to issue and sell $105 million principal amount of Bonds, 6.12% Series due 1995 and $70 million principal amount of Bonds, 8.25% Series due 2002. The October 1992 Order reserved jurisdiction over the issuance and sale of $280 million principal amount of Bonds.

By order dated April 24, 1993 (HCAR No. 25803) ("April 1993 Order"), SERI was authorized, through December 31, 1994, to issue and sell $60 million principal amount of Bonds, 6% Series due 1998. The April 1993 Order reserved jurisdiction over the issuance and sale of $220 million principal amount of Bonds ("Reserved Bonds").

SERI now proposes, with respect to the Reserved Bonds, to deviate from the Commission's Statement of Policy Regarding First Mortgage Bonds (HCAR No. 13105, February 16, 1956, as modified by HCAR No. 16369, May 8, 1969) to the extent that any or all series of the remaining $220 million aggregate principal amount of Bonds may be non-callable, rather than non-refundable, at the option of SERI for the life of such series.

Northeast Utilities, et al. (70–8076)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and its wholly owned nonutility subsidiary company, HEC Inc. ("HEC") (collectively, "Applicants"), 24 Prime Parkway, Natick, Massachusetts 01760, have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and Rules 45, 87(b)(1), 90, and 91 thereunder. Applicants seek to expand HEC's current authorization and to engage in financing transactions.

[2] Columbia and its nonutility subsidiary, Columbia Gas Transmission Corporation ("Transmission"), filed for protection with the Bankruptcy Court for the District Court of Delaware on July 31, 1991, in response to financial difficulties related to Transmission's obligations under above-market gas purchase contracts. In re The Columbia Gas System, Inc. and Columbia Gas Transmission Corp., Case No. 91–803. By its order dated May 11, 1993, the Bankruptcy Court approved the amendment to the Agreement.

By order dated July 27, 1990 (HCAR No. 25114–A) ("1990 Order"), the Commission authorized HEC to provide conservation and load management services, and the following energy management services: (1) The identification of energy cost reduction opportunities through energy audits; (2) the design of facility and process enhancements; (3) the management of or the direct construction and installation of energy conservation equipment; (4) the training of client personnel in the operation of equipment; (5) the maintenance of energy systems; and (6) the reporting of system results. The 1990 Order authorized, through June 30, 1993, NU to make capital contributions to HEC in an amount not to exceed $6 million, HEC to borrow up to $15 million under a credit/term loan agreement with a bank or group of banks ("Agreement"), and NU to make additional capital contributions to or guarantees on behalf of HEC in an amount not to exceed $4 million should the Agreement require.

HEC now wishes to expand the energy management services and demand side management services it provides, and HEC seeks to enter into the consulting business. HEC proposes to provide the following energy management services: (1) Identification of energy and other resource (water, labor, maintenance, materials) cost reduction opportunities; (2) design of facility and process modification and/or enhancement to realize such opportunities; (3) design of new and retrofit heating, ventilating and air conditioning, electrical and power systems, motors, pumps, lighting, water and plumbing systems and related structures to realize energy and other resource efficiency; (4) the management or direct installation of energy conservation equipment; (5) performance contracts, i.e., contracts under which HEC is paid for its services and the equipment it installs based on the energy savings that result from such services and equipment; (6) assistance in identifying and arranging third-party financing for energy conservation programs; (7) training of client personnel in the operation of equipment; (8) system commissioning, i.e., observing the operation of the installed system to insure that it meets the design specifications; and (9) reporting system results.

The demand side management services which HEC seeks to provide include: (1) Design of energy conservation programs; (2) implementation of energy conservation programs; (3) performance contracts for demand side management work; and (4) monitoring and/or evaluation of demand side management programs, including metering and site inspection.

HEC proposes to provide the following consulting services: (1) Development and review of architectural, structural and engineering drawings for energy and other resource efficiency; (2) design and specification of energy consuming equipment; (3) design and marketing of intellectual property, i.e., any process, program, technique, or computer software used to analyze energy conservation opportunities and results; [3] and (4) general technical advice concerning the use, benefits, planning and/or administration of energy management and/or demand side management programs that is not associated with current, planned or potential HEC energy management or demand side management services. HEC states that it would only render consulting services in cases where HEC is not directly involved in the performance of energy management and demand side management services.

HEC proposes to provide its energy management and demand side management services to customers located in New England and New York ("Region") and to provide limited services outside the Region, with the restriction that revenues attributable to customers outside of the Region do not exceed the revenues attributable to customers inside of the Region ("Revenue Restriction"). HEC proposes to provide consulting worldwide without the Revenue Restriction.[4]

HEC states that NUSCO may provide services at cost of HEC to aid in HEC's consulting business. [5] Applicants represent that NUSCO employees would only provide services to HEC related to consulting projects if such services would not adversely impact services provided by NUSCO to the other subsidiaries of NU. In addition, Applicants state that on an employee equivalent basis, they do not expect that HEC will require more than ten NUSCO full-time employees at any one time, including those employees assisting in HEC's provision of consulting services.

Through June 30, 1996, Applicants propose that NU be authorized to make capital contributions to HEC up to an aggregate amount of approximately $6 million, and that HEC be authorized to extend its current revolving credit/term loan agreement with a borrowing limit of up to $11 million or to enter into a comparable new loan agreement for up to $11 million.[6] Should additional capital contributions or guarantees be required by the credit/term loan agreement, NU proposes to make such capital contributions or guarantees in an amount up to $4 million. HEC anticipates the interest rate on the revolving credit/term loan agreement would be the bank's prime rate plus 1.25% or less, with an annual commitment fee of .25% or less.

National Fuel Gas Supply Corp., et al. (70–8135)

National Fuel Gas Supply Corporation ("National") and Penn-York Energy Corporation ("Penn-York"), (collectively, "Applicants"), both non-utility subsidiaries of National Fuel Gas Company ("National Fuel"), a registered holding company, each of 10 Lafayette Square, Buffalo, New York 14203, have filed an application under sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

National proposes to acquire all of the assets of Penn-York and merge Penn-York into National. On the effective date of the merger, Penn-York would cease to exist as a separate entity, and all of Penn-York's assets, liabilities, rights and

[3] Should HEC use any intellectual property developed by Northeast Utilities Service Company ("NUSCO"), NU's service company subsidiary, or any other NU subsidiary company, HEC states that it would pay the following amounts to that NU subsidiary company for any such intellectual property actually sold or licensed by HEC: (1) 70% of the revenues from the intellectual property until the NU subsidiary company that developed the intellectual property recovers its programming and development costs; and (2) 20% of such revenues thereafter. HEC would pay costs plus 20% of HEC's revenues for intellectual property developed at its request. HEC would address such requests only to NUSCO.

[4] To insure that HEC's consulting revenues do not include any revenues from energy management or demand side management services, HEC states that: (1) Revenues will only be categorized as consulting revenues if HEC is not at the same management services for that customer; (2) if a consulting client of HEC requests that HEC also provide energy management and/or demand side management services, all revenues received from that customer, until the energy management and/or demand side management work is completed, would be subject to the Revenue Restriction; and (3) if a customer for whom HEC is providing energy management and/or demand side management requests that HEC also provide a consulting service or services, all revenues from that customer would be subject to the Revenue Restriction, until all the energy management and/or demand side management work is completed.

[5] The 1990 Order authorized NUSCO to provide services at cost to HEC.

[6] NU, HEC, and NU subsidiary companies participating in the system money pool recently have filed in SEC File No. 70–8048, two post-effective amendments, to request authorization to make short-term loans from the NU system money pool to HEC in an aggregate amount up to $11 million through December 31, 1994. If the amendments are granted, HEC and NU would amend this application-declaration to withdraw the requests for authorization of HEC's borrowings under a revolving credit/term loan agreement and associated NU capital contributions and guarantees beyond the date HEC first borrows from the money pool.

obligations would become those of National, the surviving corporation. Also on the merger's effective date, all of the outstanding capital stock of Penn-York, which is owned and held by National Fuel, would be retired. Following the merger, all of Penn-York's customers would continue to receive the same service from National. Both Penn-York's customers and National's customers would continue to pay the same rates that would apply absent the proposed merger, unless and until such rates are changed with the authorization of the Federal Energy Regulatory Commission.

The proposed transaction includes the acquisition by National of all of the assets of Penn-York, consisting of: three underground natural gas storage fields (including 84 wells, gathering lines and non-customer-owned gas within those fields); approximately 17 miles of transmission pipelines connecting the gas storage fields to National, Tennessee Gas Pipe Line Company and Columbia Gas Transmission Corporation; two compressor stations totalling approximately 13,350 horsepower; and, other appurtenant facilities, current assets and other assets. As of September 30, 1992: Penn-York's property, plant and equipment had a book value of $75,885,252; Penn-York's current assets were $4,228,762; its other assets were $5,683,260; and its total assets (less accumulated depreciation) were $85,797,274.

The Applicants propose that the transaction is reasonably incidental or economically necessary or appropriate to the operation of National as a gas utility company pursuant to section 2(a) of the Gas Related Activities Act of 1990.

Consolidated Natural Gas Company, et al. (70–8195)

Consolidated Natural Gas Company ("CNG"), a registered holding company, CNG Tower, Pittsburgh, Pennsylvania 15222–3199, and its wholly owned nonutility subsidiary companies, CNG Research Company ("Research"); Consolidated System LNG Company ("LNG"); and Consolidated Natural Gas Service Company, Inc. ("Service"), located at CNG Tower, Pittsburgh, Pennsylvania 15222–3199; CNG Coal Company ("Coal"); CNG Producing Company ("Producing"), and its subsidiary company, CNG Pipeline Company ("Pipeline"), CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112–6000; CNG Transmission Corporation ("Transmission") and CNG Storage Service Company ("Storage"), 445 West Main Street, Clarksburg, West Virginia 26301; CNG Gas Services Corporation ("Gas Services"), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244–0746; and Consolidated's public-utility subsidiary companies, The Peoples Natural Gas Company ("Peoples") CNG Tower, Pittsburgh, Pennsylvania 15244–0746; The East Ohio Gas Company ("East Ohio"), 1717 East Ninth Street, Cleveland, Ohio 44115; The River Gas Company ("River Gas"), 324 Fourth Street, Marietta, Ohio 45750; Virginia Natural Gas, Inc. ("VNG"), 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23501–3488; Hope Gas, Inc. ("Hope Gas"), P.O. Box 2868, Clarksburg, West Virginia 26302–2868; and West Ohio Gas Company ("West Ohio"), 319 West Market Street, Lima, Ohio 45802 ("collectively, Subsidiaries"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

CNG proposes to issue and sell commercial paper pursuant to an exception from competitive bidding, in an aggregate principal amount not to exceed $800 million outstanding at any one time, from time-to-time through June 30, 1994 ("Commercial paper"). Such Commercial Paper may be domestic commercial paper ("Domestic Paper") and/or European commercial paper ("Euro Paper"). Domestic Paper will have varying maturities of not more than 270 days and Euro Paper will have maturities from 7 to 183 days. CNG proposes to sell Domestic Paper or Euro Paper, whichever provides the lower cost in a given transaction, but only so long as the discount rate or the effective interest cost on the date of sale does not exceed the prime rate of interest from a commercial bank.

To the extent that it becomes impractical to sell the Commercial Paper due to market conditions or otherwise., CNG proposes to borrow, repay and reborrow, without collateral under back-up lines of credit, in an aggregate principal amount not to exceed $600 million through June 30, 1994 ("Loans"). The additional $200 million of back-up will be provided by unused commitments under an existing credit agreement with banks. The Loans will mature not more than one year from the date of each borrowing, will be prepayable in whole or part at any time, and will bear interest at a rate not to exceed the prime commercial rate of interest of the lending bank in effect on the date of each borrowing. A commitment fee of no more than 0.125% of the principal amount of each bank's commitment may be paid.

It is also proposed that through June 30, 1994, CNG provide financing to the Subsidiaries in an aggregate amount not to exceed $1.26 billion in the form of open account advances, long-term loans and/or capital stock purchases. Individual Subsidiary financing by CNG would not exceed the following amounts: (1) Transmission, $400 million; (2) East Ohio, $350 Million; (3) Peoples, $125 million; (4) VNG, $60 million; (5) Hope Gas, $25 million; (6) Gas Services, $50 million; (7) Storage, $1 million; (8) West Ohio, $20 million; (9) Service, $15 million; (10) Producing, $200 million; (11) River Gas, $10 million; (12) Coal, $3 million; and (13) Research, $1 million.

Open account advances ("Advances"), may be made, repaid and remade on a revolving basis, and all such Advances will be repaid within one year from the date of the first Advance to the borrowing Subsidiary with interest at the same effective rate of interest as CNG's weighted average effective rate of commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding, the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted by the Federal Reserve Bank of New York. Advances will be made through the CNG System money pool authorized under a Commission order dated June 12, 1986 (HCAR No. 24128).

Long-term loans will mature over a period of time not in excess of 30 years with the interest rate predicted on and substantially equal to CNG's cost of funds for comparable borrowings. In the event CNG has not had recent comparable borrowings, the rates will be tied to the Salomon Brothers indicative rate for comparable debt issues published in Salomon Brothers, Inc. Bond Market Roundup, or to a comparable rate index, on the date nearest to the time of takedown.

Capital stock will be purchased from the Subsidiaries at its par value (book value in the case of VNG). Capital stock transactions between CNG and its utility Subsidiaries would occur under an exemption pursuant to rule 52 and are not part of the authorization requested herein.

Producing proposes to provide to Pipeline, from to time through June 30, 1994, up to an aggregate of $1 million of financing through short-term loans in the form of open account advances and/or long-term loans evidenced by non-negotiable notes (documented by book entry only) and/or the purchase of up to 10,000 shares of common stock, $100 par value, of Pipeline. The open account advances and long-term loan will bear interest at rates equal to the cost of

money to Producing through its borrowing from CNG.

The Subsidiaries also propose to increase their authorized common stock as needed to accommodate proposed stock sales and to provide for future issues, any such increase being limited to a number of shares calculated by dividing the aggregate financing proposed for such Subsidiary herein by the par value (book value in the case of VNG) of such Subsidiary's common stock rounded up to the nearest hundred.

It is also proposed that LNG effect a one for one-hundred reverse stock split, resulting in an increase in the par value of its common stock from $100 to $10,000 in order to reduce state franchise taxes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–12122 Filed 5–20–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare Draft Environmental Impact Statement, John F. Kennedy International Airport (JFK)/LaGuardia Airport (LGA) Access Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Eastern Region of the FAA announces: (1) The FAA, acting as "Lead Agency" and the New York State Department of Transportation (NYSDOT), acting as "Joint Lead Agency" intend to prepare a draft Environmental Impact Statement (EIS) for a proposal by the Port Authority of New York and New Jersey, acting as "Sponsor", to develop the John F. Kennedy International Airport (JFK)/ LaGuardia Airport (LGA) Access Program (Airport Access Program). The study area encompasses portions of the Boroughs of Manhattan and Queens that represent the major existing transportation corridor (Study Corridor) to and from JFK and LGA. The Study Corridor extends from the border of JFK in Queens County and continues north to LGA, encompassing the rights-of-way of the Van Wyck Expressway and the Grand Central Parkway (GCP). From LGA, the Study Corridor continues west on the GCP and Brooklyn Queens Expressway (BQE), over the East River via the Queensboro Bridge to the east side of Manhattan in the vicinity of 59th Street. The major transportation facilities within the Study Corridor include the GCP, the Van Wyck Expressway, the Long Island Rail Road (LIRR) and the New York City Transportation Authority (NYCTA) subway system and NYCTA bus service. Major project elements may include grading, filling, paving, erection and construction of new transportation facilities (including rolling stock, controls, maintenance equipment, etc.) within the Study Corridor, or improvement of existing transportation facilities within the Study Corridor.

(2) The Federal and State EIS scoping process will consist of two public scoping meetings to allow for public comments, one in the Borough of Manhattan and one in the Borough of Queens. Additionally, there will be a public comment period for involved and interested agencies and persons to submit written comments representing concerns and issues they believe should be addressed in the draft EIS.

(3) The joint FAA and NYSDOT public scoping meeting for the Borough of Manhattan will be held at 3 p.m. on June 24, 1993 at Saint Peter's Church, 619 Lexington Avenue (54th St. and Lexington Ave.), New York, New York 10022. All persons wishing to present oral comments must register at the scoping meeting. Registration will begin at 2 p.m. and close at 8 p.m. All persons registered by the close of registration will be heard. Oral comments will be limited to five (5) minutes per speaker.

The joint FAA and NYSDOT public scoping meeting for the Borough of Queens will be held at 3 p.m. on June 28, 1993 at the Queens Borough Hall, 120–55 Queens Boulevard (2nd Floor), Kew Gardens, New York 11424. All persons wishing to present oral comments must register at the scoping meeting. Registration will begin at 2 p.m. and close at 8 p.m. All persons registered by the close of registration will be heard. Oral comments will be limited to five (5) minutes per speaker.

DATES: In order for written comments to be considered, they must be received by Mr. Anthony P. Spera, Manager, Planning and Programming Branch, Federal Aviation Administration, Airports Division AEA–610, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430, (718) 553–1245 on or before June 28, 1993.

Questions concerning the draft EIS or the process being applied by the FAA should be directed to Mr. Spera.

SUPPLEMENTARY INFORMATION: Information, data, opinions and comments obtained throughout the course of the scoping process may be used in the preparation of the draft EIS. The purpose of this Notice of Intent is to inform the public and local, State and Federal government agencies that a draft EIS will be prepared and to provide those interested with the opportunity to present their opinions, comments, information or other relevant observations concerning the environmental impacts related to implementation of this proposal.

A draft copy of the Scoping Document can be obtained for review from Mr. Anthony P. Spera at the above-referenced address.

Implementation of the Airport Access Program would improve accessibility to, from and between JFK and LGA by reducing travel times, increasing travel reliability, improving air quality and reducing automobile vehicle miles traveled. Major actions to be addressed in the draft EIS include the following six (6) alternatives:

Alternative 1—Automated Guideway Transit (AGT) System: The AGT system would directly connect JFK and LGA with Manhattan and nearby rail and bus systems, thereby providing airport service for both air passengers and airport employees. Potential alignment for construction of the AGT system begins at JFK and continues north to the Jamaica Station via the Van Wyck Expressway. From Jamaica Station, the alignment continues north to Willets Point/Shea Stadium via the GCP, or the Van Wyck Expressway. From Shea Stadium, the alignment continues northwest to LGA via the GCP. From LGA, the alignment continues west to Sunnyside Yard via the GCP and the BQE. From Sunnnyside Yard, the alignment continues to the east side of Manhattan, in the vicinity of 59th Street, via the Queensboro Bridge. Potential station locations for the AGT system include, but are not necessarily limited to the following: JFK, Howard Beach, LIRR Jamaica Station, Willets Point/Shea Stadium, LGA, Long Island City and a station on Manhattan's east side in the vicinity of 59th Street.

Alternative 2—Roadway Improvements: This alternative includes various high occupancy vehicle (HOV) and roadway construction improvements to existing transportation corridors. The possible HOV improvements include: (1) High Occupancy Vehicle Lane (HOVL) on the northbound Van Wyck Expressway Service Road from Rockaway Boulevard to Jamaica Avenue, (2) HOV Queue Bypass at the entrance north of Hillside Avenue to the southbound Van Wyck Expressway, and (3) Bus use on the

Belt/Laurelton/Cross Island Parkway Corridor.

Alternative 3—Transportation Systems Management (TSM): The TSM Alternative could include low-cost, operational improvements to the existing JFK and LGA public transportation access systems. This could involve a variety of options including, but not necessarily limited to (1) regulation of ramp entrance volumes onto major transportation corridors, (2) provision of information to travelers regarding alternative routes to and from the airports, (3) signal retiming and, (4) improvement to existing transportation services currently providing public transportation to both JFK and LGA.

Alternative 4—Subway/Railroad Extensions: The subway extension alternative could include improving the existing New York City Transportation Authority (NYCTA) subway line to service JFK via two possible alignments: (1) Utilization of the existing subway from lower Manhattan to Queens via the 63rd Street Tunnel, along the proposed connection to Sunnyside Yard, to the LIRR Main Line and the abandoned Rockaway Beach Branch to Howard Beach and into JFK, or (2) Replacement of the current bus connection from the Howard Beach Station to JFK with a subway extension. The railroad extension alternative could include upgrading the existing Long Island Rail Road sytem to provide rail service to JFK via two possible alignments: (1) LIRR Penn Station via the Main Line and the abandoned Rockaway Beach Branch to JFK, and (2) LIRR Penn Station via the Main Line to Jamaica Station, then the LIRR Atlantic Branch to the vicinity to Baisley Pond Park, then JFK via 150th Street.

Alternative 5—Busway Operations: This alternative would upgrade the abandoned LIRR Rockaway Beach Branch right-of-way by converting it into a busway with portals near the Long Island Expressway and the Howard Beach Station. From Manhattan's east side, the buses would enter the Midtown Tunnel, continue eastbound on the Long Island Expressway to Woodhaven Boulevard, enter the busway parallel to the LIRR Main Line and continue on the abandoned Rockaway Beach Branch heading south to Howard Beach and JFK. A second busway alternative could include utilization of the Van Wyck Expressway between JFK and Jamaica Station, within which an exclusive busway could be implemented.

Alternative 6—No Action: This alternative evaluates the results of providing no improvements to the existing airport access system. Access to JFK and LGA is currently provided by, but not necessarily limited to the following:

(1) Vehicular access via major highways including the Van Wyck Expressway, the GCP and the Belt/Laurelton/Cross Island Parkway Corridors.

(2) Franchise bus/van/limo service from Manhattan, Queens, Brooklyn, Staten Island, Bronx, Long Island, Westchester, Upstate New York, Connecticut, New Jersey and Pennsylvania to JFK and LGA.

(3) Bus/Subway Service:

From Queens—

—Carey Coach to JFK and LGA.
—NYCTA bus service to LGA and JFK (via local bus/subway service).
—Triboro Coach bus service to LGA (via bus/subway service).

From Brooklyn—

—Carey Coach from Ashland and Hanson Place to JFK and LGA.
—NYCTA bus service to JFK (via local bus/subway service).

From Long Island—

—LIRR to Jamaica Station, then Carey Coach to JFK and LGA.
—Classic Airport Share Ride to JFK and LGA.

From Westchester—

—Westchester Express to JFK and LGA.
—Connecticut Limousine to JFK and LGA.
—Metro North Trains to Grand Central Station, then Carey Coach to JFK and LGA.

From Connecticut—

—Connecticut Limousine to JFK and LGA.
—Metro North Trains to Grand Central Station, then Carey Coach to JFK and LGA.

(4) Subway to Howard Beach Station and free shuttle bus service to the Central Terminal Area of JFK.

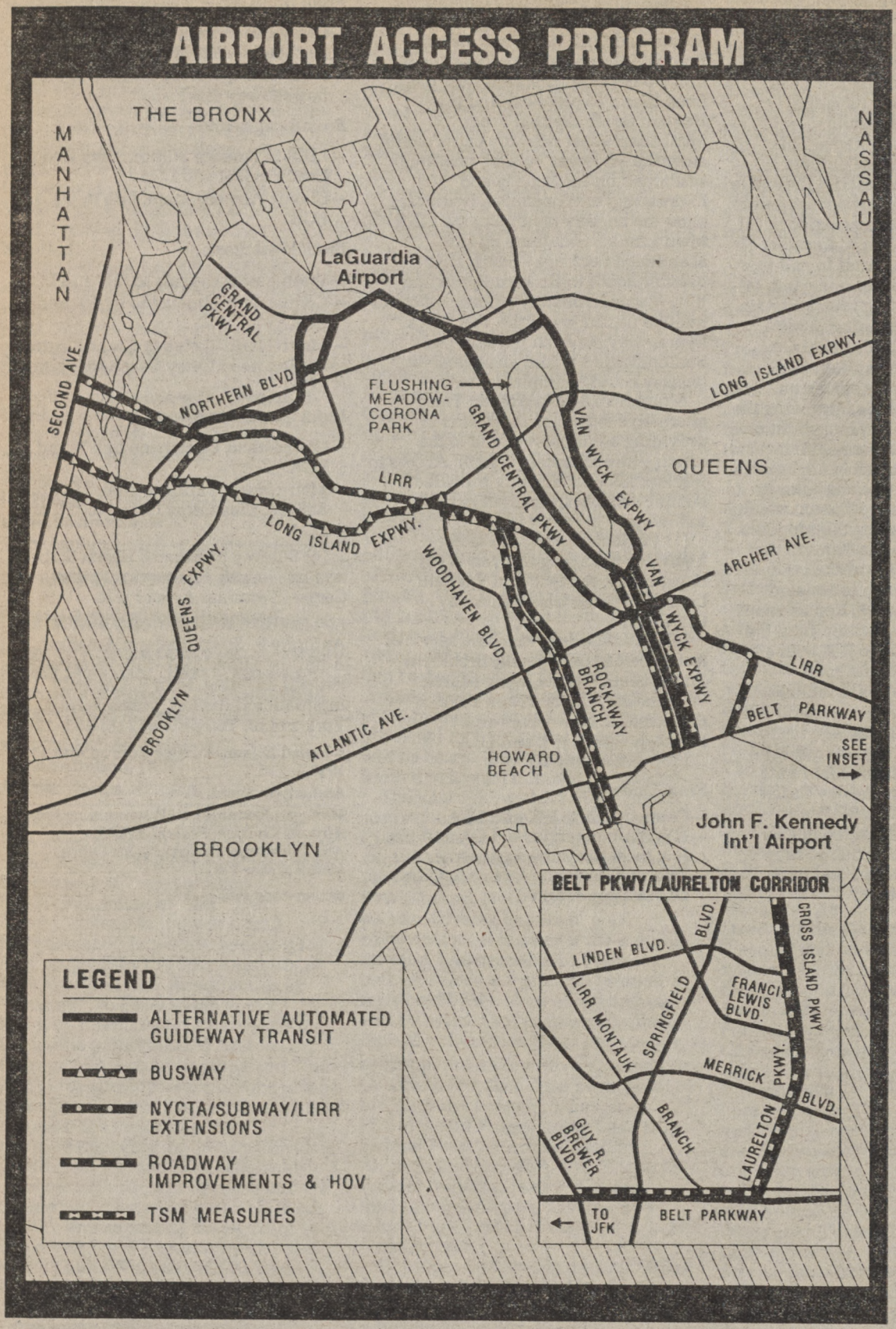
FOR FURTHER INFORMATION CONTACT: Mr. Anthony P. Spera, Federal Aviation Administration, AEA–610, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Telephone (718) 553–1245.

Issued in Jamaica, New York on May 13, 1993.

Anthony P. Spera,

Manager, Planning and Programming Branch, Airports Division, Federal Aviation Administration, Eastern Region Office, Jamaica, New York.

BILLING CODE 4910–13–M



[FR Doc. 93–12183 Filed 5–20–93; 8:45 am]
BILLING CODE 4910–13–C

[Summary Notice No. PE–93–22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice not the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 10, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 13, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27231
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.481 (b), (c) and (d)
Description of Relief Sought: To allow Delta Air Lines, Inc., to schedule its two-pilot crews in accordance with certain regulations applicable to 2 pilots and 1 additional flight crew, which allow for up to 24 hours of duty within any 72 consecutive hours before requiring a rest period of 18 hours; and applicable to 2 pilot crews, which require that a pilot who has flown more than 8 hours during any 24 consecutive hours must be given 18 hours of rest.

Docket No.: 27237
Petitioner: Midwest Express Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.471(a)(4) and (b)(2)
Description of Relief Sought: To allow Midwest to schedule a flight crew member for flight time duty even though that flight time would exceed 8 hours between required rest periods, and even though that crew member would not receive 10 consecutive hours of rest for 8 or more, but less than 9, hours of scheduled flight time.

Dispositions of Petitions

Docket No.: 25862
Petitioner: Cessna Aircraft Company
Sections of the FAR Affected: 14 CFR 47.69(b)
Description of Relief Sought/ Disposition: To extend Exemption No. 5043 to allow Cessna Aircraft Company to conduct flights outside the United States, subject to the same terms and conditions stated in the original exemption.

GRANT, April 30, 1993, Exemption No. 5043B

Docket No.: 26922
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 25.855
Description of Relief Sought/ Disposition: To exempt petitioner from the requirements of § 25.855(c) for the noncompliant areas of the forward partition lower lobe, C cargo compartment on the B–747–400F airplane.

PARTIAL GRANT, April 27, 1993, Exemption No. 5649

Docket No.: 26971
Petitioner: United Airlines
Sections of the FAR Affected: 14 CFR 121.314
Description of Relief Sought/ Disposition: To permit a 1-month extension in the compliance time for the retrofit of Class C and D cargo compartment liners, over the time currently granted to the Air Transport Association of America (ATA) for all affected operators in Exemption 5535.

GRANT, April 16, 1993, Exemption No. 5535A

Docket No.: 26990
Petitioner: Tim Meidinger
Sections of the FAR Affected: 14 CFR 445.29(b)(1)
Description of Relief Sought/ Disposition: To allow the use of smaller aircraft nationality and registration markings in place of the 12-inch markings required.

DENIAL, May 10, 1993, Exemption No. 5641

Docket No.: 27104
Petitioner: Richmor Aviation
Sections of the FAR Affected: 14 CFR 91.511(a)(2), 135.165(a)(1), (5) and (6), and 135.165(b)(5), (6) and (7)
Description of Relief Sought/ Disposition: To permit RHA to operate its turbojet airplanes equipped with one high frequency communication system (HF) and one single long-range navigational system (LRNS) in extended over water operations.

PARTIAL GRANT, April 26, 1993, Exemption No. 5650

[FR Doc. 93–12074 Filed 5–20–93; 8:45 am]
BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane Issues

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 Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss general aviation and business airplane issues.

DATES: The meeting will be held on June 2, 1993 at 10 a.m. Arrange for oral presentations by May 26, 1993.

ADDRESSES: The meeting will be held at the National Business Aircraft Association, 1200 18th Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Carolina Forrester, Office of Rulemaking (ARM–206), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9690.

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 Aviation Rulemaking Advisory Committee to be

held on June 2, 1993, at the National Business Aircraft Association, 1200 18th Street NW., Washington, DC. 20005. The agenda for the meeting will include:

- Opening Remarks
- Review of Action Items
- Status Reports From The Accelerated Stalls, Fuel Indicators, and FAR/JAR Harmonization Working Groups

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by May 26, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

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.

Issued in Washington, DC, on May 17, 1993.

Thomas E. McSweeney

Acting Assistant Executive Director for General Aviation and Business Airplane Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–12075 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Capital City Airport, Lansing, MI and To Use the Revenue From a PFC at Capital City Airport, Lansing, MI and Mason Jewett Field, Mason, MI.

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 a passenger facility charge (PFC) at Capital City Airport and to use the revenue from a PFC at Capital City Airport and Mason Jewett Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 21, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas W. Schmidt, A.A.E., Executive Director of the Capital Region Airport Authority at the following address: Capital Region Airport Authority, Capital City Airport, Lansing, Michigan 48906.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Capital Region Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dean C. Nitz, Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7300. 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 a passenger facility charge (PFC) at Capital City Airport and to use the revenue from a passenger facility charge at Capital City Airport and Mason Jewett Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 4, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Capital Region Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 21, 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: August 31, 2003

Total estimated PFC revenue: $9,711,000

Brief description of proposed project(s):

Impose and Use Projects at Capital City Airport

Taxiway B lighting replacement
Southeast General Aviation Ramp reconstruction
Security fencing in terminal area
Land acquisition in west terminal area
Building demolition and removal
Security access control
Freight Ramp
Snow removal equipment replacement
Airport maintenance building
Reconstruct main entrance road
Acquire Runway Protection Zone properties
Master Plan update
Airfield signage
Rehabilitate terminal apron
Replace snow removal equipment
Security access control—Phase II

Impose and Use Projects at Mason Jewett Field

Reconstruct taxi streets
Master Plan update

Impose Only Projects at Capital City Airport

ARFF access road construction
Paved tie downs
Rehabilitate Service Roads
Obstruction Removal
Freight ramp construction
Construct taxiway
Rehabilitate and widen Runway 6/24
Extend Runway 6/24 and extend Taxiway C
Navigational aids—Runway 6/24
Connector taxiways

Class of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT."

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Capital Region Airport Authority offices at Capital City Airport, Lansing, Michigan.

Issued in Des Plaines, Illinois, on May 11, 1993.

Larry H. Ladendorf,

Assistant Manager, Airports Division, Great Lakes Region.

[FR Doc. 93–12071 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at the Central Wisconsin Airport, Mosinee, WI

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 a PFC at the Central Wisconsin Airport under the provisions of the Aviation Safety and

Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 21, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, MN.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to James Hansford, Manager of the Central Wisconsin Airport at the following address: Central Wisconsin Airport, 823–1 Highway 153, Mosinee, Wisconsin 54455.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Central Wisconsin Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, (612) 725–4221. 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 a PFC at the Central Wisconsin Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 4, 1992, the FAA determined that the application to impose a PFC submitted by the Central Wisconsin Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 3, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: June 1, 1993
Proposed charge expiration date: December 31, 2018
Total estimated PFC revenue: $10,440,000
Brief description of proposed project(s): Terminal Concourse Addition, Air Carrier Ramp Expansion, and Runway 17 Extension.
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand air taxi operators operating aircraft with less than 20 seats.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central Wisconsin Airport.

Issued in Des Plaines, Illinois, on May 11, 1993.

Larry H. Ladendorf,

Assistant Manager, Airports Division, Great Lakes Region.

[FR Doc. 93–12073 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rhinelander-Oneida County Airport, Rhinelander, WI

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 the revenue from a PFC at Rhinelander-Oneida County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 21, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Joseph J. Brauer, Airport Manager, Rhinelander-Oneida County Airport at the following address: Rhinelander-Oneida County Airport Commission, c/o Rhinelander-Oneida County Airport, 3375 Airport Road, Rhinelander, Wisconsin 54501.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rhinelander-Oneida County Airport Commission under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, (612) 725–4221. 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 the revenue from a PFC at Rhinelander-Oneida County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 5, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Rhinelander-Oneida County Airport Commission was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 4, 1993.

The following is a brief review of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: January 1, 1994.
Proposed charge expiration date: October 31, 1997.
Total estimated PFC revenue: $279,801.
Brief description of proposed projects:

Projects to Impose and Use PFC

Acquisition Aircraft Rescue and Fire Fighting (ARFF) vehicle
Install REIL's runway 15/33, PAPI Runway 33
Wheel Chair Lift
Airport Security Equipment
Terminal Renovation
Heating for ARFF and Snow Removal Equipment (SRE) building
Rehabilitate Runway 9/27 and Taxiway A
Sealcoat Apron

Projects Only to Impose a PFC

Install Sanitary Sewer & Water to terminal
Acquire Snow Removal Equipment
Construct anti-ice/deice facility
Class of carriers which the public agency has requested not be required to collect PFCs: Part 135 operators

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rhinelander-Oneida County Airport Commission, Rhinelander-Oneida County Airport.

Issued in Des Plaines, Illinois, on May 11, 1993.

Larry H. Ladendorf,

Assistant Manager, Airports Division, Great Lakes Region.

[FR Doc. 93–12072 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at the Tri-Cities Airport, Pasco, WA

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 a PFC at the Tri-Cities Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 21, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Port of Pasco, Washington, at the following address: Tri-Cities Airport, 3601 North 20th, Pasco, Washington 99301.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Pasco, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Johnson, (206) 227–2655; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW.; suite 250; Renton, Washington 98055–4056. 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 the Tri-Cities Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 13, 1993, the FAA determined that the application to impose and use a PFC submitted by the Port of Pasco was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 18, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: November 1, 1993

Proposed charge expiration date: November 31, 1996

Total estimated PFC revenue: $1,230,731.00

Brief description of proposed project: Airfield safety project; access control; ARFF building expansion; snow equipment building expansion; taxiway rehabilitation; safety area grading; purchase land.

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 in 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 SW., 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 Tri-Cities Airport.

Issued in Renton, Washington, on May 13, 1993.

David A. Field,

Acting Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–12069 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Yampa Valley Regional Airport, Hayden, 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 Yampa Valley Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 21, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager, Denver Airports 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 Routt County Board of County Commissioners, Steamboat Springs, Colorado, at the following address: Box 773598, Steamboat Springs, Colorado 80477.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Routt County Board of County Commissioners, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Davis, (303) 286–5526; 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 Yampa Valley Regional Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 12, 1993, the FAA determined that the application to impose and use a PFC submitted by Routt County Board of County Commissioners was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 24, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: November 1, 1993

Proposed charge expiration date: March 31, 1997

Total estimated PFC revenue: $532,881.00

Brief description of proposed project: Acquire two ARFF vehicles; construct parallel taxiway to the end of runway 28; grade and drain partial parallel taxiway, overlay existing apron edge taxiway and relocate deicing pad; runway safety area grading.

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 in 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 SW., 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 Yampa Valley Regional Airport.

Issued in Renton, Washington, on May 12, 1993.

David A. Field,

Acting Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–12070 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Railroad Locomotive Design Features; Open Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice of open meeting.

SUMMARY: In order to explore matters related to FRA's duty to assess the occupant protection, environmental, health and operational safety features of railroad locomotives, FRA will hold an informal open meeting on June 23rd, 1993, in Washington, DC, with representatives of various concerned parties. The meeting will also be open to any interested person who wishes to attend as an observer. FRA may schedule additional meetings to the extent that interest is expressed by other parties.

DATES: The open meeting will be held on Wednesday, June 23rd, 1993, beginning at 10 a.m.

ADDRESSES: The open meeting will be held in rooms 8236–8240, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Principal Program Person: Mr. Rolf Mowatt-Larssen, Chief, Motive Power and Equipment Division, Office of Safety Enforcement, Office of Safety, FRA, Washington, DC 20590. Telephone: (202) 366–9186 (FTS 366–9186). Principal Attorney: Mr. Kyle Mulhall, Trial Attorney, Office of the Chief Counsel, FRA, Washington, DC 20590. Telephone: (202) 366–0621 (FTS 366–0621).

SUPPLEMENTARY INFORMATION: Section 10 of the Rail Safety Enforcement and Review Act (Pub. L. 102–365) requires that FRA assess the adequacy of existing locomotive crashworthiness standards. In addition, the section requires that FRA examine the extent to which a variety of topics can affect productivity, health, and the safe operation of locomotives. Prior to making significant preliminary decisions about these subjects, FRA has invited individuals to participate in a meeting concerning future locomotive crashworthiness and working conditions. This open meeting with invited representatives of a number of organizations will be held on June 23rd, 1993. Since these issues have potential bearing on future FRA regulatory activities, this meeting will be open to any interested person who wishes to observe.

The meeting will be Wednesday, June 23rd, 1993, beginning at 10 a.m., in rooms 8236–8240 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. The meeting will be open to any interested person who wishes to attend as an observer. FRA may schedule additional meetings if requested by interested parties.

Issued in Washington, DC, on May 17th, 1993.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 93–12050 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. 93–34; Notice 1]

American Honda Motor Co., Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

American Honda Motor Co., Inc. (Honda) of Torrance, California has determined that some of its seat belt assemblies fail to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR part 573. Honda 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.

Paragraph S4.3(j)(3) of Standard No. 209 requires that "an emergency locking retractor of a Type 1 or Type 2 seat belt assembly * * * shall not lock, if the retractor is sensitive to vehicle acceleration, when the retractor is rotated in any direction to any angle of 15 degrees or less from its orientation in the vehicle * * *."

Honda determined that the seat belt assemblies for the rear outside seating positions of approximately 1.2 million model year 1990, 1991, 1992, and early 1993 two-door and four-door Accords do not comply with S4.3(j)(3), the emergency locking retractor requirements of Standard No. 209. When the vehicle in which the noncomplying belt is installed is in certain parking positions such as on a steep uphill grade, the rear seat occupants are sometimes unable to pull the belt out of the retractor, and thus cannot fasten their belts. The vehicle must be moved to a more level position for the rear seat occupant to be able to put on the seat belt.

Honda supports its petition for inconsequential noncompliance with the following:

Honda believes that the noncompliance does not affect the occupant protection performance of the subject seat belt assemblies. To verify this, Honda tested the belts to determine whether they meet the locking requirements of Standard No. 209. All the belts complied with these requirements. Further, Honda performed dynamic sled test comparisons of the noncompliant belts to compliant belts at a test speed of 30 miles per hour. Honda found that the performance of the noncompliant belts was almost the same as that of the compliant belts.

Honda states that the primary effect of the noncompliant seat belts is inconvenience due to the rear seat occupant's inability to pull the belt out from the retractor under certain parking conditions, as when the vehicle is in a significant uphill parking position in excess of 11 degrees, or when the vehicle has been parked such that one side of the vehicle is substantially higher than the other (at least nine degrees). Honda believes that the opportunities for parking an affected vehicle in this type of situation are very uncommon and would present a high level of discomfort to rear seat occupants from sitting at this angle. Honda states that when the vehicle is parked on ground at lesser angles than

previously noted, the noncompliant belts work completely normally.

Honda reviewed its consumer records for complaints relating to the noncompliance. It found that consumers had registered a total of 173 complaints regarding the 4-door sedan and 34 complaints regarding the 2-door coupe. These complaints are known to be related to the subject noncompliance, as the problem is clearly described in the complaint. In addition, Honda received 168 complaints regarding the 4-door sedan and 46 complaints regarding the 2-door coupe which were not clearly defined and may or may not be related to the subject noncompliance. The consumer complaint ratios, taking into account only the known related complaints, are 0.026 percent for the 4-door sedan and 0.014 percent for the 2-door coupe.

Since Honda offers a lifetime warranty for seat belts, it states that it will replace, free of charge, any unit that has a functional problem at any time during the life of the vehicle. In this instance, Honda will notify owners of the subject vehicles that it will replace the sensor in the noncomplaint seat belt retractors if the customer experiences the locking problem.

Honda concludes by stating that, although the noncomplying retractors may, in certain situations, result in the belt not being able to be pulled out of the retractor, this is a temporary condition which is remedied if the vehicle is moved from an uphill position of greater than 11 degrees or a lateral angle of greater than nine degrees. There is no risk to safety once the belt has been successfully fastened, since the performance of the belts is equal to those which are in total compliance with Standard No. 209. Since the seat belts have a lifetime warranty, any complaint concerning the ability to activate the belts will result in Honda replacing the belt with no cost to the consumer.

Interested persons are invited to submit written data, views, and arguments on the petition of Honda, 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: June 21, 1993.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: May 17, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–12049 Filed 5–20–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 17, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0214
Form Numbers: ATF F 5110.74
Type of Review: Revision
Title: Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer
Description: This form is used by persons who wish to produce and receive spirits for the production of alcohol fuels as a business or for their own use and for State and local registration whether required. The form describes the person(s) applying for the permit, location of the proposed operation, type of material used for production and amount of spirits to be produced.
Respondents: Individuals or households, State of local governments, Business or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 1,364
Estimated Burden Hours per Respondent: 1 hour, 48 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 2,455 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–12113 Filed 5–20–93; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

May 17, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0051
Form Number: CF 7523
Type of Review: Extension
Title: Entry and Manifest of Merchandise Free of Duty
Description: This form is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions and by Customs to authorize the entry of such merchandise. It is also used by the carrier to show that the materials being imported are to be released to the importer or consignee.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 4,950
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 8,247 hours
Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and

Budget room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–12111 Filed 5–20–93; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

May 17, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1011

Regulation ID Number: Notice 87–61, LR–130–86 (Announcement)

Type of Review: Extension

Title: Long-Term Contracts; Methods of Accounting Under Tax Reform

Description: These reporting requirements are necessary to permit taxpayers to change their methods of accounting for long-term contracts to comply with section 460 of the Internal Revenue Code.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 5,000

Estimated Burden Hours Per Respondent: 5 hours

Frequency of Response: Other (for the first taxable year the taxpayer changes its method)

Estimated Total Reporting Burden: 25,000 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–12112 Filed 5–20–93; 8:45 am]

BILLING CODE 4830–01–M

Office of Thrift Supervision

[AC–24: OTS No. 3317]

Albion Federal Savings and Loan Association, Albion, NY; Approval of Conversion Application

Notice is hereby given that on May 12, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Albion Federal Savings and Loan Association, Albion, New York, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: May 17, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–12067 Filed 5–20–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–21: OTS Nos. 0291 and 5849]

Carolina Savings Bank, Wilmington, NC; Edenton Savings and Loan Association, Edenton, NC; Approval of Conversion Applications

Notice is hereby given that on March 8, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or his/her designee, acting pursuant to delegated authority, approved the applications of Carolina Savings Bank, Wilmington, North Carolina, and Edenton Savings and Loan Association, Edenton, North Carolina, to convert to the stock form of organization. Copies of the applications are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

Dated: May 17, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–12064 Filed 5–20–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–22: OTS No. 1989]

Columbia Federal Savings Bank, Woodhaven, NY; Approval of Conversion Application

Notice is hereby given that on May 22, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Columbia Federal Savings Bank, Woodhaven, New York to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th floor, Jersey City, New Jersey 07302.

Dated: May 17, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–12065 Filed 5–20–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–23: OTS No. 0905]

Peoples Federal Savings and Loan Association of Chicago, Chicago, IL; Approval of Conversion Application

Notice is hereby given that on May 12, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Peoples Federal Savings and Loan Association of Chicago, Chicago, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: May 17, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–12066 Filed 5–20–93; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 97
Friday, May 21, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, May 25, 1993, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion on the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Matters relating to the Corporation's corporate and supervisory activities.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 18, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–12165 Filed 5–18–93; 4:34 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, May 25, 1993, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: 1993 First Quarter Financial Management Report.

Discussion Agenda

Memorandum and resolution re: Study of savings bank life insurance which makes a finding whether savings bank life insurance activities of insured banks pose or may pose any significant risk to the insurance fund of which such banks are members.

Memorandum and resolution re: Revision of the Bank Insurance Fund Recapitalization Schedule; Adequacy of the current Bank Insurance Fund and Savings Association Insurance Fund assessment rates.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 898–6745 (Voice); (202) 898–3509 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 18, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–12166 Filed 5–18–93; 4:33 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:01 a.m. on Tuesday, May 18, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Applications of Branch Banking and Trust Company, Wilson, North Carolina ("Branch"), a State nonmember bank and Bank Insurance Fund member, for consent to purchase certain assets and assume the deposit and certain other liabilities of one Wake County office and eight Forsyth County, North Carolina, offices of 1ST Home Federal Savings and Loan Association of the Carolinas FA, Greensboro, North Carolina ("1ST Home"), a federally chartered savings and loan association and Savings Association Insurance Fund member, for consent to establish those eight Forsyth County offices of 1ST Home as branches of Branch, and for consent to participate in an optional conversion transaction.

Matters relating to the probable failure of a certain insured bank.

Matters relating to the Corporation's resolution and corporate activities.

Matters relating to a certain financial institution.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re:

New York Regional Office, Pilot Program, (Case No. 500–00018–92–COM)

In calling the meeting, the Board determined, on motion of Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: May 18, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–12167 Filed 5–18–93; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m., Wednesday, May 26, 1993.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly FHLBank System Reports
   A. Financial Report
   B. Membership Report
   C. Community Investment Program Report
2. Affordable Housing Program Loan Fund Guidelines
3. Membership Regulation—Issues
4. Final Regulation Modifying Federal Home Loan Bank Director Eligibility Requirements
5. FHLBank System Records Retention Policy
6. Distribution of FHLBank Directorships
7. FHLBank of Boston Proposal to Lend to a Nonmember Mortgagee

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the April Board Minutes
2. First Quarter FHLBank System Budget to Actual Performance
3. Issuance of Debt Without Finance Board Approval
4. System 2000 Update
5. Review of FHLBank Financial Management Policy Compliance
   A. 1st quarter duration/market value of equity report
   B. Financial Management Policy violations
6. Discussion of the merits of the System's moving to 20:1 in conjunction with changes to the Financial Management Policy guidelines, particularly those that effect the limits on mortgage-backed securities investment limits on mortgage-backed securities investment
7. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(6), (8) and 9(A) and (B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–12268 Filed 5–19–93; 3:37 pm]

BILLING CODE 6725–01–M

AGENCY HOLDING THE MEETING: BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 26, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendments to Regulations H (Membership of State Banking Institutions in the Federal Reserve System; K (International Banking Operations); and Y (Bank Holding Companies and Change in Bank Control) to adopt a uniform multi-agency criminal referral form. (Proposed earlier for public comment; Docket No. R–0792)

Discussion Agenda

2. Publication for comment of proposed amendments to Regulations H (Membership of State Banking Institutions in the Federal Reserve System) and Y (Bank Holding Companies and Change in Bank Control) regarding real estate appraisal standards (including Docket No. R–0711, published earlier for public comment).

3. Proposed new and enhanced Federal Reserve Bank services to facilitate implementation of same-day settlement of checks. (Proposed earlier for public comment; Docket No. R–0727).

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–12204 Filed 5–19–93; 11:36 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Wednesday, May 26, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-12203 Filed 5–19–93; 11:36 am]

BILLING CODE 6210–01–P–M

LEGAL SERVICES CORPORATION

Audit and Appropriations Committee Meeting and Board of Directors Meeting Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 29025.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Meetings of the Legal Services Corporation Board of Directors and its Provision for the Delivery of Legal Services, Audit and Appropriations, Office of the Inspector General Oversight Committees will be held on May 24, 1993. The meetings will commence at 8 a.m. and will be held in the following order, with each meeting commencing following adjournment of the prior meeting and continuing until all business has been concluded:

1. Provision for the Delivery of Legal Services Committee;
2. Audit and Appropriations Committee;
3. Office of the inspector General Oversight Committee; and
4. Board of Directors.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: The Legal Services Corporation, 750 1st Street, NE., 11th Floor, The Board Room, Washington, DC 20002, (202) 336–8800.

CHANGES IN MEETING: Audit and Appropriations Committee Meeting.

MATTERS TO BE CONSIDERED:

- The following will be added and considered by the Audit and Appropriations Committee as agenda item number "8."

8. Consideration of Report on Review of Guidelines Governing Board Travel.

- In addition, the following will be added and considered by the Board of

Directors as sub-item "e." under agenda item number "8."

e. Consideration of Report on Review of Guidelines Governing Board Travel.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: May 19, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93–12175 Filed 5–19–93; 10:23 am]

BILLING CODE 7050–01–M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Wednesday, November 17, 1993, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Wednesday, November 17, from 10:00 a.m. to 6:30 p.m., on Thursday, November 18, from 9:00 a.m. to 6:30 p.m., and on Friday, November 19, from 9:00 a.m. to 1:30 p.m.

PLACE: The Hotel Galvez, 2024 Seawall Boulevard, Galveston Island, Texas 77550.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. Among the issues that the Commission plans to consider at the meeting will be: implementation of the 1993 amendments to the Marine Mammal Protection Act; the 1993 International Whaling Commission meeting and preparations for 1994; marine mammal die-offs and stranding programs; Fish and Wildlife Service and National Marine Fisheries Service activities bearing on marine mammals in Alaska; conservation plans and programs; recovery plans and programs; and marine mammal/fisher interactions.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, NW., Room 512, Washington, DC., 20009, 202/606–5504.

Date: May 19, 1993.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 93–12161 Filed 5–18–93; 4:15 pm]

BILLING CODE 6820–31–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 17, 1993.

A closed meeting will be held on Friday, May 21, 1993, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, May 21, 1993, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Christine Sakach at (202) 272–2300.

Dated: May 18, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–12205 Filed 5–19–93; 11:36 am]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 97
Friday, May 21, 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.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 93-010N]

FSIS Proposed Strategic Plan; Public Hearings and Request for Comments

Correction

In notice document 93-11435 beginning on page 28389 in the issue of Thursday, May 13, 1993, make the following correction:

On page 28390, in the first column, in the table at the bottom of the page, under the heading FSIS hearing contact, in the second entry, "Laynda Spencer" should read "Lynda Spencer".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. 33-6990, 34-32116, IC-19399, File No. S7-27-92]

RIN 3235-AF50

Repurchase Offers by Closed-End Management Investment Companies

Correction

In rule document 93-8639 beginning on page 19330, in the issue of Wednesday, April 14, 1993, make the following correction:

§ 270.23c-3 [Corrected]

1. On page 19344, in the first column, in § 270.23c-3(b)(2)(iii), in the third line, "policy of" should read "policy within".

BILLING CODE 1505-01-D

Federal Register

Friday
May 21, 1993

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 106 et al.

Safeguarding Food From Contamination During Transportation; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 108, 110, 121, 171, 173, 178, and 180

[Docket No. FS–1; Notice No. 93–13]

RIN 2137–AC00

Safeguarding Food From Contamination During Transportation

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing regulations addressing the safe transportation of food products in highway and rail transportation. This action is required by the Sanitary Food Transportation Act of 1990 (SFTA). The intended effect of this rulemaking is to increase the level of safety associated with the transportation of food products. This proposal would restrict a cargo tank, tank car, or portable tank to the carriage of either food products or non-food products. RSPA has not identified any nonfood products that are acceptable to be carried in a tank vehicle that carries food products and, therefore, is not proposing an "acceptable nonfood product list." For other motor and rail vehicles, the proposal would forbid the transportation of food products in the same vehicle with poisons, infectious substances, hazardous wastes, or solid wastes (i.e., "unacceptable nonfood products"). However, such vehicles would be allowed to carry unacceptable nonfood products before or after the carriage of food products provided that the vehicle is free of any contaminating residues. The proposal would require any motor vehicle or rail vehicle that has transported unpackaged friable asbestos to be dedicated to the transportation of asbestos and refuse. These Food Safety Regulations (FSR) would not apply to: The transportation of products in farm vehicles, considered implements of husbandry, operated by a private carrier exclusively for agricultural purposes; the offering or accepting for transportation of cardboard, pallets, beverage containers, and other food packaging materials; or the transportation of food products which are packaged in two fully enclosed packagings.

DATES: *Comments.* Comments must be received on or before October 18, 1993.

Public Hearings. Public hearings will be held on (1) June 29, 1993, from 9:30 a.m. till 5 p.m. in Washington DC; and on (2) September 13 and 14 1993, from 2 p.m. till 5 p.m. on September 13, 1993, and from 9 a.m. till 5 p.m. on September 14, 1993, in Chicago, IL. Hearings may conclude before 5 p.m. and the second day of the hearing (September 14, 1993) may be cancelled if all persons wishing to give oral comments have been heard.

ADDRESSES: *Comments.* Copies of SFTA may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9371 (202) 275–2091. Comments to this NPRM should be addressed to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington DC 20590–0001. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number (i.e., Docket FS–1). The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington DC 20590–0001. Telephone: (202) 366–5046. Public dockets may be reviewed between the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

Public Hearings. The public hearings will be held in the following locations: (1) June 29, 1993, at the Federal Aviation Administration's Auditorium, 3rd Floor, 800 Independence Avenue SW., Washington DC 20591; (2) September 13 and 14, at the Federal Aviation Administration Building, 2300 East Devon Ave., room 166–170, Des Plaines, Illinois, 60018.

Any person wishing to present an oral statement at the public hearing should notify John A. Gale, by telephone or in writing, at least two working days prior to the public hearing. Each request must identify the speaker; organization represented, if any; daytime telephone number; and the anticipated length of the presentation, not to exceed 10 minutes. Written text of the oral statement should be presented to the hearing officer prior to the oral presentation.

FOR FURTHER INFORMATION CONTACT: Edmund J. Richards, (202) 366–0656, Interagency Coordinator for Hazardous Materials Safety, or John A. Gale, Office of Hazardous Materials Standards (202) 366–8553, RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On November 3, 1990, the President signed the "Sanitary Food Transportation Act of 1990" (SFTA; 49 App. U.S.C. 2803–2812), which requires the Secretary of Transportation (Secretary) to promulgate regulations to promote the safe transportation of food products. SFTA was enacted in response to Congressional findings that: (1) Americans are entitled to receive food and other consumer products that are not made unsafe as a result of certain transportation practices; (2) the American public is threatened by the transportation of products potentially harmful to consumers in motor vehicles and rail vehicles that are used to transport food and other consumer products; and (3) the risks posed by such transportation practices are unnecessary, and such practices must be terminated. Congress expressed concern relative to practices including the transportation of wastes or potentially harmful nonfood products in the same vehicles that carry food, food additives, drugs, devices, and cosmetics, as defined in the Federal Food, Drug, and Cosmetic Act (hereinafter referred to collectively as "food products"), and the backhauling of chemicals or other potentially harmful nonfood products in cargo tank motor vehicles, rail tank cars, and tank trucks that also haul food products.

On February 20, 1991, DOT published a final rule in the Federal Register (56 FR 6810) which delegated the authority to issue the regulations to be promulgated under SFTA (i.e., sections 4, 5, 6, 7, and 8) to the Administrator of RSPA. In addition, the Federal Highway Administration (FHWA) and the Federal Railroad Administration (FRA) were delegated the authority to enforce, in their respective modes of transportation, SFTA and the regulations issued under SFTA (i.e., sections 9, 10, 11, 12 and 13 of SFTA).

On February 20, 1991, RSPA also published an advance notice of proposed rulemaking (ANPRM) in the Federal Register under Docket No. FS–1 (Notice No. 91–1; 56 FR 6934). The purpose of this notice was to solicit public comments on regulatory options concerning SFTA. RSPA received over 125 comments in response to Notice No. 91–1 from a wide range of entities likely to be affected by the requirements of SFTA. The ANPRM included more than 40 questions, but commenters were not limited to responding to those questions. The questions posed in the ANPRM and the comments received in response to the ANPRM concerned (1)

scope; (2) acceptable nonfood products; (3) unacceptable nonfood products; (4) dedicated vehicle products; (5) communication standards; (6) materials of construction for cargo tanks, rail tank cars and tank trucks; (7) minimum insurance or liability requirements; (8) waivers; and (9) other related issues.

In response to the President's January 28, 1992 announcement of a Federal regulatory review, DOT published a notice on February 7, 1992 (57 FR 4744, Docket RR–1) to solicit comments on the Department's regulatory programs. RSPA received several comments to Docket RR–1 concerning the FS–1 ANPRM.

The underlying theme of most of the comments received to the ANPRM and Docket RR–1 was for RSPA to focus on only the specific issues identified in SFTA and not burden the various affected industries with additional, cumbersome, unnecessary, and costly regulations. They also pointed out that there are many policies and procedures already in place that are consistent with the objectives of SFTA and that they should be used as a starting point wherever possible and practicable. In developing this NPRM, RSPA has considered these comments as they affect costs and operational requirements.

This proposal focuses on those areas where contamination can occur if proper precautions (e.g., cleaning, packaging, commodity separation) are not taken and where sufficient guidelines are not available. These precautions are necessary when there is the potential for a residue being left in reusable bulk packagings that could contaminate a load of food products, or have surface contact with food products.

II. Proposal

1. Scope

In accordance with SFTA, the Secretary is to issue regulations with respect to the transportation of food products in "motor vehicles and rail vehicles" which are used to transport either refuse or other nonfood products which are unsafe to the health of humans or animals. In section 5 of SFTA, the Secretary is to issue regulations with respect to the transportation of food products in "tank trucks, rail tank cars, and cargo tanks." In issuing regulations, the Secretary is to consider the extent to which packaging or similar means of protecting and isolating commodities are adequate to minimize or eliminate the potential risks of transporting food products in vehicles used for nonfood products. In addition, section 6(b)(2) of SFTA provides that the regulations issued under SFTA shall not include cardboard, pallets, beverage containers, and other food packagings, except to the extent that the Secretary determines that the transportation of such items would make food products unsafe.

In the ANPRM, RSPA requested comments on those industry practices that should be excepted from the regulations that are to be promulgated under SFTA. RSPA also asked if the industry-accepted terms of "cargo tank, tank car, and portable tank", as defined in 49 CFR part 171, should be used in lieu of the terms tank trucks, rail tank cars, and cargo tanks.

Many motor carriers of food products which also transport cardboard and other packaging materials, equipment, and supplies used in the manufacture and distribution of food products asserted that two-way utilization of food vehicles promotes the efficient use of equipment and is a key factor in maintaining transportation by highway of food products at reasonable levels. Commenters pointed out that section 6(b)(2) of SFTA states that DOT shall not include cardboard, pallets, beverage containers, and other food packaging as "unacceptable nonfood products," unless DOT specifically determines those products to be unacceptable. One commenter added that shippers with USDA inspectors on site should be granted an exception from any regulations promulgated under SFTA.

One commenter stated that the container leasing industry, including the portion headquartered in the United States, leases to ship lines of every nationality moving in every direction from hundreds of ports throughout the world, without having knowledge of, or control over, what products are transported in the containers while they are in the possession of the ship lines. The commenter stated that the leasing companies have no knowledge of the condition of a container until it is returned to a depot agent of a leasing company somewhere in the world. One commenter recommended that containers used in international transport, tank containers protected by commercial practice, and reefers (refrigerated vehicles) be excepted from SFTA requirements.

Commenters addressing intermodal shipments agreed that there is virtually no way to know the prior use or movements of a container. Some commenters questioned whether the statute intended for freight containers to be covered or just "motor vehicle" and "rail vehicle" (secs. 3(b), 4(a), (c), 5(a), 6(a)). The commenters contended that containers are primarily marine instruments, although intermodal, and can be carried on a chassis over the road and on a railroad flatcar or special purpose car. These commenters stated that there is no suggestion in the legislation that the container transport industry was within the legislative intent. No reference is made to transportation between the United States and other countries or to marine cargo containers. Accordingly, the commenters recommended that containers used in international transport be excepted.

The majority of commenters addressing truck renting and leasing explained that it is important to recognize that at no time during truck rental and leasing, either long- or short-term, are truck renting and leasing firms actually engaged in the transportation of goods and products. Operation and control of the vehicle always remains in the hands of the lessee or lessor. Therefore, they recommended that the commercial users of rented or leased vehicle be required to comply with SFTA regulations.

The regulations proposed under this NPRM would apply to persons who offer for transportation, except for transportation and transport food products and nonfood products by motor vehicles and railroad freight cars (i.e., transport vehicles). This proposal also applies to persons who offer for transportation, except for transportation, and transport food products and nonfood products in portable tanks, freight containers, bulk packagings, or international commerce that are transported by highway or rail. In addition, this proposal applies to persons who receive food products and nonfood products transported in cargo tanks.

Section 5 of SFTA requires regulation of cargo tanks, tank trucks, and rail tank cars that transport food products. In this NPRM, RSPA is proposing to use the phrase "cargo tank" to encompass both cargo tanks and tank trucks because these two terms are synonymous. In addition, this NPRM proposes to regulate the transportation of food products in portable tanks, freight containers, and other bulk packagings. Such bulk packagings are used to transport large quantities of food products which, if not free from contaminating residues, could make food products unsafe to the health of humans or animals. RSPA believes that food product contamination is as likely in such bulk packagings as it is when food products are transported in cargo tanks or van trailers. In fact, many portable tanks, freight containers, and other bulk packagings can transport

quantities equaling or exceeding those found in cargo tanks, van trailers or railroad freight cars. Therefore, RSPA is proposing to regulate food products that are transported in bulk packagings, freight containers, portable tanks, and in international commerce when such products are transported in the U.S. by highway or rail because of the Secretary's responsibility to ensure the safety of food products in all motor and rail transportation.

RSPA is proposing the following exceptions from the FSR: (1) Farm vehicles that are considered an implement of husbandry, operated by a private motor carrier, exclusively for agricultural purposes. (Because of the nature of such activities and because of their early position in the food processing and distribution chain, they do not pose a danger to the safety of humans and animals. In addition, subjecting farm vehicles to the regulations issued under SFTA, which are to be entitled the Food Safety Regulations (FSR; 49 CFR part 121), would impose a substantial burden on farm operations disproportionate to any benefit likely to be achieved.); (2) Food products packaged in two fully enclosed packagings, one of which is inside the other, except that such packagings may not be transported in vehicles used for dedicated vehicle products. (The integrity of such packagings is sufficient to protect the enclosed food from contamination during transportation and is consistent with the authority granted to the Secretary in section 4(c)(1) regarding decisions involving the adequacy of packaging standards.); and (3) Cardboard, pallets, crates, beverage containers, and other food packaging materials used in the transportation of food products. (Under normal transportation conditions such materials do not present a contamination threat to food products during transportation.).

Excepting food products packed in two fully enclosed packagings is consistent with RSPA's objective in minimizing the burden on the food industry while assuring our Nation's food supply. RSPA believes that several issues remain to be resolved on the topic of "double packed" foods and is, therefore, asking the following questions:

(1) Should a mesh bag be considered a fully enclosed packaging?
(2) Should a cardboard box or shrink wrap that has small openings on its top or sides be considered a fully enclosed packaging?
(3) Should the outer packaging be subjected to a performance standard?

2. Acceptable Nonfood Products/Tank Vehicles

Section 5 of SFTA prohibits the transportation of food products in cargo tanks, rail tank cars, and tank trucks ("tank vehicles") that are used to transport nonfood products that would make food products unsafe to the health of humans or animals. The Secretary is required to publish a list of acceptable nonfood products that may be transported in tank vehicles that are suitable for the carriage of food products. Section 3 of SFTA defines "nonfood product" as any material, substance or product including refuse and solid waste, as such term is defined in the Solid Waste Disposal Act, that is not a food product.

Many commenters expressed concern about allowing food grade tank vehicles to carry any nonfood products. Some commenters expressed the opinion that tank vehicles used to carry food products should be dedicated to that purpose. One person stated that even a "DOT approved nonfood product" shipped in a food grade tank vehicle could result in adulteration of the food shipment. Another commenter stated that the list of acceptable nonfood products should be kept at a minimum and only those nonfood products which can be absolutely guaranteed not to contaminate food products should be included on the list. One commenter did suggest that food products should be allowed to be transported in tank vehicles that were used to carry detergents, soaps, sanitizers, alkalies, and acids commonly used in the food industry. Other products that could be moved with food products were reported to be substances described in the Food and Drug Administration (FDA) Food Additive Rules; the U.S. Department of Agriculture (USDA) approved list of substances of meat and poultry plants; and the International Codex Alimentarius.

Food products are at their greatest risks in transportation when placed in a tank vehicle that contains a residue from its previous load. Although this risk is compounded when the previous load was a nonfood product, even tank vehicles that are dedicated to food product service can pose a serious contamination threat if not properly cleaned. This risk arises from the fact that when placed in a tank vehicle, large volumes of food product are placed in direct contact with potentially contaminating residues. This risk is offset, however, by the fact that the food industry—shippers, carriers and consignees—generally does not allow its tank vehicles to be used for nonfood products. Although food product safety is an important objective to food manufacturers, for product integrity and quality control purposes (e.g., flavor and texture), most companies have specific policies and procedures which require tank vehicles to be dedicated to a specific type of food product service and to be cleaned under very specific guidelines.

RSPA has determined that there are no nonfood products that are acceptable to be carried in a tank vehicle that carries food products and is, therefore, not proposing an "acceptable nonfood product list." There are numerous factors that must be considered in order to allow a nonfood product to be carried in a food tank vehicle, such as—the type of nonfood product, the type of food product to be carried, the type of tank vehicle and its materials of construction, and the cleaning procedure. However, RSPA is requesting further comments regarding which, if any, nonfood products should be allowed in food tanks, with appropriate rationale, and the conditions applicable to such transport.

3. Unacceptable Nonfood Products/ Other Vehicles

Section 6 of SFTA prohibits the transportation of food products in motor vehicles and rail vehicles, other than tank vehicles, that are used to transport unacceptable nonfood products. The Secretary is required to publish a list of unacceptable nonfood products that may not be transported in vehicles used to transport food products. In the ANPRM, RSPA requested comments on what products should be placed on the "list of unacceptable nonfood products" and to what extent packaging removes the threat of contamination from these unacceptable nonfood products.

Those products that were described by commenters as being unacceptable to be transported in the same vehicle with food products were poisons, irritating substances, etiologic agents, radioactive materials, and certain miscellaneous commodities such as green salted hides, fish meal, or fish scraps. In addition, almost all commenters included some form of "solid waste" in this final list. RSPA received many comments on the ability of packaging to minimize the threat of food contamination. One commenter wrote "* * * the entire issue calls for a reasonable approach which recognizes the significant role that packaging plays. If the packaging is adequate and the integrity of the commodities are not compromised, then there is no problem in moving a load of packaged food items with packaged nonfood items that are overpacked or

double-packed." Other commenters thought that hazardous materials that are packaged in accordance with the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) are packaged well enough to travel in the same vehicles with food products, whereas some felt that certain hazardous materials, i.e., poisons in Packing Group I, packaged or not, should not travel with foods. A number of commenters see the HMR packaging requirements as being essentially leakproof, and see possible separation and isolation of the cargoes to be the only possible necessity. In contrast, one commenter noted that "no type of packaging can totally prevent leakage of the contents." Several commenters indicated that no hazardous material should be allowed to travel with foods. From another standpoint, a few commenters looked at the integrity of packagings for food products as being adequate enough to allow food products to be carried "in almost any trailer regardless of what it has carried and still be safe."

Many commenters stated that the following products should be allowed to be transported with food products: Crushed or broken cans and bottles, cardboard and other food packagings, pallets, truck cleaning products, out-of-date foods, dented cans, milk cases, lubricants, fertilizers, raw materials for food processing, product returns, plastics, lumber, and small tanks of compressed gases (oxygen and acetylene) used for emergency welding by truckers.

The HMR currently forbid the transportation of food products with materials bearing a POISON label. However, with the enactment of SFTA, there are additional hazardous materials and other products, packaged or unpackaged, that should never be transported with food products because of the threat they present to food products. As a result, RSPA is proposing to forbid the transport of food products in the same transport vehicle with materials meeting the definition of: (1) Division 6.1, Packing Group I and II (poisonous materials); (2) Division 6.2 materials (infectious substances); (3) Hazardous waste; or (4) Solid waste. However, a transport vehicle would be allowed to transport food products before and after the carriage of these materials, provided the vehicle is free from any contaminating residues. If a transport vehicle does contain a residue from one of these materials or from any material that could contaminate (i.e., corrupt, debase, or make impure) the food product to be loaded therein, as a result of their admixture, then the transport vehicle must be appropriately cleaned prior to loading the food products. RSPA is not proposing any specific cleaning standard but is instead providing a performance-based safety requirement, thereby allowing industry to develop appropriate cleaning standards for the numerous types of materials and transport vehicles that are transported and used in our Nation's transportation system. RSPA is applying the responsibility of assuring such cleaning on both the shipper and carrier thereby establishing a partnership between these two parties to assure the cleanliness of the transport vehicle. However, in the event of a violation of the regulations due consideration will be given to any person who unknowingly violates the regulations (i.e., a carrier who accepts for transportation a sealed transport vehicle). Consistent with Section 3 of SFTA, RSPA is proposing to use the definition of "solid waste" as defined in the Solid Waste Disposal Act, except that RSPA is including "domestic sewage" in the definition. There are potential safety problems that could be experienced if food products were transported in the same vehicle with "domestic sewage."

D. Dedicated Vehicles Products

Section 7 of SFTA requires that the Secretary issue regulations prohibiting any person from using a motor vehicle or rail vehicle for the transportation of asbestos, in forms or quantities determined by the Secretary to be necessary, or of products that present an extreme danger to human or animal health despite any decontamination, removal, disposal, packaging or other isolation procedures, unless such vehicle is dedicated to transportation of asbestos, such extremely dangerous products, or refuse. In the ANPRM, comments were requested as to the materials that should be included on the "List of Dedicated Vehicle Products" and in what quantity and form asbestos should be regulated.

Very few commenters recommended that any products be added to the dedicated vehicle products list. However, one commenter did state that some 1,600 materials in the HMR should be included, e.g., white phosphorus, highly flammable butane, liquid chlorine, sodium hydroxide, flammable solids that are dangerous when wet, and insecticides.

Unpackaged, friable asbestos was identified by many commenters as extremely dangerous. Also, asbestos containing wastes, and water-soaked asbestos waste materials were mentioned as needing extremely good packaging to be safe (air tight and leak-proof). However, most commenters agreed that vehicles carrying packaged asbestos, could still safely carry other materials, e.g., rock, sand, and the like. One commenter stressed that commercial asbestos fibers packaged in accordance with the HMR should not be required to be transported in dedicated vehicles.

RSPA has not identified any material that presents such a hazard that, despite any decontamination, removal, or packaging, should restrict that vehicle from carrying any product except asbestos, other dedicated vehicle products, or refuse. RSPA is proposing to require that asbestos, as mandated by SFTA, be carried in vehicles that are dedicated to the transport of asbestos and refuse. However, RSPA is limiting this proposal to those forms of asbestos that meet the definition of a hazardous substance in 49 CFR 171.8 and are carried in bulk in a transport vehicle (i.e., unpackaged). Consistent with section 3 of SFTA, RSPA has defined "refuse" as any discarded material to be transported to or disposed of in a landfill or incinerator, or required by law to be transported to or disposed of in a landfill or incinerator.

E. Communication Standards

Section 4 of SFTA requires, for motor and rail vehicles, the issuance of regulations for appropriate recordkeeping, identification, marking, certification or other means of verifying compliance with the regulations to be issued under SFTA. Section 5 of SFTA specifies that a tank truck or a cargo tank may not be used to transport food products or acceptable nonfood products unless the tank truck or cargo tank is identified by a permanent marking. Section 5 also requires persons who arrange for the use of a tank truck or a cargo tank to transport food or nonfood products, to disclose to the motor carrier if the product being transported is to be used as, or in the preparation of, a food or food additive, or as a nonfood product listed on the "acceptable nonfood product list."

In the ANPRM, RSPA requested comments on the types of recordkeeping, identification, marking, certification or other means of verification currently in place that could be used to promote compliance with the regulations issued under SFTA. Most of the commenters claimed that there is no comprehensive system in place to ensure the safe transportation of food products, but asserted that current industry practices generally provide adequate means of preventing adulteration of food products. Types of verification suggested by commenters

included verification of prior cleaning, identification of prior loads, basic construction guidelines for containers in direct contact with food, and standardized markings for cargo tanks.

The majority of commenters discussed whether a "cradle to grave" (grower to retailer) system should be developed to track the transportation of food products, and strongly discouraged the development of such a system. The commenters' responses ranged from "most companies presently maintain such records to be in a position to track and account for any shipment," to such a system being considered as "unreasonable, costly, and burdensome."

Commenters discussed different types of communication standards and whether the standards should apply to offerors, carriers, consignees, users and owners of vehicles subject to SFTA. The majority agreed that all communication standards should be minimal and standardized throughout the system.

Several commenters discussed the need for consistent methods of permanently marking vehicles (i.e., multi-purpose trucks could be marked "Food," "Food Products," "Nonfood," or "Nonfood products") near loading/unloading fittings and connections to identify a vehicle's acceptability or unacceptability for food products. One commenter supported identification requirements for all bulk shipments. Another commenter stated that it was aware that certain tank vehicles are currently marked "Food Grade" and recommended that only vehicles dedicated to food grade products be marked. One commenter stated that the marking requirement in section 5(c)(1) of SFTA only applies to cargo tanks. The commenter went on to state that since tank cars are owned by private parties who carefully control what moves in their tank cars, permanent markings are not necessary.

Several commenters recommended that a carrier notify an offeror of the acceptability of the vehicle. For example, one commenter wrote "that a certificate or letter of guarantee from the carrier that the vehicle complies with SFTA, the last three bills of lading, a wash certificate, and permanent marking of the vehicle should be made available where requested or required." Another commenter stated that certification by a carrier would effectively communicate acceptability of a vehicle for food products.

Many commenters stated that a written certification on the bill of lading regarding whether the load is a food product or not would be sufficient. Some persons suggested that both the carrier and the offeror should certify to the consignee that the food product will be transported in accordance with SFTA. They stated that this method would equitably distribute liability to the appropriate parties. Many commenters believed that communication requirements should be kept to a minimum. One commenter stated that there is no reason to drastically change current communication standards as adequate safeguards are in place to promote compliance with the regulations to be promulgated under SFTA. Other commenters pointed out that tank cars are owned and operated by shippers and lessors who specify their use in the functional equivalent of dedicated service. The commenters went on to state that there are also car tracking and car assignment/car grading systems and policies in place that provide effective communication to both shippers and carriers and restrict the possibility of tank cars switching from food to nonfood product service.

Based on the comments received, RSPA does not find that elaborate communication requirements are necessary to comply with the other requirements proposed under this NPRM and are not justified considering the minimal benefit that may be derived. With respect to shipping paper disclosures, RSPA is proposing to limit disclosures to those shippers who offer food products for highway carriage in a cargo tank, as specified in SFTA. RSPA agrees with the many commenters to the ANPRM who stated that other communication requirements such as "cradle-to-grave" manifesting or a daily log would provide a limited benefit with enormous costs. However, RSPA requests comments on the need to establish additional shipping paper disclosures/certifications to assure compliance with the regulations to be promulgated under SFTA.

In accordance with section 5(c)(1) of SFTA, RSPA is proposing to require cargo tanks to be permanently marked Food Grade or with a recognized food or food type name (e.g., "milk," "sugar"). Consistent with the requirement in section 5(c)(3) of SFTA, RSPA is also proposing to forbid consignees from (1) accepting food products in a cargo tank unless it is so marked; or (2) accepting nonfood products, except spoiled food products transported for disposal, in a cargo tank marked for food grade service. However, RSPA is requesting specific comments on the possible ramifications of prohibiting consignees from accepting food or nonfood products in unauthorized tank vehicles.

Although certification by the carrier that a vehicle is clean is not a specific requirement of SFTA, the question was raised by RSPA in the ANPRM because it does represent an option for addressing the cleanliness of the vehicle when transporting food, especially if backhaul operations are involved. Several commenters supported some form of certification by the carrier, but there were also many commenters who were concerned about the additional costs involved as well as the fact that many companies have an inspection or "checkout" procedure to ensure the cleanliness of the vehicle prior to loading. Since the present system appears to be working well, RSPA has decided not to propose a written certification requirement at this time.

6. Materials of Construction for Cargo Tanks, Rail Tank Cars and Tank Trucks

Section 4 of SFTA requires the issuance of regulations for appropriate materials of construction for cargo tanks, rail tank cars and tank trucks, and their accessory equipment, that transport food products. In the ANPRM, RSPA requested comments as to the existence of any industry standards for the construction of food grade tank vehicles.

Commenters recommended that existing industry standards for the construction of cargo tanks, rail tank cars, and tank trucks be utilized for the purposes of SFTA. The standards already in place include the "3A Sanitary Standards" for milk containers, the International Maritime Organization's container specifications, the specifications in the United Nations Recommendations for the Transport of Dangerous Goods, and the container specifications in 49 CFR parts 178–180. Most commenters indicated that existing standards for materials and methods of construction are adequate and that little or no modification to existing standards is necessary.

Some commenters wrote that new or modified requirements for materials of construction would have little or no impact on current carriers since most of them are already utilizing food grade containers. If RSPA decides to impose new materials of construction requirements, most of the commenters suggested a grandfather clause be granted to allow continued use of existing trailers to reduce the costs associated with this change.

RSPA is proposing that cargo tanks, tank cars, and portable tanks that transport food (including their accessory equipment) be constructed so that they are compatible with, and will not contaminate the food products carried.

There are many current standards and industry practices in use regarding construction materials that provide adequate protection of food products in cargo tanks, tank trucks, and rail tank cars. Specifying new materials of construction standards would have little or no impact in improving safety over current practices, and shippers, carriers, and lessors should have the flexibility to choose their own combinations of construction materials and food products as long as the safety of the public is not jeopardized. Therefore, RSPA is proposing a performance standard to require that tank vehicles have food contact surfaces constructed of materials that will not contaminate the food products. Suitable food contact materials would be those approved by the FDA, in accordance with the Food, Drug and Cosmetic Act, or by the USDA under the Meat Inspection Act or the Poultry Inspection Act.

7. Minimum Insurance and Liability Requirements

Section 4 of SFTA states that the Secretary may establish provisions for minimum levels of financial responsibility. In the ANPRM, RSPA requested comments concerning whether the current insurance requirements of the Federal government are adequate for the risks addressed by SFTA and, if not, at what level should the financial responsibility requirements be set.

Overall, the majority of commenters agreed that the minimum levels of financial responsibility currently in effect for motor carriers (49 CFR part 387) are adequate for the risks addressed by SFTA. On the other hand, some commenters urged RSPA to increase the current minimum levels. Moreover, commenters expressed the opinion that all modes should be required to have financial responsibility at least equal to that of motor carriers. Several commenters were against the imposition of financial responsibility requirements on rail carriers. Commenters stated that the costs to obtain these levels of financial responsibility are dependent upon functions of risk, location, deductibles, and other variables.

The comments received concerning the kinds and levels of financial responsibility for offerors and freight forwarders potentially subject to SFTA were varied. A few commenters stated that insurance or other liability requirements, like that of motor carriers, should not be imposed on freight forwarders. Commenters also argued that shippers, brokers, and freight forwarders should bear a greater portion of the financial responsibility. There were comments recommending that all entities subject to SFTA requirements should have the same level of financial responsibility.

Many commenters claimed that carriers, if not self-insured, maintain some form of product liability insurance which would meet or exceed the reasonable requirements for protecting food from contamination during transportation. Therefore, their view is that there is no need for additional coverage. However, one commenter argued that many small carriers and brokers do not have adequate financial responsibility levels. Another commenter, supporting the idea of self-insurance, stated that most first class railroads are self-insured up to $5 million, and that short-line railroads carry liability insurance.

RSPA is not proposing additional insurance requirements. In order to protect themselves from the inherent risks in today's market place, companies have secured significant levels of financial liability insurance. RSFA believes, as was stated by a majority of the commenters, that the current insurance requirements and company policies are adequate for the risks addressed by SFTA.

8. Waivers

Section 8 of SFTA authorizes the Secretary to waive, in whole or in part, application of SFTA if the Secretary determines that such waiver would not result in the unsafe transportation of food products. The waiver authority provides the Secretary the flexibility to adjust a broad rule to the myriad of special cases and accepted safe practices that already exist in the food industry. Waivers are meant to encourage innovation in better, more efficient ways to transport food products safely. In order to be granted a waiver, a petitioner must propose substitute measures that will provide the same level of safety as the regulations. Because section 8 of SFTA requires that any such waiver be published in the Federal Register and the fact that in 49 CFR part 107 RSPA has already established procedures for the issuing of exemptions from the HMR, RSPA is proposing to establish the waiver program in the same manner that the current exemption program is handled under the HMR for hazardous materials.

9. Other Related Issues

a. Incident Reporting

Section 4 of SFTA requires the Secretary to issue regulations with respect to the transportation of food products in motor vehicles and rail vehicles which are used to transport nonfood products that could make food products unsafe to the health of humans or animals as a result of such transportation. In the ANPRM, RSPA requested comments on the need for an incident reporting system in order to evaluate the extent of the problem, the effectiveness of the regulatory program, and the need for any legislative or regulatory changes.

Approximately half of the commenters advocated the development of an incident reporting system to evaluate the extent of the perceived problem, effectiveness of the regulatory program, and the need for any changes. The other half opposed the development of any incident reporting system. Some of these opponents argued that incident reporting would be too costly and cumbersome for the small number of incidents that occur.

RSPA is proposing an incident report form that would be tailored to special informational needs such as the type of food product contaminated and the source of contamination. Some form of written incident reporting is necessary to develop a data base to properly manage the program, monitor compliance, determine deficiencies in the regulations, and identify those persons and practices that place our Nation's food supply at risk. Costs to the industry should be minimal. RSPA proposes to require that a carrier notify RSPA if that carrier has specific knowledge that its load of food products was contaminated during transportation. In addition, any person offering a food product who rejects a carrier's transport vehicle because of its potential to contaminate the food products would be required to report to RSPA. Furthermore, any person that receives a load of food or nonfood products in a cargo tank that is not authorized to carry food or nonfood products would be required to report such a receipt to RSPA.

A copy of the proposed incident report is published as an attachment to this notice. Part (A) of the form would require the date of the incident and part (B) would request the address where the incident occurred. Part (C) of the form would require the address, and a point of contact, for each party involved. Part (D) would require information on the packaging of the food product involved, if applicable, such as the type of packaging (e.g., cargo tank, metal drum, fiberboard box) and the capacity of the packaging. Part (E) of the form would require information on the food product involved, if applicable, such as the type of food product and the quantity involved. In Part (F), RSPA is requesting

information on the contaminant, if applicable. The type of contaminant and its packaging, and the quantity involved should be noted. Part (G) of the form is requesting information on those vehicles, food products or nonfood products that are rejected. RSPA is requesting information for the reason for the rejection, the last load transported in the transport vehicle, and if the transport vehicle had been cleaned subsequent to its last load. In Part (H) of the form, RSPA is requesting information as to the monetary cost of the incident. In Part (I) of the form, RSPA is requesting a description of the incident. This information should provide a clear understanding to RSPA of the incident and the reason for the contamination, for the rejection of the transport vehicle, or for the rejection of the product. Part (J) of the form is to be signed by the person filling out the form, including their company name and address.

b. Cleaning Standards

In the ANPRM, RSPA requested comments on what, if any, cleaning standard should be required for tank vehicles and other transport vehicles prior to the carriage of food products. Generally, commenters recommended cleaning procedures for decontaminating vehicles between loads. Suggestions included water and/or hot pressure wash of the interior and exterior of the vehicle with careful inspection to ensure it is clean for food service. Transporters of sweeteners and syrups stated that they have dedicated vehicles and do not use detergents or sanitizers to clean their tankers. Instead, they use hot pressure wash and suggest a wash ticket system. One commenter stated that detergent and hot water wash is adequate for food products, but an additional steam cleaning is required for nonfood products.

The majority of commenters suggested that the previous cargo carried should determine the type of cleaning necessary to prepare for the next food product. A few commenters indicated that a laboratory analysis to detect unacceptable residues was desirable and feasible, but most commenters indicated an "organoleptically" conducted inspection was most practical. This type of inspection requires the inspector to use senses of sight, smell, and touch to check for films, residues, loose objects, or other unsafe conditions that might lead to food contamination. Other factors influencing the type of cleaning necessary were suggested to be: the structure of a tank, how long a vehicle has been out of service, and the extent of contamination.

One commenter suggested that performance rather than procedural cleaning standards should be emphasized: "Emphasize inspection of cleaning results by the offeror of the food and a system of certification for tank/container wash facilities." Another commenter suggested that sanitization be required prior to transporting food. Several commenters wrote that effective washing of the inside unit with 180 °F water for a minimum of 30 minutes for rail and 15 minutes for truck should prepare a tank to carry food products. One commenter referred to the House of Representatives Report on SFTA (H.R. No. 390, Pt. 2, 101st Cong., 2d Sess. (1990)) which stated that a washout is adequate to prevent contamination. One commenter included an example of cleaning used by the corn wet milling and soft drink industries. These methods are designed for use with loads of sugars and syrups. Cleaning is conducted between each load or at least every 24 hours.

Two other commenters suggested that cleaning sites and/or equipment should be dedicated to food service because tank rinse water could be recirculated and re-utilized between a contaminating cargo and a food cargo. Commenters mentioned that some cleaning fluids might themselves taint foods in a food grade vehicle.

Because tank vehicles that transport food products would not be allowed to transport nonfood products RSPA is not proposing a cleaning standard for tank vehicles in such service. However, for the cleaning of tank vehicles in food product service and other transport vehicles that carry food product (e.g., reefers and rail box cars) RSPA is not proposing a specific cleaning standard but is requiring that vehicles be free from potential contaminating residues. Faced with tens of thousands of nonfood and food products and a myriad of vehicle types, materials of construction, and cleaning procedures, RSPA is not proposing a single cleaning/decontamination procedure. RSPA believes that the individual companies are best suited to determine the appropriate cleaning method for the removal of harmful residues.

c. Training and Enforcement

Like other rules issued by the Department, these regulations will be enforced in a variety of ways. The NPRM proposes an incident reporting system that should provide important information upon which to base enforcement activities. In some cases, the highway vehicles and railroad crews will be carrying documentation that will allow roadside or railside inspection and enforcement. In addition, we anticipate that members of the public will voluntarily alert federal and state inspectors to potential violations.

Under SFTA, Motor Carrier Safety Assistance Program (MCSAP) agencies may enforce the provisions of the Act, with the DOT providing training to the State enforcement agencies. In addition, enforcement of SFTA is a reimbursable MCSAP expense (49 CFR 350.79(c)(4)).

Request for Comments on State Enforcement and Training Requirements

Section 8(c) of SFTA requires the DOT "to develop and carry out a training program for inspectors to conduct vigorous enforcement [of the statute] * * *." Based on this requirement, comments are requested on the following questions:

1. In order for the States to adequately enforce SFTA requirements, is additional documentation necessary (shipping paper, record retention requirements, etc.)?

2. Comments are requested on the methods and procedures the States would utilize to enforce SFTA requirements during reviews and roadside inspection if additional documentation is not required.

3. What kind of training would be required in order for inspectors to recognize, as required by section 8(c) of SFTA, "adulteration problems associated with the transportation of food, food additives, drugs, devices, and cosmetics * * *."?

Request for Comments on Enforcement Policy

It should be noted that although document tracking requirements are not being proposed in this rulemaking, the individual modal administrations may propose such paperwork requirements to the RSPA at a later time.

1. Commenters to the ANPRM stated that both the carrier and the shipper (offeror) of the food product should certify to the consignee that the products will be transported in accordance with SFTA. Accordingly, should additional shipping paper disclosures or certifications be required under SFTA?

2. If some form of certification is required, should these requirements adopt verbatim or closely parallel the current certification requirements specified in § 172.204 of the Hazardous Materials Regulations?

Consideration will be given to imposing additional recordkeeping requirements in a future rulemaking, if comments received to this proposal or future enforcement activity indicate that

additional documentation is required to enable the FHWA to adequately track as well as enforce SFTA requirements. If such documentation is proposed, a document may be required to be maintained by the shipper and at the carrier's principal place of business. Such a document may be required to accompany the vehicle while the food product is being transported. The document would contain, at a minimum, the signatures of both the carrier and shipper representatives, the cargo tank manufacturer's name, serial number, and unit number (if applicable), date, time, and name and address where the vehicle was last sanitized or cleaned, and the technical name of the product or the proper shipping name of the material that the vehicle last contained. The document maintained on the vehicle may be required to be on the vehicle until a non-edible product or hazardous materials are transported. Such documentation would assist the MCSAP agencies during enforcement of SFTA requirements during a roadside inspection.

III. Review by Section

Subchapter A's title would be revised to identify that it covers food safety, hazardous materials transportation, and pipeline safety.

Part 106 would be moved from subchapter B into subchapter A. The rulemaking procedures that are currently found in part 106 would also apply to the Food Safety Regulations.

Appendix A of Part 106 would be revised to delegate certain rulemaking procedures under SFTA to the Associate Administrator for Hazardous Materials Safety.

Part 107 would be moved from subchapter B to subchapter A. In addition, part 107 would be editorially revised to correctly reference the changed subchapters.

A new *Part 108—Food Safety Program Procedures* would be added with the following sections:

Subpart A—General Requirements

Section 108.1 Purpose and scope. This section would state the purpose and scope of this new part. This part would specify the procedures related to waivers, and OMB information collection requirements for the Food Safety Regulations (FSR; 49 CFR part 121).

Section 108.3 Definitions. This section would define certain terms that would be used in part 108.

Section 108.5 Request for confidential treatment. This section would specify the conditions under which material will be treated as confidential.

Subpart B—Waivers

Section 108.101 Purpose and scope. This section would prescribe the procedure for applying for a waiver from the FSR.

Section 108.103 Application for waiver. This section would prescribe the specific information that RSPA will need in order to process a waiver application. Information needed will include the regulations from which relief is being sought and how the proposed variation will be as safe as the regulations in the FSR.

Section 108.105 Application for renewal. This section would prescribe the condition for renewing a waiver. RSPA proposes to have a five year expiration date for waivers. In order that renewals are processed in a timely fashion, RSPA proposes to require waiver renewals to be submitted 60 days before the expiration date of the waiver.

Section 108.107 Administrative review. Upon receipt of a waiver request, RSPA would review it and identify to the requesting party if the request is lacking any supporting information. If the request is complete, RSPA will begin processing the waiver request.

Section 108.109 Processing of application. Each complete application for a waiver would be published in the Federal Register for public comment. In addition, this section would prescribe conditions under which RSPA could deny a waiver request.

Section 108.111 Party to a waiver. This section proposes that if a waiver would also be beneficial to a company other than the original applicant, other companies could become party to the already existing waiver.

Section 108.119 Amendment, suspension, termination, and referral for enforcement action. Every waiver will be granted for a maximum of five years. However, if RSPA has just cause, it will revoke any waiver prior to the expiration date of the waiver.

Section 108.121 Petition for reconsideration. If a person believes that a waiver has been denied or revoked for unjust reasons, that person may petition the Associate Administrator of Hazardous Materials Safety in accordance with the provisions of this section.

Section 108.123 Availability for public inspection. Except for materials determined to be treated in a confidential manner, all information related to a waiver application is available for public inspection in RSPA's Dockets room.

Subchapter B—Food Safety Regulations

Part 121—General Information, Regulations, Communication Standards, and Definitions

Subpart A—General Information, Regulations, Communication Standards and Definitions

Section 121.1 Purpose and scope. This section would prescribe the purpose and scope of Subchapter B. The purpose of these regulations will be to ensure the safe transportation of food products. The regulations will cover the transportation of food products, and of materials which pose a hazard to the safety of food products (e.g., solid waste and asbestos), by railroad freight car and motor vehicle in commerce.

In response to a comment made by the USDA, RSPA is proposing to except from the FSR those farm vehicles, that are considered an implement of husbandry, operated by a private motor carrier, exclusively for agricultural purposes. USDA stated that subjecting farm vehicles to the FSR would not increase food safety because farmers have a vested interest in maintaining the quality of their products and are in such an early position in the food processing chain as not to pose a danger to human or animal health. This section would also except food products packaged in two fully enclosed packagings, one of which is inside the other, from the FSR, with the exception of the dedicated vehicle requirements. In addition, this section would except from the FSR the offering or acceptance for transportation of cardboard, pallets, beverage containers, and other food packing materials.

Section 121.3 General requirements. This section would specify that no food products may be transported with materials which pose a hazard to the safety of food products (e.g., solid waste and asbestos), by railroad freight car and motor vehicle in commerce. In addition, this section would prescribe that persons subject to the requirements of the FSR instruct each of their officers, agents, and employees having any responsibility for preparing for transportation a material subject to the requirements of this subchapter as to the applicable regulations.

Section 121.5 Definitions. This section would define several terms that would be used in subchapter B. Several of these terms are defined as in SFTA. One term defined in this section that was not defined in SFTA is "person." RSPA is proposing a generally accepted definition of person which is similar to the definition found in the HMTA. However, because Congress did not

expressly mention government entities in the passage of SFTA, RSPA is not proposing to include government entities in the definition of person.

Section 121.11 Incident reporting. This section would require that a carrier notify RSPA if that carrier has specific knowledge that its load of food products was contaminated during transportation. In addition, any person offering a food product who rejects a carrier's transport vehicle from carrying its food products because of the transport vehicle's potential to contaminate the food products would be required to report to RSPA. Furthermore, any person that receives a load of food or nonfood products in a cargo tank that is not authorized to carry food or nonfood products would be required to report such a receipt to RSPA. All notifications to RSPA would be accomplished by submitting a food safety incident report, a copy of which would be required to be maintained at the person's principal place of business for a period of two years. A copy of the proposed form is published as an attachment to this notice.

Section 121.13 Communication requirements. This section would require that cargo tanks, authorized to transport food products, be permanently marked with the words "Food Grade" or with a recognized food or food type name such as "milk" or "sugar." If the cargo tank is removed from food service, the marking would have to be removed because it would also be a violation of the FSR to transport a nonfood product, except for lawful disposal purposes, in a cargo tank that is marked for food grade use. In addition, except for private carriage, a person offering food products for transportation in a cargo tank must notify the carrier that the materials being offered for transportation are food products. This disclosure can be accomplished by a one-time notification, in writing, to the carrier that both the shipper and the carrier must sign, that covers a specific time period, and that the shipper maintains on file for three months following the last shipment. Otherwise, the shipper would have to provide the carrier a shipping document, at the time of pick-up, that the carrier must maintain in the cab of the cargo tank motor vehicle, stating that the product being offered for transportation is a food product.

This section proposes to require that any person attempting to sell or lease a transport vehicle that has transported a dedicated vehicle product to notify, in writing, potential buyers or lessors, that the transport vehicle is only allowed to carry other dedicated vehicle products and refuse. This section also proposes to require that carriers notify consignees and consignors when a load of their food product has been contaminated in transportation. This notification must be done as soon as practicable so as to assure that prompt actions are taken to protect the public.

Subpart B—General Requirements for Shippers and Carriers of Food Products

Section 121.101 Food products in cargo tanks, tank cars, and portable tanks. This section would prohibit a person from offering for transportation or transporting a food product in a cargo tank, portable tank, or tank car that previously contained a nonfood product. In addition, this section would require a cargo tank, portable tank, or tank car, authorized to carry a food product, to be cleaned before loading a food product if the residue from the prior load has the potential to contaminate the subsequent load. This would reduce the risk of contamination to food products from the residue of a prior load of food products. Furthermore, this section would forbid a person from accepting a food product in a cargo tank that is not marked "FOOD GRADE" or other equivalent marking. Likewise, a person would be forbidden from accepting a nonfood product in a cargo tank that is marked "FOOD GRADE". The intent of this section is to prohibit those practices that have the potential to contaminate food products and are not otherwise specifically covered by the Food Safety Regulations (FSR; 49 CFR part 121).

Section 121.103 List of unacceptable nonfood products. This section would list those products that have been determined to be unacceptable nonfood products. This list includes materials that meet the definition of Division 6.1, Packing Groups I and II; Division 6.2; or hazardous waste; as these terms are defined in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180); and solid waste.

Section 121.105 Food products in transport vehicles, freight containers, and bulk packagings other than cargo tanks, tank cars or portable tanks. This section would forbid any person from offering for transportation or transporting a food product in a transport vehicle, freight container or bulk packaging, other than a cargo tank, portable tank, or tank car, unless the vehicle is free from residues that are potentially contaminating to the food product. In addition, this section would forbid any person from offering for transportation or transporting a food product in a transport vehicle, freight container or bulk packaging with a material that is found in the list of unacceptable nonfood products in § 121.103. This section would also require persons to clean each transport vehicle, freight container or bulk packaging prior to the loading of any food product if it contains a residue of an unacceptable nonfood product or from a prior load that has the potential to contaminate the food product to be loaded.

Section 121.107 List of dedicated vehicle products. This section would list those products that have been determined to be dedicated vehicle products. The only product RSPA has identified as a dedicated vehicle product at this time is asbestos—which was specifically identified in SFTA as a dedicated vehicle product. However, as authorized by SFTA, RSPA is limiting the restriction of transporting asbestos in dedicated vehicles to that asbestos which meets the definition of a hazardous substance in 49 CFR 171.8 and is placed in a transport vehicle without any intermediate forms of containment (i.e., unpackaged).

Section 121.109 Dedicated vehicle products. This section would restrict those transport vehicles that transport a dedicated vehicle product to the carriage of dedicated vehicle products and refuse.

Subchapter C

The HMR, subchapter C of chapter I of title 49, would be revised editorially to replace the words "Subchapter B" with the words "Subchapter A," where appropriate.

IV. Regulatory Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This rule, as proposed, does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule, but is a significant rule under the regulatory procedures of the Department of Transportation [44 FR 11034] because of significant public interest. A regulatory evaluation is available for review in the Docket.

RSPA estimates the potential benefits of this proposal at $69.4 million annually. Of this total, $12.7 million is from known sources of contamination (i.e., those directly attributable to contamination that occurred during transportation and were detected before being consumed), and $56.7 million in undetected contaminated shipments. The cost of the proposal is estimated to be $5.3 million annually. RSPA seeks comments on the magnitude of these estimates as well as the methodologies used to derive them. One category of benefits, "averted property damage",

accounts for nearly 90 percent of the total estimated benefits, and includes $6 million in food that spoils as a direct result of contamination during transportation and is detected and thus never consumed, and $56.7 million in contaminated food that goes undetected and is consumed.

Under most circumstances where the consumer is able to detect contaminated or defective goods, the cost of property damage is likely to be borne by one or more of the following four parties: the producer, the shipper, the carrier, or the retailer. When the property damage is known, a rational retailer, carrier, or consumer would not accept the shipment or would seek recourse against one or more of the parties responsible for the contaminated product. Profit-seeking shippers, carriers, or retailers would find it in their interest to reduce contamination as long as it cost less to do so than the lost value of contaminated shipments. Consequently, in order for the true cost of the proposal (estimated at $5.3 million) to be less than the known property damage ($6 million), that the proposal would prevent, at least some shippers, carriers, or retailers would have to be missing opportunities to increase their net earnings.

In addition, consumers are likely to bear a substantial portion of the cost of property damage that falls into the "undetected" category. This may occur as a result of retailers not detecting spoilage before the food is sold or, worse, consumers not detecting it after purchase and not demanding a refund. In the event that the contamination is detected or can be detected by the consumer, the retailer, the carrier, or the shipper has incentives to identify the source of the contamination and seek appropriate compensation. To the extent the "undetected" contamination costs are borne ultimately by the consumer, the incentive to minimize the problem is reduced. RSPA is particularly interested in comments regarding the question of whether sufficient incentives already exist for shippers, carriers, and retailers to reduce property damage when it is cost-effective, and if not, why not? For example, is there reason to believe or evidence to suggest that shippers, carriers, or retailers do not ultimately bear the cost of property damage due to contamination occurring during the transportation process?

B. Executive Order 12612

The proposed rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). Section 12 of SFTA provides that the provisions of the Hazardous Materials Transportation Act (HMTA; 49 App. U.S.C. 1801 *et seq.*) relating to the relationship of the HMTA to State, political subdivision, or Indian tribe laws, regulations, or other requirements shall apply with respect to the relationship of SFTA to non-Federal laws and regulations that concern a subject covered by SFTA.

The Hazardous Materials Transportation Act contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if (1) compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under section 105(a)(4), concerning certain covered subjects, or section 105(b), concerning highway routing. This proposed rule, if adopted as final, would preempt any State, local, or Indian tribe requirements concerning subjects covered by SFTA and the Federal regulations, as provided by section 12 of SFTA. However, persons subject to this rule would not include State or local governments. RSPA lacks discretion in this area, and has determined that preparation of a federalism assessment is not warranted.

C. Impact on Small Entities

Based on limited information concerning size and nature of entities likely affected by this proposed rule, I certify this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act because the major impacts of this rule center on the dedication of tank vehicles which are primarily owned and operated by large corporations. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

The information collection requirements contained in proposed §§ 121.11 and 121.13 are being submitted to the Office of Management and Budget (OMB) for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, Attention: Desk Officer for the Department of Transportation. All comments must reference the title for this notice "Safeguarding Food From Contamination During Transportation."

List of Subjects

49 CFR Part 106

Administrative practice and procedure, Foods, Hazardous materials transportation, Pipeline safety.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 108

Administrative practice and procedure, Confidential business information, Foods, Reporting and recordkeeping requirements, Transportation.

49 CFR Part 110

Disaster assistance, Education, Emergency preparedness, Grant programs—Environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

49 CFR Part 121

Foods, labeling, Reporting and recordkeeping requirements, Transportation.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous material transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and under the authority of 49 App. U.S.C. 2804–2807, 49 CFR parts 106, 107, 108, 110, 121, 171, 173, 178, and 180 would be amended as follows:

1. The heading for subchapter A of title 49 subtitle B, chapter I, is revised to read as follows:

SUBCHAPTER A—HAZARDOUS MATERIALS TRANSPORTATION, SANITARY FOOD TRANSPORTATION, AND PIPELINE SAFETY

PART 106—RULEMAKING PROCEDURES

2. The authority citation for part 106 is revised to read as follows:

Authority: 49 App. U.S.C. 11472(h)(1); 49 App. U.S.C. 1672; 49 App. U.S.C. 1803, 1804, 1808; 49 App. U.S.C. 1653, 1657(e); 49 App. U.S.C. 2803; 49 App. U.S.C. 2002.

3. Part 106 is transferred from subchapter B to subchapter A of subtitle B, chapter I of 49 CFR.

4. Appendix A to part 106 is amended by adding paragraph (a)(4) to read as follows:

Appendix A to Part 106

* * * * *

(a) * * *

(4) The Sanitary Food Transportation Act of 1990, 49 App. U.S.C. 2803–2807.

* * * * *

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

5. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1653(d), 1655, 1802, 1804, 1805, 1806, 1808–1811, 1815; 49 CFR 1.45 and 1.53 and app. A of 49 CFR part 1.

6. Part 107 is transferred from subchapter B to subchapter A of chapter I of 49 CFR.

7. A new part 108 is added to subchapter A of chapter I of Title 49 to read as follows:

PART 108—FOOD SAFETY PROGRAM PROCEDURES

Subpart A—General Provisions

Sec.

108.1 Purpose and scope.
108.3 Definitions.
108.5 Request for confidential treatment.
108.7 Service of process on non-residents of the United States.
108.9 Public docket room.

Subpart B—Waivers

Sec.

108.101 Purpose and scope.
108.103 Application for waiver.
108.105 Application for renewal.
108.107 Administrative review.
108.109 Processing of application.
108.111 Party to a waiver.
108.117 Withdrawal.
108.119 Amendment, suspension, termination, and referral for enforcement action.
108.121 Petitions for reconsideration.
108.123 Availability for public inspection.

Authority: 49 App. U.S.C. 2807.

Subpart A—General Provisions

§ 108.1 Purpose and scope.

(a) This part prescribes procedures utilized by the Research and Special Programs Administration, the Associate Administrator for Hazardous Materials Safety and the Office of Chief Counsel in carrying out their duties under the Act, pertaining to the safe transportation of food products.

(b) This subpart defines certain terms and prescribes procedures that are applicable to each proceeding described in this part.

§ 108.3 Definitions.

All terms defined in 49 App. U.S.C. 2802 of the Act are used in their statutory meaning. Other terms used in this part are defined as follows:

Act means the Sanitary Food Transportation Act of 1990, 49 App. U.S.C. 2803–2812.

Person means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof.

Transport or transportation means any movement of property in commerce (including intrastate commerce) by motor vehicle or railroad freight car, and any loading, unloading, or storage incidental thereto.

§ 108.5 Request for confidential treatment.

(a) If any person filing a document with the Associate Administrator for Hazardous Materials Safety claims that some or all the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if that person requests the Associate Administrator for Hazardous Materials Safety not to disclose the information, that person shall file together with the document a second copy of the document from which has been deleted the information for which confidential treatment is claimed. The person shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, that person must include a statement as to why the information is privileged or confidential. If the person filing a document does not submit a second copy of the document with the confidential information deleted, the Associate Administrator for Hazardous Materials Safety may assume that there is no objection to public disclosure of the document in its entirety.

(b) The Associate Administrator for Hazardous Materials Safety may grant or deny any claim of confidentiality. Notice of a decision by the Associate Administrator for Hazardous Materials Safety to deny the claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

§ 108.7 Service of process on non-residents of the United States.

(a) *Designation of agent for service.* When a person who is not a resident of the United States is required by this subchapter or Subchapter B of this chapter to designate a permanent resident of the United States as his agent upon whom service of process may be made for him and on his behalf, the agent may be an individual, a firm, or a domestic corporation. Any number of principals may designate the same person as agent. A designation is binding on a principal even if the designation is not in compliance with all the requirements of this section, until rejected by the Associate Administrator for Hazardous Materials Safety. A designated agent may not assign performance of his functions under the designation to another person.

(b) *Form and contents of designation.* A designation of agent for service shall:

(1) Be written in English and dated;

(2) Be made in the legal form required to make it valid and binding on the principal under the laws, corporate bylaws, or other requirements governing the making of the designation by the principal at the place and time where it is made and the person or persons signing the designation shall certify that it is so made;

(3) State the full legal name, principal name of business, if any, and mailing address of the principal;

(4) Provide that it remains in effect until withdrawn or replaced by the principal;

(5) State the legal name and mailing address of the agent; and

(6) Bear a declaration of acceptance duly signed by the designated agent.

(c) *Method of service.* Service of any process, notice, order, decision, or requirement of the Associate Administrator for Hazardous Materials Safety may be made by registered or certified mail addressed to the agent with return receipt requested or in any

other manner authorized by law. If service cannot be effected because the agent has died (or, if a firm or a corporation ceases to exist) or moved, or otherwise does not receive correctly addressed mail, service may be made by publication in the **Federal Register**.

§ 108.9 Public docket room.

The public docket room in the RSPA offices at 400 7th Street, SW., Washington, DC provides for public inspection and copying:

(a) Copies of notices of proposed rulemaking issued by the RSPA, including advance notices, together with the comments received during rulemaking proceedings, copies of any related **Federal Register** notices, final rules, petitions for reconsideration, and decisions issued in response to petitions for reconsideration;

(b) Applications for waivers from the RSPA's regulations governing the transportation of food products, including supporting data, memoranda of any informal meetings with applicants, related **Federal Register** notices, comments received during the public comment period, and copies of decisions issued granting or denying applications for waivers; and

(c) Such other information pertaining to the RSPA's food safety program required by statute to be made available for public inspection and copying and any information which the RSPA determines should be made available to the public.

Subpart B—Waivers

§ 108.101 Purpose and scope.

This subpart prescribes procedures by which persons who are subject to the requirements of this subchapter, or subchapter B of this chapter, may obtain a waiver by proposing alternative measures or practices that will achieve equivalent levels of safety or levels of safety consistent with the public interest and the Act.

§ 108.103 Application for waiver.

(a) Any person who is subject to the requirements of this subchapter or subchapter B of this chapter, may apply to the Associate Administrator for Hazardous Materials Safety for a waiver from those requirements.

(b) Each application filed under this section for a waiver must:

(1) Be submitted in triplicate to: Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590–0001, Attention: Office of Exemptions and Approvals;

(2) Set forth the text or substance of the regulation from which the waiver is sought;

(3) State the name, street address, and telephone number of the applicant;

(4) Include a detailed description of the proposal, including when appropriate, plans, procedures, test results, previous waivers, if any, to be used;

(5) Describe all relevant shipping experience;

(6) Specify the proposed mode of transportation, identify any increased risks to food safety that are likely to result if the waiver is granted, and specify the control measures which the applicant considers necessary or appropriate to compensate for those increased risks;

(7) Specify the proposed duration or describe the proposed schedule of events for which the waiver is sought;

(8) Provide documentation explaining why the applicant believes the proposal including any control measures specified by the applicant will achieve a level of safety which:

(i) Is at least equal to that specified in the regulation from which the waiver is sought; or

(ii) If the regulations do not contain a specified level of safety, will be consistent with the public interest and will adequately protect against the risks to health and life which are inherent in the transportation of food products and unacceptable food products;

(9) If the applicant seeks to have the application processed on a priority basis, set forth the facts and reasons supporting priority handling; and

(10) If the applicant is not a resident of the United States, include a designation of a permanent resident of the United States as agent for service of process in accordance with § 108.7.

(c) Unless the Associate Administrator for Hazardous Materials Safety finds that there is good reason for priority processing of an application, each application is processed in the order in which it is received. To permit timely consideration, an application should be submitted at least 120 days before the requested effective date.

(d) If the applicant wishes to claim confidential treatment for any information contained in the application, the procedures set forth in § 108.5 apply.

§ 108.105 Application for renewal.

(a) Each application for the renewal of a waiver issued under this subpart must:

(1) Be submitted in triplicate to: Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590–0001, Attention: SFTA Waivers Branch;

(2) Identify the waiver for which a renewal is requested;

(3) State the name, address, and telephone number of the applicant;

(4) Include either—

(i) A certification by the applicant that the descriptions, technical information and assessment submitted in the original application, or as may have been updated by any subsequent application for renewal, remain accurate and correct; or

(ii) Such amendments to the previously submitted descriptions, technical information and assessment as is necessary to update them and assure their accuracy and correctness;

(5) A statement describing all relevant shipping experiences, including incidents involving contamination of food products, that have occurred in connection with the waiver since its issuance or most recent renewal or, if no food contamination has occurred, a certification to that effect. This statement must include the approximate number of shipments made or packages shipped, as appropriate.

(b) To permit timely consideration, an application for renewal should be submitted at least 60 days before the expiration date of the waiver.

(c) If, at least 60 days prior to the expiration of an existing waiver of a continuing nature, the holder files an application for renewal which is complete and conforms with the requirements of this section, the waiver will not be considered to have expired until the application for renewal has been finally determined.

§ 108.107 Administrative review.

A written application for a waiver submitted as provided in § 108.103(b) or the renewal of a waiver submitted as provided in § 108.105 is reviewed by the Associate Administrator of Hazardous Materials Safety to determine whether it is complete and conforms with the requirements of this subpart. If it is not returned to the applicant by the end of that period, it will be processed as provided in § 108.109. If an application is returned, the applicant will be informed in what respects the application is incomplete.

§ 108.109 Processing of application.

(a) After an application for a waiver or renewal of a waiver is determined to be complete, the Associate Administrator for Hazardous Materials Safety dockets the application and, for an application under § 108.103, publishes a notice in the **Federal Register** affording an opportunity for interested persons to comment. All comments received before the close of

the comment period are considered before final action is taken on such an application.

(b) No public hearing, or other formal proceeding is held on an application filed under this subpart before its disposition under this section. However, during the processing of an application the Associate Administrator for Hazardous Materials Safety may require the applicant to supply additional information.

(c) The Associate Administrator for Hazardous Materials Safety may deny an application in accordance with the following:

(1) The application is denied if it does not contain adequate justification or if it contains any materially false or materially misleading statements, or does not include information required by § 108.103 or § 108.105, as appropriate.

(2) If an application is denied, the Associate Administrator for Hazardous Materials Safety will notify the applicant in writing of the reason for denial and publish notice of the denial in the **Federal Register**.

(d) If the Associate Administrator for Hazardous Materials Safety determines that the application contains adequate justification, the Associate Administrator for Hazardous Materials Safety grants it subject to such terms as appropriate, notifies the applicant in writing, and publishes in the **Federal Register** a notice of the grant.

(e) If the Associate Administrator for Hazardous Materials Safety determines that an application concerns a matter of such general applicability and future effect as to warrant being made the subject of rulemaking, the Associate Administrator for Hazardous Materials Safety may initiate rule making under part 106 of this chapter in addition to or instead of granting or denying the application.

§ 108.111 Party to a waiver.

(a) Any person who is eligible to apply for a waiver under § 108.103 may apply to the Associate Administrator for Hazardous Materials Safety to be made a party to an application filed under that section or § 108.105 or to a waiver or renewal granted under § 108.109(d).

(b) Each application filed under this section must:

(1) Be submitted to: Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590–0001, Attention: SFTA Waivers Branch;

(2) Identify the waiver application or waiver to which the applicant seeks to become a party;

(3) State the name, address and telephone number of the applicant; and

(4) If the applicant is not a resident of the United States, include a designation of a permanent resident of the United States as agent for service of process in accordance with § 108.7.

(c) The applicant becomes a party to a waiver application or waiver if the Associate Administrator for Hazardous Materials Safety determines that:

(1) The applicant is a person who is eligible to apply under § 108.103 for a waiver; and

(2) The waiver application or waiver to which the applicant seeks to become a party concerns a matter of a continuing nature and does not depend upon information entitled to confidential treatment.

(d) The Associate Administrator for Hazardous Materials Safety publishes in the **Federal Register** a notice of each application received under § 108.103, each initial determination made and each renewal granted under this section.

(e) A person who becomes a party to a waiver under this section is subject to the terms of that waiver, including the expiration date stated therein. The procedures set forth in § 108.105 through § 108.109 with respect to an application for renewal of a waiver apply to a party to a waiver.

§ 108.117 Withdrawal.

(a) An applicant may withdraw an application at any time prior to a final determination by the Associate Administrator for Hazardous Materials Safety.

(b) Except for documents for which confidential treatment was requested by the applicant, withdrawal of an application does not authorize the removal of any related records from the dockets or files of the RSPA.

§ 108.119 Amendment, suspension, termination, and deferral for enforcement action.

(a) A waiver and any renewal of a waiver terminates according to its terms but not later than five years after the date of issuance unless terminated sooner under paragraph (c) of this section.

(b) The Associate Administrator for Hazardous Materials Safety may amend or suspend a waiver if:

(1) The Associate Administrator for Hazardous Materials Safety determines that an activity under the waiver is not being performed in accordance with the terms of the waiver; or

(2) On the basis of information not available at the time the waiver was granted or renewed, such action is necessary to protect against risk to life or property.

(c) The Associate Administrator for Hazardous Materials Safety may terminate a waiver if:

(1) The Associate Administrator for Hazardous Materials Safety determines that the waiver is no longer consistent with the public interest;

(2) The waiver is no longer necessary because of an amendment to the regulations;

(3) The waiver was granted on the basis of false or misleading material information; or

(4) The waiver holder or parties to the waiver are found to be in violation of the specific terms of the waiver or applicable requirements of subchapter B of this chapter.

(d) Unless the Associate Administrator for Hazardous Materials Safety determines that immediate amendment, suspension, or termination of a waiver is necessary to abate the risk of an imminent hazard, the Associate Administrator for Hazardous Materials Safety notifies the holder of the waiver or a party to a waiver in writing of the reasons for amending, suspending or terminating the waiver and provides that person an opportunity to show cause why the waiver should not be amended, suspended, or terminated under paragraph (b) or (c) of this section.

(e) Notwithstanding paragraphs (b), (c) and (d) of this section, the Associate Administrator for Hazardous Materials Safety may refer a waiver for initiation of an enforcement case. If, as the result of the enforcement proceeding, the holder of the waiver or a party to a waiver is determined to have violated the terms of the waiver, the Associate Administrator for Hazardous Materials Safety may amend, suspend, or terminate the waiver.

§ 108.121 Petitions for reconsideration.

Any applicant for a waiver or renewal of a waiver aggrieved by an action taken by the Associate Administrator for Hazardous Materials Safety under this subpart, and any holder of a waiver suspended or terminated by the Associate Administrator for Hazardous Materials Safety under § 108.119 (b) or (c), may petition the Associate Administrator for Hazardous Materials Safety for reconsideration. The petition must be filed within 30 days of service of notification of that action. The petition must contain a brief statement of the complaint, and an explanation as to why that action is unreasonable or is not in the public interest.

§ 108.123 Availability for public inspection.

(a) Information relevant to an application under this part, including

the application and supporting data, memoranda of any informal meetings with the applicant, and the grant or denial of the application is available for public inspection, except as specified in paragraph (b) of this section, at the RSPA public dockets room, 400 7th Street, SW., Washington, DC 20590–0001. Copies of available information may be obtained, as provided in part 7 of this title.

(b) Information made available for inspection does not include materials which the Associate Administrator for Hazardous Materials Safety determines should be withheld from public disclosure under § 108.5 and in accordance with the applicable provisions of section 552(b) of title 5, United States Code, and part 7 of this title.

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

8. The authority citation for part 110 continues to read as follows:

Authority: 49 App. U.S.C. 1815; 49 CFR part 1.

8a. Part 110 is transferred from subchapter B to subchapter A of subtitle B, chapter I of 49 CFR.

9. Subchapter B of chapter I of title 49 is revised to read as follows:

SUBCHAPTER B—FOOD SAFETY REGULATIONS

PART 121—GENERAL INFORMATION, REGULATIONS, COMMUNICATION STANDARDS AND DEFINITIONS

Subpart A—General Information, Regulations, Communication Standards and Definitions

Sec.

121.1 Purpose and scope.
121.3 General requirements.
121.5 Definitions.
121.11 Incident reporting.
121.13 Communication requirements.

Subpart B—General Requirements for Shippers and Carriers of Food Products

121.101 Food products in cargo tanks, portable tanks, and tank cars.
121.103 List of unacceptable nonfood products.
121.105 Food products in transport vehicles, freight containers, and bulk packagings other than cargo tanks, portable tanks, and tank cars.
121.107 List of dedicated vehicle products.
121.109 Dedicated vehicle products.

Authority: 49 App. U.S.C. 2803, 2804, 2805, 2806 and 2807.

Subpart A—General Information, Regulations, Communication Standards and Definitions

§ 121.1 Purpose and scope.

(a) This subchapter prescribes the requirements governing the offering, acceptance for transportation, and the transportation of food products, and of materials which pose a hazard to the safety of food products (e.g., solid waste and asbestos), by railroad freight car and motor vehicle in commerce.

(b) The following are not subject to the requirements of this subchapter:

(1) Farm vehicles, considered implements of husbandry, operated by a private carrier exclusively for agricultural purposes;

(2) The offering or acceptance for transportation of food packing materials such as cardboard, pallets, and beverage containers; or

(3) Food packaged in two fully enclosed packagings, one of which is placed inside the other except that such packages may not be transported on vehicle used for dedicated vehicle products.

§ 121.3 General requirements.

(a) No person may offer, accept for transportation, or transport a food product, or a material which would make food products unsafe to humans or animals, unless that food product or material is handled and transported in accordance with this subchapter or a waiver issued under subchapter A of this chapter.

(b) Each person who offers or accepts for transportation, or transports material subject to the requirements of this subchapter must instruct any officer, agent, or employee of that person having responsibility for preparing for transportation or transporting the material as to the applicable regulations of this subchapter.

§ 121.5 Definitions.

In this subchapter: *Bulk packaging* means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which food products or non-food products are loaded with no intermediate form of containment and which has:

(1) A maximum capacity greater than 450 L (119 gallons) or more than 0.45 cubic meters (16 cubic feet) as a receptacle for a liquid;

(2) A maximum net mass greater than 400 kg (882 pounds) and a maximum capacity greater than 450 L (119 gallons) as a receptacle for a solid; or

(3) A water capacity greater than 454 kg (1000 pounds) as a receptacle for a gas as defined in 49 CFR 173.115.

Cargo tank means a bulk packaging which:

(1) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures (for "tank", see 49 CFR 178.345–1(c), 178.337–1, or 178.338–1, as applicable);

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, portable tanks, tank cars, or multi-unit tank car tanks.

Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.

Contaminate means to corrupt, debase, or make impure by an admixture of a foreign substance not inherent to the material in question.

Cosmetic means:

(1) An article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; or

(2) An article intended for use as a component of any such article; except that such term shall not include soap.

Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) Recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them;

(2) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in animals; or

(3) Intended to affect the structure or any function of animals, and which does not achieve any of its principal intended purposes through chemical action within or on animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

Drug means:

(1) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(2) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(3) Articles (other than food) intended to affect the structure or any function of animals; and

(4) Articles intended for use as a component of any article specified in paragraph (1), (2), or (3) of this definition, but does not include devices or their components, parts, or accessories.

Food means items, other than drugs or medicines, intended or suitable for consumption by humans or other animals and include:

(1) Articles used for food or drink for animals;

(2) Chewing gum; and

(3) Articles used for the components of any such article.

Food additive means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include—

(1) A pesticide chemical in or on a raw agricultural commodity;

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;

(3) A color additive;

(4) Any substance used in accordance with a sanction or approval granted prior to the enactment of this paragraph pursuant to the Food Drug and Cosmetic Act, the Poultry Product Inspection Act (21 U.S.C. 451) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71); or

(5) A new animal drug approved by the Food and Drug Administration.

Food product means either a cosmetic, drug, device, food or food additive, or combination thereof, as defined in this subchapter.

Implement of husbandry means a motor vehicle designed or adapted and used exclusively for agricultural operations and only incidently operated or moved upon the highways.

Motor vehicle includes a vehicle, machine, tractor, trailer, or semitrailer, or any combination thereof, propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property. It does not include a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

Nonfood product means any material that does not meet the definition of a food product.

Person means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof.

Portable tank means a bulk packaging (except a cylinder having a water capacity of 1000 pounds or less) designed primarily to be loaded onto, or on, or temporarily attached to a transport vehicle or ship and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means. It does not include a cargo tank, tank car, multi-unit tank car tank, or trailer carrying 3AX, 3AAX, or 3T cylinders.

Railroad freight car means a car designed to carry freight or non-passenger personnel by rail, and includes a box car, flat car, gondola car, hopper car, tank car and occupied caboose.

Refuse means any discarded material to be transported to or disposed of in a landfill or incinerator, or required by law to be transported to or disposed of in a landfill or incinerator.

RSPA means the Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

Transport vehicle means a cargo-carrying vehicle such as an automobile, van, tractor, truck, semitrailer, tank car, cargo tank, or railroad freight car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, rail car, tank etc.) is a separate transport vehicle.

Transports or Transportation means any movement of property in commerce (including intrastate commerce) by motor vehicle or rail freight car.

United States means the fifty States, the District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Northern Mariana Islands, Guam, or any other territory or possession of the United States.

§ 121.11 Incident reporting.

(a) A carrier who has specific knowledge that a shipment of food product under its control was contaminated during transportation must, in addition to notifying the consignee and consignor (see § 121.13(e)), report in writing, on DOT form F xxxx.x, in duplicate, to RSPA within 30 days of discovering such information.

(b) A person offering a food product for transportation who rejects a carrier's transport vehicle, freight container, or bulk packaging for the transportation of its food product because the transport vehicle, freight container, or bulk packaging has the potential to contaminate the food product must report, on DOT form F xxxx.x, in duplicate, to RSPA, within 30 days of such rejection.

(c) A carrier whose transport vehicle, freight container, or bulk packaging was rejected due to possible contamination must provide any necessary information that is needed for the person to comply with paragraph (b) of this section.

(d) A person who has received or rejected a shipment of a food product or nonfood product that was transported in violation of § 121.13 (a) or (b) must report, on DOT form F xxxx.x, in duplicate, to RSPA, within 30 days of such rejection.

(e) A person making a report under this section shall send the report to the Information Systems Manager, DHM–63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001; a copy of the report shall be retained, for a period of two years, at the person's principal place of business, or at other places as authorized and

approved in writing by an agency of the Department of Transportation.

§ 121.13 Communication requirements.

(a) No person may offer for transportation or transport a food product in a cargo tank unless the cargo tank is permanently marked, in a clearly visible location, with the words "Food Grade" or with a recognized food or food-type name (e.g., milk or sugar) in letters at least 50 mm (2.0 inches) in height.

(b) No person may offer for transportation or transport a nonfood product in a cargo tank marked "Food Grade" or marked with a recognized food or food type name (e.g., milk or sugar).

(c) Each person who offers for transportation a food product to be transported in a cargo tank that is not operated by that person must disclose to the carrier that the product to be carried is a food product. Disclosure can be accomplished in the following manner:

(1) In a written document signed by both the shipper and carrier, provided that both the shipper and carrier maintain a copy of the document on file, at their principal place of business, for at least 3 months following the last shipment. This notification may be used to cover multiple shipments by the same shipper and carrier; or

(2) By providing the carrier a shipping document at the time of pick-up that clearly states that the product being offered is a food product. This shipping document must be maintained by the carrier in the cab of the cargo tank motor vehicle for the duration of the shipment.

(d) Each person selling or leasing a transport vehicle, freight container, or bulk packaging that has been used to transport a dedicated vehicle product (see § 121.105), must disclose that fact to any potential buyer or lessee in writing.

(e) If a food product has been contaminated during transportation, the carrier must notify the consignor and the consignee of such fact, either orally or in writing, as soon as practicable, in order that prompt actions may be taken to protect the public.

Subpart B—General Requirements for Shippers and Carriers of Food Products

§ 121.101 Food products in cargo tanks, portable tanks, and tank cars.

(a) No person may offer, accept for transportation or transport a food product in a cargo tank, portable tank, or tank car that—

(1) Was previously loaded with or contains a nonfood product; or

(2) Previously contained a food product, unless the cargo tank, tank car or portable tank is free from all residues from the prior load so as not to contaminate the food product.

(b) No person may accept delivery of a food product from a cargo tank unless the cargo tank is marked in accordance with § 121.13 of this part.

(c) No person may accept delivery of a nonfood product, except spoiled food products that have been transported for disposal, from a cargo tank that is marked in accordance with § 121.13 of this part.

(d) No person may offer for transportation or transport a food product in a cargo tank, tank car, or portable tank that is constructed of materials, including its accessory equipment, that will contaminate the food product.

§ 121.103 List of unacceptable nonfood products.

List of unacceptable nonfood products. Unacceptable nonfood products are as follows:

(a) A material meeting the definition of Division 6.1, Packing Group I or II, material, in 49 CFR 171.8, except when transported in accordance with 49 CFR 173.4, 173.25, or 177.841(e);

(b) A material meeting the definition of Division 6.2, as defined in 49 CFR 171.8;

(c) A material meeting the definition of a hazardous waste, as defined in 49 CFR 171.8; and

(d) Solid waste.

§ 121.105 Food products in transport vehicles, freight containers, and bulk packagings other than cargo tanks, portable tanks, and tank cars.

(a) No person may offer, accept for transportation, or transport a food product in the same transport vehicle, freight container, or bulk packaging with an unacceptable nonfood product listed in § 121.103.

(b) No person may offer for transportation or transport a food product in a transport vehicle, freight container, or bulk packaging, if it contains a residue of a material identified in § 121.103 or any other previously loaded material that has the potential to contaminate the food product unless it has been cleaned prior to the loading of the food product.

(c) No person may offer for transportation or transport a food product in the same transport vehicle or freight container with a package bearing a KEEP AWAY FROM FOOD label, (see subchapter C of this chapter), unless the packages are segregated in accordance with the requirements in § 174.680(b) or § 177.841(e)(3) of this chapter, as appropriate.

§ 121.107 List of dedicated vehicle products.

List of dedicated vehicle products. The dedicated vehicle product is asbestos, meeting the definition of a hazardous substance in 49 CFR 171.8, when placed in a transport vehicle without any intermediate form of containment.

§ 121.109 Dedicated vehicle products.

No person may offer for transportation or transport any food or nonfood product, except for refuse and dedicated vehicle products, in a transport vehicle that has carried a dedicated vehicle product listed in § 121.107.

SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

10. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808 and 1818; 33 U.S.C. 1321; 49 CFR part 1.

§ 171.2 [Amended]

11. In 49 CFR 171.2, remove the words "subchapter B" and add, in their place, the words "subchapter A" in paragraphs (c) and (d)(3).

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

13. In 49 CFR part 173, remove the words "subchapter B" and add, in their place, the words "subchapter A" in § 173.22(a)(2)(iv) and § 173.124(a)(1)(ii)(A).

PART 178—SPECIFICATIONS FOR PACKAGINGS

14. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

15. In 49 CFR part 178, remove the words "subchapter B" and add, in their place, the words "subchapter A" in § 178.320, in the definition of "Manufacturer", § 178.337–18(a), and § 178.345–15(a).

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

16. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. App. 1803; 49 CFR part 1.

17. In 49 CFR part 180, remove the words "subchapter B" and add, in their place, the words "subchapter A" in § 180.3 (a), (b)(3) and (b)(5) and § 180.413 (a)(1) and (a)(2).

Issued in Washington, DC on May 14, 1993, under authority delegated in 49 CFR 1.53(i).

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Attachment to Preamble

Food Safety Incident Report

DOT Form F xxxx.x

(A) Date of Incident: _____
(B) Location of Incident:
Address: _____
City: _____
State: _____
Zip: _____
(C) Consignor's Information:
Name: _____
Company: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Carrier's Information:
Name: _____
Company: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Consignee's Information:
Name: _____
Company: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____

Page 2 of DOT Form F xxxx.x

(D) Food Packaging Information:
Type of Packaging: _____
Capacity: _____
(E) Food Product Information:
Product Name: _____
Quantity: _____
(F) Contamination Information:
Contaminant: _____
Contaminant Packaging: _____
How Contaminated: _____
(G) Rejection Information:
Reason for Rejection: _____
Last load, if nonfood: _____
Tank cleaned?: _____
(H) Damages:
Value of lost product: _____
Cost of disposal: _____
Cost of cleaning: _____
(I) Description of Incident (including how the incident happened, the time it occurred, how it was discovered, and any remedial actions taken):
_____
_____
_____
_____
_____
(J) _____
Signature _____
Date _____
Company name and _____
Address _____

[FR Doc. 93–11819 Filed 5–20–93; 8:45 am]
BILLING CODE 4910–60–P

federal register

Friday
May 21, 1993

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1 et al.
Food Labeling; Metric Labeling Requirements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 100, 101, and 104

[Docket No. 92N–0406]

Food Labeling; Metric Labeling Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations to require the use of the most appropriate units of both the customary inch/pound (Avoirdupois System) and the International System of Units (SI) for the declaration of the net quantity of contents on food labels. This action is being taken in accordance with 1992 amendments to the Fair Packaging and Labeling Act (the FPLA).

DATES: Written comments by July 20, 1993. The agency is proposing that any final rule that may issue based on this proposal become effective on February 14, 1994.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James R. Taylor, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5229.

SUPPLEMENTARY INFORMATION:

I. Background

A. Historical

The use of metric units in the United States was first authorized by law in 1866 (Metric System Act of July 28, 1866; 14 Stat. 339). In 1875, the United States signed the Treaty of the Meter in Paris, which established the International Bureau of Weights and Measures and recognized the meter as the accepted international unit of measure. However, the inch-pound system continued to be the predominant form of measurement in the United States (Ref. 1).

On August 9, 1968, the Metric Study Act (Pub. L. 90–472) was enacted. This act directed the Secretary of Commerce to conduct a study to determine the advantages and disadvantages of increased use of the SI metric system in the United States and to submit a full report to Congress within 3 years. The report, "A Metric America: A Decision Whose Time Has Come," was submitted to Congress in August, 1971. The findings of the study were that "* * * eventually the United States will join the rest of the world in the use of the metric system as the predominant common language of measurement. Rather than drifting to metric with no national plan to help the sectors of our society and guide our relationships abroad, a carefully planned transition in which all sectors participate voluntarily is preferable" (Ref. 1).

On December 23, 1975, President Gerald Ford signed the Metric Conversion Act of 1975 (15 U.S.C. 205b). Section 3 of this legislation (as amended on August 23, 1988) (Pub. L. 100–418) declared a national policy:

(1) to designate the metric system of measurement as the preferred system of weights and measures for United States trade and commerce.

(2) to require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities * * *.

(3) to seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in Government publications; and

(4) to permit the continued use of traditional systems of weights and measures in nonbusiness activities.

The act directed the establishment of a U.S. Metric Board to coordinate the nationwide voluntary conversion to the metric system. However, no time period was set within which conversion should take place, and no funds were authorized to finance the expenses that would have been incurred in conversion.

B. Recent Developments

On August 23, 1988, Congress passed the Omnibus Trade and Competitiveness Act (Pub. L. 100–418) which based on a finding that world trade was increasingly geared towards the metric SI (metric system). It further found that U.S. industry was often at a competitive disadvantage when dealing in international markets because of its nonstandard measurement system, and that it was sometimes excluded from these markets when it was unable to deliver goods which were measured in metric terms. Consequently, Congress declared the SI to be the preferred system of weights and measures for U.S. trade and commerce. It also required that each Federal agency, by the end of fiscal year 1992, use SI units in its procurements, grants, and other business related activities, except to the extent that such use was impractical or was likely to cause significant inefficiencies or loss of markets to U.S. firms, such as when foreign competitors are producing competing products in nonmetric units. Further, it directed Federal agencies to seek out ways to increase public understanding of the SI through educational information and guidance and in Government publications, and to permit the continued use of traditional systems of weights and measures in nonbusiness activities.

On July 25, 1991, President George Bush issued Executive Order 12770, "Metric Usage in Federal Government Programs," which designated the Secretary of Commerce to direct and coordinate efforts by Federal departments and agencies to implement Government SI usage in accordance with section 3 of the Metric Conversion Act (15 U.S.C. 205b), as amended by section 5164(b) of the Omnibus Trade and Competitiveness Act. In support of these efforts, all executive branch departments and agencies of the U.S. Government were specifically directed, among other things, to use, to the extent feasible by September 30, 1992, or by such other date or dates established by the department or agency in consultation with the Secretary of Commerce, SI units of measurement in Federal Government procurements, grants, and other business-related activities. Other business-related activities included all uses of measurement units in agency programs and functions related to trade, industry, and commerce.

On February 14, 1992, the American Technology Preeminence Act of 1991 (the ATPA) (Pub. L. 102–245) was enacted. Section 107 of the ATPA amended the FPLA (15 U.S.C. 1451 et seq) to require, among other things, that the most appropriate units of the SI be used as the primary system for measuring quantity in the declaration of net quantity of contents on consumer packages. This provision was to take effect on February 14, 1994.

However, it soon became clear that these amendments had the potential to impose a significant economic burden on U.S. industry. Therefore, on August 3, 1992, President Bush signed Pub. L. 102–329 (the technical amendments) which repealed section 107 of the ATPA and made technical amendments to the FPLA with respect to its treatment of SI units. As a result of these technical amendments, the FPLA now: (1) Permits, in lieu of the term "weight" the use of the term "mass"; (2) requires use of the most appropriate units of both the customary inch-pound system and the SI for the declaration of the net quantity

of contents; (3) removes the requirement for the dual declaration (for example, 24 oz (1 lb 8 oz)) of the net quantity of contents in the customary inch-pound system of measure on packages labeled in terms of weight that contain less than 4 pounds or 1 gallon, on packages labeled in terms of linear measure, and on packages labeled in terms of the measure of area; (4) permits the statement of the net quantity of contents on random weight packages to be expressed in pounds and decimal fractions of a pound carried out to not more than 3 decimal places and makes SI declaration of the net quantity of contents on such packages optional; and (5) exempts all foods packaged at the retail store level from the requirement that the statement of the net quantity of contents include a statement in terms of SI units.

The technical amendments did not change the February 14, 1994, effective date for the metric labeling requirements of the ATPA. However, they provide that the SI labeling requirements will have no effect on the sale or distribution of products whose labels were printed before the effective date. Further, nothing in the technical amendments applies to unit pricing, advertising, recipe programs, nutrition labeling, or other general pricing information. Finally, nothing in the technical amendments is to be construed to require changes in package size or to affect in any way the size of packages.

II. Provisions of the Proposed Rule

FDA is proposing to amend the food labeling provisions in § 101.105 (21 CFR 101.105) by redesignating § 101.105 as new § 101.7 and revising it to implement the provisions of the ATPA and the technical amendments summarized in section I. of this document.

A. Revised Section Heading

The agency is proposing to revise the section heading of proposed § 101.7 to read: "Declaration of net quantity of contents" instead of the present wording "Declaration of net quantity of contents when exempt." This revision is necessary to correct the title of this section, which does not accurately reflect the provisions of the regulation. As currently published, this section contains many more provisions than are implied by the current title. The section provides general provisions for the declaration of the statement of net quantity of contents on all food labels and contains no information pertaining to when a food is exempt from a declaration of the net quantity of contents.

The agency recognizes that there are several existing regulations that reference § 101.105. Therefore, the agency is further proposing to make the necessary editorial changes to reflect the proposed redesignation in those sections of the regulations in parts 1, 100, 101, and 104.

B. SI Terminology

The agency is proposing in § 101.7 to include the term "mass" or "masses" in conjunction with the term "weight" or "weights." The technical amendments revised the FPLA by striking the term "weight" or "weights" wherever it appeared and by inserting in its place the phrase "weight or mass" or "weights or masses." The use of the term "mass" in conjunction with the term "weight" in the regulation will conform the nomenclature of this regulation to the definition specified by the National Institute of Standards and Technology (NIST), Department of Commerce. This definition, which is contained in the NIST Handbook No. 44, 1993 ed., paragraph 3.2.1, Appendix B, entitled "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," (Ref. 2) states: "The mass of a body is a measure of its inertial property or the amount of matter it contains." The inclusion of the term "mass" in the regulation will permit the use of the more appropriate term "mass" when referring to the measure of the amount of matter an object contains.

C. SI Standards

The agency is proposing in § 101.7(b) to include the appropriate SI units of mass, volume, or capacity. The proposed revision will require the declaration of the net quantity of contents to be stated in units of both the customary inch-pound system and the SI of measure rather than the inch-pound system only. This proposed revision implements section 4(a)(2) of the FPLA, as amended, which requires that the net quantity of contents be separately and accurately stated using the most appropriate units of both the customary inch-pound system and the SI.

To reduce the possibility for confusion, the agency tentatively finds that proposed § 101.7 should contain a complete description of the terminology applicable to all fractions of units of the SI, their name, symbol, and multiplying factor. This description will permit manufacturers to identify the most appropriate SI units for the declaration of the net quantity of contents appropriate to their products. The General Conference on Weights and Measures (CPGM) of the Meter Convention, of which the United States is a member, is the definitive reference on the SI. The CPGM has established base units for the SI, has established a set of prefixes, has established the derived and supplementary units, and has established a comprehensive specification for the units of measurement. Therefore the agency is proposing in new § 101.7(d)(2) to provide this information as a ready reference to all interested parties. This information is also available in the following NIST Special Publications: "The International System of Units (SI)" (Ref. 3); "Guide for the Use of the International System Units" (Ref. 4); "Interpretation of the SI for the United States" (Ref. 5); and in the final rule entitled, "Metric Conversion Policy for Federal Agencies" published by the Department of Commerce in the **Federal Register** of January 2, 1991 (56 FR 160) (15 CFR part 19, subpart B). FDA has previously provided guidance on the use of SI units in the form of Compliance Policy Guide (CPG) 7150.17, dated April 1, 1987. FDA intends that the provisions of the final rule based upon this proposal will supersede the guidance of CPG 7150.17.

The agency is also proposing in § 101.7(m) to include the acceptable abbreviations that may be used when stating the net quantity of contents in SI units. This information is also readily available in the publications listed above. The agency is proposing to add this information to those abbreviations currently contained in the regulation for use in conjunction with the customary inch-pound system of measure because the FPLA mandates the declaration of the net quantity of contents to be in the most appropriate units of both the customary inch-pound system and the SI.

The agency is proposing in new § 101.7(r) to provide a specific conversion chart for use in calculating the conversion of SI quantities to inch-pound quantities and inch-pound quantities to SI quantities. Uniform conversion factors are necessary to ensure that net content declarations are consistent from product to product. For example, the conversion from ounces to grams must always use the same factor, 28.3495, and not 28.00, 28.3, or 28.35. Use of one factor by one manufacturer and a different factor by another manufacturer would result in different SI quantities for the same amount in ounces or vice versa and would result in consumer confusion. Thus, the proposed change will help to eliminate this confusion.

The chart in proposed § 101.7(r) is derived from the "Metric/Inch-Pound Conversion Factors" appearing as Appendix A to the "Uniform Packaging and Labeling Regulations" adopted by the National Conference of Weights and Measures (NCWM) which is contained in NIST Handbook 130 (1993) (Ref. 6). FDA is proposing the use of the NIST chart as the specific standard for converting SI and inch-pound quantities over conversion charts produced by other entities (both public and private) because the U.S. Department of Commerce has been designated in Executive Order 12770 to direct and coordinate efforts by Federal departments and agencies to implement Government SI usage in accordance with the Metric Conversion Act of 1975 and the Omnibus Trade and Competitiveness Act of 1991. NIST is that part of the U.S. Department of Commerce most concerned with weights and measures, specifically the establishment and maintenance of U.S. standards of weights and measures.

FDA specifically solicits comments concerning the rounding procedures that should be used for metric/inch-pound conversions, and whether such procedures should be included in the provisions of any final rule based on this proposal. At the present time, the agency rounds up (i.e., increases by 1 unit the last digit retained) when the digits to be discarded begin with a 5 or more. However, FDA is aware that a number of State regulatory agencies prefer to follow other rounding rules. For example, the National Conference on Weights and Measures (NCWM) is considering a revision of NIST Handbook 130 (Ref. 7) to address conversion of inch-pound units to SI units for quantity declarations on packages. That revision permits packers to round down to avoid overstating the net contents. Also, the revision differs slightly from current FDA rounding procedures in another respect. When the first digit dropped is 5 followed by a zero, and the last digit retained is an even number, the converted figure is rounded down (e.g., 2.450 rounds to 2.4). Under other circumstances the converted figure is rounded up (e.g., 2.550 rounds to 2.6). Both NIST and FDA rounding procedures provide that the converted figure is rounded down where the first digit dropped is less than 5

Further, FDA solicits comments about whether significant digits should be addressed in the provisions of any final rule based on this proposal. (The American Heritage Dictionary defines significant digits as "digits of the decimal form of a number beginning with the leftmost nonzero digit and extending to the right to include all digits warranted by the accuracy of measuring devices used to obtain the numbers.") NIST procedures (Ref. 7) provide that it is the packager's responsibility to select the appropriate number of significant digits to use in a quantity declaration. FDA generally agrees with this position. However, FDA questions whether the final rule should provide more guidance. For example, should the final rule address the use of zero digits at the end of a number? FDA's previously mentioned CPG 7150.17 (p. 7) contains the following guidance about such zero digits:

(a) If the first significant digit of the metric value is EQUAL TO OR LARGER than the first significant digit of the inch-pound value, round the metric value to the SAME NUMBER of significant digits as there are in the inch-pound value.

(b) If the first significant digit of the metric value is SMALLER than the first significant digit of the inch-pound value, round the metric value to ONE MORE significant digit than is in the inch-pound value.

D. Examples of the Quantity of Contents Declaration

The agency is proposing in new § 101.7(d)(3) to include specific examples of the inch-pound/SI declaration of the net quantity of contents. These examples are provided as a convenience to interested persons because the FPLA, as amended, requires the use of the most appropriate units of both the customary inch-pound system and the SI when declaring the net quantity of contents on consumer commodities. This information is also contained in CPG 7150.17. Additionally, the agency is also proposing in new § 101.7(d)(4) to provide an example of the SI/inch-pound arrangement of the declaration of the net quantity of contents to clarify how this information is to be presented on the label. The addition of this information to the proposed revised regulation represents no change in FDA's policy.

The "e" mark that is included in examples in proposed § 101.7(d)(3) is a special symbol used on packages marketed within the European Community (EC). The EC requires that the "e" mark be at least 3 millimeters (mm) high and appear in the same field as the statement of the net quantity of contents. For example: "Net Wt 99 g e 3.5 oz."

The "e" mark is used by the packer or importer to provide a guarantee that the package to which it is applied has been made up in accordance with the "average system of weights and measures," which is used in the EC (Ref. 8). The absence of the "e" mark on a product shipped in the EC would result in the shipment being subjected to customs inspection in each country that it entered. U.S. companies that obtain authorization from an EC member State may market their products in the EC and facilitate shipment of their products by using the "e" mark on their packages. However, it has been FDA's policy not to permit any intervening material between the expression of measure and the actual amount of the measure, e.g., "Net Wt 24 oz (1 lb 8 oz)" or "Net Wt 24 oz (1.5 lb)," within the statement of the net quantity of contents. However, from information supplied by industry through NIST (Ref. 9), FDA tentatively concludes that it is impractical to require manufacturers to maintain dual packaging for marketing their products, i.e., one set for U.S. markets and another set for the EC. Consequently the agency is proposing in § 101.7(f) to permit the voluntary placement of the "e" mark within the statement of the net quantity of contents as shown in the example above (and in proposed § 101.7(d)(3) and (d)(4)) by those manufacturers that intend to market products in the EC. FDA advises that compliance with the provisions proposed below does not necessarily ensure that a package to which it is applied has been made up in accordance with the "average system of weights and measures," which is used in the EC.

E. Use of Decimal Fractions

The agency is proposing in § 101.7(d)(1) to permit the expression of decimal fractions in the declaration of the net quantity of contents to be made to not more than 3 decimal places rather than to not more than 2 decimal places as is currently required. The proposed revision responds to amended section 4(a)(3)(A)(ii) of the FPLA, which permits the use of 3 decimal places for the expression of the net quantity of contents for random weight generated packages when expressed in terms of pounds and decimal fractions of a pound. The expression of decimal fractions to 3 places is the position of the NCWM concerning the declaration of the net quantity of contents as expressed in NIST Handbook 130. Accordingly, FDA is proposing the changes in § 101.7(d)(1) pursuant to the FPLA, as amended, and to make this regulation compatible with other Federal agencies' interpretations concerning the use of decimal fractions in the declaration of the net quantity of contents. The proposed revision represents a change in FDA's policy concerning the declaration of decimal fractions in the statement of the net

quantity of contents. The agency is also proposing to make this change in § 101.7(j) for consistency.

F. SI Equivalents

The agency is proposing in § 101.7(f) to include the SI equivalents to the inch-pound terms used in the regulation. In this paragraph, for example, the regulation maintains packages having a principal display panel of 5 square inches. The agency is parenthetically adding the SI equivalent of 32 cm^2. The proposed revision will provide interested parties with the SI equivalents to these inch-pound terms calculated using the appropriate conversion factors. The proposed revision conforms to the requirements of Executive Order 12770 to use SI units of measurement in all Federal Government, business-related activities. Such activities include the use of such units in agency programs and functions related to trade, industry, and commerce. The addition of this information to the proposed revised regulation does not represent a change in FDA's policy. The agency is also proposing in § 101.7(i), (l), and (q) to include the SI equivalents to the customary inch-pound terms.

G. Editorial Changes

The agency is proposing in § 101.7(e) to include the word "display" after the word "alternate principal." The proposed revision is an editorial change to clarify that the term "display panel" applies to both the principal display panel as well as the alternate principal display panel. The proposed addition of this word to the revised regulation is only for clarity and does not represent a change in FDA's policy.

Section 4(a)(3)(A) of the FPLA no longer requires that all packages that contain less than 4 pounds or 1 gallon bear a dual declaration of the net quantity of contents in terms of the customary inch-pound system of measure (for example, in total ounces and in the largest whole unit with any remainder in terms of ounces or common or decimal fractions of the largest whole unit, as appropriate). Consequently, the agency believes that this dual declaration of the net quantity of contents in terms of the Avoirdupois system should not be required by regulation. FDA believes that retention of this requirement by regulation would not be consistent with the law and is no longer required to facilitate value comparisons. Accordingly, the agency is proposing to delete the requirement for a dual declaration of the net quantity of contents in the customary inch-pound system of measure from the regulation. The proposed deletion from the regulation represents a change in FDA's policy in response to the FPLA, as amended.

The agency is proposing in § 101.7(n) to permit the dual inch-pound declaration of the net quantity of contents on a voluntary basis as a convenience to consumers. The agency is also proposing in § 101.7(n) examples of the voluntary dual declaration of the net quantity of contents for packages containing less than 4 pounds or 1 gallon. Because the proposed revised regulation does not require such dual declarations, examples of such dual declarations are no longer necessary. The agency is requesting comments on whether it should permit voluntary dual declaration as proposed below. Depending on the comments that are submitted, the agency may delete the provisions for voluntary dual quantity declaration from the final rule.

The agency is proposing to remove the provision in the regulation (§ 101.105(p)) that provides for the use of SI units as an alternative declaration of the net quantity of contents. The FPLA, as amended, requires the use of the most appropriate units of both the customary inch-pound system and SI units for the declaration of the net quantity of contents. Consequently, the existing provisions are obsolete.

Further, FDA is proposing to make use of the term "net weight" optional. This term has been required for many years to modify all declarations of quantity of contents in terms of weight. The agency no longer believes this term is necessary to avoid consumer confusion because the required presence of the declaration in SI units will make the fact that the declaration is in terms of weight or mass rather than in terms of fluid measure.

H. Exemption From SI Labeling Requirements

The agency is proposing in § 101.7(t)(1) to exempt all foods packaged at the retail store level from the requirement that the statement of the net quantity of contents include a statement in terms of the SI metric system of measure. This proposed exemption implements new section 4(a)(6) of the FPLA, which specifically exempts all foods packaged at the retail store level from the requirement that the statement of net quantity of contents include a statement in terms of SI units.

III. Exclusions From SI Labeling Requirements

The agency is proposing to provide specific exclusions to the requirements for the use of the SI units when declaring the net quantity of contents. Section 2 of the technical amendments specifically excluded: Unit pricing, advertising, recipe programs, nutrition labeling, and other general pricing information from the requirements of the amendments concerning the use of the SI units when declaring the net quantity of contents. Accordingly, the agency is proposing to include these exclusions in new § 101.7(t)(2).

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

As required by the Regulatory Flexibility Act and Executive Orders 12291 and 12612, FDA has examined the economic implications of the proposed rule to amend part 101. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking, and Executive Order 12612 requires Federal agencies to ensure that Federal solutions, rather than State or local solutions, are necessary. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has determined that this proposed rule may have a significant adverse impact on small businesses. Finally, because this regulation applies to food for interstate commerce and individual State regulations would hinder interstate commerce, FDA finds that there is no substantial federalism issue which would require an analysis under Executive Order 12612.

A. Costs

Congress established February 14, 1994, as the effective date for the ATPA. FDA has opted to delay the application of certain requirements of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) until May 8, 1994. Therefore, most firms will be able to make label changes reflecting both the 1990 amendments and the technical amendments, thus incurring no additional costs of compliance associated with the technical amendments. However, manufacturers of foods exempted from the requirements of section 403(q) of the act

may incur costs in complying with the SI requirements of the technical amendments to the FPLA. Such foods could include foods with no nutritional value, foods packaged in small packages, medical foods, certain infant formulas, raw agricultural commodities and raw fish, and foods manufactured by small businesses exempted under section 403(q)(5)(D) of the act. There are approximately 500 medium and large firms that would incur the additional administrative and printing costs of complying with the technical amendments. The agency estimates that administrative costs will be approximately $215 per medium firm and $1,575 per large firm, or a total of $245,000 for all affected firms. Printing costs for this regulation will be approximately $520,000. FDA estimates the total costs of compliance of the technical amendments to be $765,000. The agency does not have the information to determine that compliance with the technical amendments would be impracticable for these firms.

The 1990 amendments exempted foods produced by small businesses, defined as firms with annual gross sales of $500,000 or less, or sales of more than $500,000 annually with less than $50,000 in food sales. However, the technical amendments did not specifically exempt foods produced by small businesses. Therefore, FDA, as required by the Regulatory Flexibility Act, has examined the impact of the proposed regulations on small firms.

There are approximately 8,100 small firms that are exempt from the requirements of mandatory nutrition labeling that would, therefore, incur the costs of complying with the technical amendments. There are three categories of cost associated with label changes: Administrative costs, printing costs, and inventory disposal costs. Administrative costs are the dollar value of the incremental administrative effort expended in order to comply with a regulation. Printing costs, which include label redesign costs, are the costs of printing new labels and may be minimized if adequate time is given for firms to incorporate these changes into planned label changes. Inventory costs are the costs of disposal of existing labels where firms have inventories that outlast the compliance period. Inventory costs can be minimized by allowing sufficient time for firms to exhaust existing stocks of labels. Under the technical amendments, all label stocks existing on February 14, 1994, may be used until exhausted. Therefore, these requirements need not cause firms to incur label inventory loss.

Administrative costs are typically smaller with longer compliance periods. Using a model generated for FDA by Research Triangle Institute (RTI), the agency determines that small firms would incur administrative costs of $215 per firm or a total of approximately $1.7 million for all affected firms (Ref. 10).

Printing costs, which are primarily redesign costs, are reduced by a longer compliance period because firms can incorporate mandated label changes into planned label changes. This would be possible for only a few small firms, perhaps as much as 20 percent (Ref. 10). The average small firm maintains 19 months of label inventory but redesigns its labels once every 30 months (Ref. 10). Therefore, printing costs will not be significantly reduced by allowing firms to use up existing stocks of labels. Using a model generated for FDA by RTI and assuming a one-color change, the agency determines that printing costs for small firms will be approximately $7.5 million (Ref. 10).

Thus, FDA estimates that the total costs to small firms for the technical amendments to be approximately $9.2 million. For these small firms, this could represent a significant cost imposition. In the summer of 1992, FDA held small business forums in response to the costs of the 1990 amendments. FDA received 77 comments in testimony and in writing. These comments indicate that small firms operate with low profit margins, between .5 percent and 5 percent of sales. For a small firm with sales of $100,000, a requirement for SI labeling could reduce annual profits by as much as one-third. Such a reduction in profits could hinder the growth of a small firm.

FDA recognizes that the costs of compliance with the SI metric requirement could be significant for some small businesses. In the legislative history of the 1992 technical amendments, there was a discussion of the fact that under the FPLA, the Secretary of Health and Human Services (and FDA, by delegation) has the authority to exempt businesses from the SI requirements if compliance will result in economic hardship or significant cost (138 Congressional Record H5345 (daily ed. June 29, 1992)). As one Congressman noted, the goal of SI labeling is competitiveness, so it is important to avoid any anticompetitive effects.

Thus, FDA is prepared to include an exemption in proposed § 101.7 if comments demonstrate that compliance with the new requirements of section 4 of the FPLA is impracticable or not necessary for adequate protection of consumers (section 5(b) of the FPLA (15 U.S.C. 1454(b)). However, the agency notes that this exemption is intended to be granted only in exceptional circumstances (138 Congressional Record H5345). Comments that support an exemption, in addition to presenting information that FDA can use to define the size of firms eligible for the exemption should provide information to support that a finding of exceptional circumstances is appropriate in this instance. Based on the information presently available, however, FDA is unable to conclude that exceptional circumstances exist for small firms that would make compliance with the requirements of the proposed rule impracticable.

The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. FDA concludes these actions may have a significant adverse impact on small businesses as defined by the Regulatory Flexibility Act.

B. Benefits

There are no health and safety benefits of this regulation. Although these regulations move the United States closer to the SI system and, thus, harmonization with international markets, these requirements alone cannot be construed as causing any of the benefits of such harmonization. Manufacturers already have the option of using SI units of measurement. Further, manufacturers of products sold internationally—either exported out of the United States or imported to the United States—will most likely have several labels for different countries because of other requirements such as language, standard package sizes, and nutrition information. Amending the requirements for declaration of net quantity of contents statements will not significantly reduce the costs of maintaining multiple labels for international trade. Therefore, based on the information presently available FDA concludes that there are no benefits of this regulation.

VI. Comments

Interested persons may, on or before July 20, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Cooper E. R., "The Metric Conversion Act of 1975, Legislative History and Implementation 1970–1980," Report No. 80–0203 SPR, Congressional Research Service, The Library of Congress, Washington, DC, August 31, 1978, Updated October 24, 1980.

2. NIST Handbook 44, 1993 ed., "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," U.S. Department of Commerce, NIST, Gaithersburg, MD, October 1992.

3. NIST Special Publication 330, 1991 ed., "The International System of Units (SI)," U.S. Department of Commerce, NIST, Gaithersburg, MD, August 1991.

4. NIST Special Publication 811, "Guide for the Use of the International System of Units," U.S. Department of Commerce, NIST, Gaithersburg, MD, September 1991.

5. NIST Special Publication 814, "Interpretation of the SI for the United States and Metric Conversion Policy for Federal Agencies," U.S. Department of Commerce, NIST, Gaithersburg, MD, October 1991.

6. NIST Handbook 130, 1993, "Uniform Laws and Regulations," U.S. Department of Commerce, NIST, Gaithersburg, MD, October 1992.

7. Letter from Edward C. Heffron, Chairman NCWM SI Working Group, NCWM, March 19, 1993.

8. Council Directive of 20 January 1976, The Council of The European Communities, Article 5, *Official Journal of the European Communities*, 21.2.76, No L46/2.

9. Letter from Crabtree and Evelyn, Ltd., November 18, 1989.

10. RTI, "Compliance Costs of Food Labeling Regulations," FDA Contract No. 223–87–2097, Project Officer—Richard A. Williams, Jr., December 1990.

List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 100

Administrative practice and procedure, Food labeling, Reporting and recordkeeping requirements.

21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

21 CFR Part 104

Food grades and standards, Frozen foods, Nutrition.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 1, 100, 101, and 104 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 403, 502, 505, 512, 602, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 352, 355, 360b, 362, 371); sec. 215 of the Public Health Service Act (42 U.S.C. 216).

2. Section 1.1 is amended by revising paragraph (c) to read as follows:

§ 1.1 General.

* * * * *

(c) The definition of package in § 1.20 and of *principal display panel* in §§ 101.1, 201.60, 501.1, 701.10 and 801.60 of this chapter; and the requirements pertaining to uniform location, lack of qualification, and separation of the net quantity declaration in §§ 101.7(f), 201.62(e), 501.105(f), 701.13(f) and 801.62(e) of this chapter to type size requirements for net quantity declaration in §§ 101.7(i), 201.62(h), 501.105(i), 701.13(i) and 801.62(h) of this chapter, to initial statement of ounces in the dual declaration of net quantity in §§ 201.62(i) and (k), 501.105(j) and (m), 701.13(j) and (m) and 801.62(i) and (k) of this chapter, to initial statement of inches in declaration of net quantity in §§ 201.62(m), 701.13(c), and 801.62(m) of this chapter, to initial statement of square inches in declaration of net quantity in §§ 201.62(n), 701.13(p) and 801.62(n) of this chapter, to prohibition of certain supplemental net quantity statements in §§ 101.7(n), 201.62(o), 501.105(o), 701.13(q) and 801.62(o) of this chapter and to servings representations in § 501.8 of this chapter are provided for solely by the Fair Packaging and Labeling Act. The other requirements of this part are issued under both the Fair Packaging and Labeling Act and the Federal Food, Drug, and Cosmetic Act, or by the latter act solely, and are not limited in their application by section 10 of the Fair Packaging and Labeling Act.

§ 1.20 [Amended]

3. Section 1.20 *Presence of mandatory label information* is amended in paragraph (e) by removing "§ 101.105(f)" and adding in its place "101.7(f)".

4. Section 1.24 is amended by revising paragraphs (a)(2), (a)(5)(iii), and (a)(6)(i); by removing and reserving paragraph (a)(6)(ii), by revising paragraphs (a)(6)(iii), (a)(7)(i) and (a)(7)(ii); by removing paragraph (a)(7)(iii); by revising paragraph (a)(8), (a)(9)(ii), and (a)(10)(i); by removing and reserving paragraph (a)(10)(ii); by revising paragraphs (a)(10)(iii), (a)(11), (a)(12), and (a)(13)(i); by removing and reserving paragraph (a)(13)(ii); and by revising paragraph (a)(13)(iii) to read as follows:

§ 1.24 Exemptions from required label statements.

* * * * *

(a) * * *

(2) Random food packages, as defined in § 101.7(j) of this chapter, bearing labels declaring net weight, price per unit or multiple units, and total price shall be exempt from the type size and placement requirements of § 101.7 of this chapter if the accurate statement of net weight is presented conspicuously on the principal display panel of the package. In the case of food packed in random packages at one place for subsequent shipment and sale at another, the price sections of the label may be left blank provided they are filled in by the seller prior to retail sale. This exemption shall also apply to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random food packages exempted by this paragraph (a)(2) except that the labels shall bear a declaration of price per unit and not price per multiple units.

* * * * *

(5) * * *

(iii) Soft drinks packaged in bottles which display other required label information only on the closure shall be exempt from the placement requirements for the declaration of contents prescribed by § 101.7(f) of this chapter if the required content declaration is blown, formed, or molded into the surface of the bottle in close proximity to the closure.

* * * * *

(6)(i) Ice cream, french ice cream, ice milk, fruit sherbets, water ices, quiescently frozen confections (with or without dairy ingredients), special dietary frozen desserts, and products made in semblance of the foregoing, when measured by and packaged in 1/2-liquid pint and 1/2-gallon measure-containers, as defined in the "Measure Container Code of National Institute of Standards and Technology (NIST) Handbook 44," Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, Sec. 4.43 "Measure-Containers," which is incorporated by reference in accordance with 5 U.S.C.

552(a) and 1 CFR part 51, are exempt from the requirements of § 101.7(b)(2) of this chapter to the extent that net contents of 8-fluid ounces and 64-fluid ounces (or 2 quarts) may be expressed as 1/2 pint and 1/2 gallon, respectively. Copies are available from the Office of Food Labeling, Center for Food Safety and Applied Nutrition (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(ii) [Reserved]

(iii) The foods named in paragraph (a)(6)(i) of this section, when measured by and packaged in 1/2-liquid pint, 1-liquid pint, 1-liquid quart, 1/2-gallon, and 1-gallon measured-containers, as defined in the "Measure Container Code of National Institute of Standards and Technology Handbook 44," Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, Sec. 4.43 "Measure-Containers," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, are exempt from the requirement of § 101.7(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the principal display panel. Copies are available from the Office of Food Labeling, Center for Food Safety and Applied Nutrition (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(7)(i) Milk, cream, light cream, coffee or table cream, whipping cream, light whipping cream, heavy or heavy whipping cream, sour or cultured sour cream, half-and-half, sour or cultured half-and-half, reconstituted or recombined milk and milk products, concentrated milk and milk products, skim or skimmed milk, vitamin D milk and milk products, fortified milk and milk products, homogenized milk, flavored milk and milk products, buttermilk, cultured buttermilk, cultured milk or culturred whole buttermilk, low-fat milk (0.5 to 2.0 percent butterfat), and acidified milk and milk products, when packaged in containers of 8- and 64-fluid ounce capacity, are exempt from the requirements of § 101.7(b)(2) of this chapter to the extent that net contents of 8 fluid ounces and 64 fluid ounces (or 2 quarts) may be expressed as 1/2 pint and 1/2 gallon, respectively.

(ii) The products listed in paragraph (a)(7)(i) of this section, when packaged in glass or plastic containers of 1/2-pint, 1-pint, 1-quart, 1/2-gallon, and 1-gallon capacities are exempt from the placement requirement of § 101.7(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the principal display panel, provided that other required label information is conspicuously displayed on the cap or outside closure and the required net quantity of contents declaration is conspicuously blown, formed, or molded into or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(8) Wheat flour products, as defined by §§ 137.105, 137.155, 137.160, 137.165, 137.170, 137.175, 137.180, 137.185, 137.200, and 137.205 of this chapter, packaged in conventional 2-, 5-, 10-, 25-, 50-, and 100-pound packages are exempt from the placement requirement of § 101.7(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the area of the principal display panel of the label.

(9) * * *

(ii) Twelve shell eggs packaged in a carton designed to hold 1 dozen eggs are exempt from the placement requirements for the declaration of contents prescribed by § 101.7(f) of this chapter if the required content declaration is otherwise placed on the principal display panel of such carton and if, in the case of such cartons designed to permit division by retail customers into two portions of one-half dozen eggs each, the required content declaration is placed on the principal display panel in such a manner that the context of the content declaration is destroyed upon division of the carton.

(10) * * *

(i) In 8-ounce and in 1-pound packages is exempt from the requirements of § 101.7(f) of this chapter that the net contents declaration be placed within the bottom 30 percent of the area of the principal display panel;

(ii) [Reserved]

(iii) In 4-ounce, 8-ounce, and 1-pound packages with continuous label copy wrapping is exempt from the requirements of §§ 101.3 and 101.7(f) of this chapter that the statement of identity and net contents declaration appear in lines generally parallel to the base on which the package rests as it is designed to be displayed, provided that such statement and declaration are not so positioned on the label as to be misleading or difficult to read as the package is customarily displayed at retail.

(11) Margarine as defined in § 166.110 of this chapter and imitations thereof in 1-pound rectangular packages, except for packages containing whipped or soft margarine or packages that contain more than four sticks, are exempt from the requirement of § 101.7(f) of this chapter that the declaration of the net quantity of contents appear within the bottom 30 percent of the principal display panel provided an accurate statement of net weight appears conspicuously on the principal display panel of the package.

(12) Corn flour and related products, as they are defined by §§ 137.211, 137.215, and 137.230 through 137.290 of this chapter, packaged in conventional 5-, 10-, 25-, 50-, and 100-pound bags are exempt from the placement requirement of § 101.7(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the area of the principal display panel of the label.

(13)(i) Single strength and less than single strength fruit juice beverages, imitations thereof, and drinking water when packaged in glass or plastic containers of 1/2-pint, 1-pint, 1-quart, 1/2-gallon, and 1-gallon capacities are exempt from the placement requirement of § 101.7(f) of this chapter that the declaration of net contents be located within the bottom 30 percent of the principal display panel: *Provided*, That other required label information is conspicuously displayed on the cap or outside closure and the required net quantity of contents declaration is conspicuously blown, formed, or molded into or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(ii) [Reserved]

(iii) Single strength and less than single strength fruit juice beverages, imitations thereof, and drinking water when packaged in glass, plastic, or paper (fluid milk type) containers of 8- and 64-fluid ounce capacity, are exempt from the requirements of § 101.7(b)(2) of this chapter to the extent that net contents of 8 fluid ounces and 64 fluid ounces (or 2 quarts) may be expressed as 1/2 pint (or half pint) and 1/2 gallon (or half gallon), respectively.

* * * * *

PART 100—GENERAL

5. The authority citation for 21 CFR part 100 continues to read as follows:

Authority: Secs. 201, 301, 307, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 337, 342, 343, 348, 371).

§ 100.155 [Amended]

6. Section 100.155 *Salt and iodized salt* is amended in paragraph (a) by

removing "§ 101.105" and adding in its place "§ 101.7".

PART 101—FOOD LABELING

7. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

§ 101.2 [Amended]

8. Section 101.2 *Information panel of package form food* is amended in paragraphs (b) and (f) by adding "§ 101.7," after "§ 101.5," and before "§ 101.8"; and in the introductory text of paragraph (c) by removing "§ 101.105(h)(1) and (2)" and adding in its place "§ 101.7(h)(1) and (h)(2)".

§ 101.7 [Redesignated from § 101.105]

9. Section 101.105 is redesignated as § 101.7 and revised to read as follows:

§ 101.7 Declaration of net quantity of contents.

(a) The principal display panel of a food in package form shall bear a declaration of the net quantity of contents. This shall be expressed in the terms of weight or mass, measure, numerical count, or a combination of numerical count and weight or mass or measure. The statement shall be in terms of fluid measure if the food is liquid, or in terms of weight or mass if the food is solid, semisolid, or viscous, or a mixture of solid and liquid; except that such statement may be in terms of dry measure if the food is a fresh fruit, fresh vegetable, or other dry commodity that is customarily sold by dry measure. If there is a firmly established general consumer usage and trade custom of declaring the contents of a liquid by weight or mass, or solid, semisolid, or viscous product by fluid measure, it may be used. Whenever the Commissioner of Food and Drugs determines that an existing practice of declaring net quantity of contents by weight or mass, measure, numerical count, or a combination in the case of a specific packaged food does not facilitate value comparisons by consumers and offers opportunity for consumer confusion, he will by regulation designate the appropriate terms to be used for such commodity.

(b)(1) Statements of weight or mass shall be in terms of the largest whole unit in both the avoirdupois pound and ounce and grams and kilograms as defined by the International System of Units (SI).

(2) Statements of fluid measure shall be in terms of the largest whole unit in both the U.S. gallon (gal) of 231 cubic inches (in^3) and quart, pint, and fluid ounce subdivisions thereof and the SI milliliter or liter and shall:

(i) In the case of frozen food that is sold and consumed in a frozen state, express the volume at the frozen temperature;

(ii) In the case of refrigerated food that is sold in a refrigerated state, express the volume at 40 °F (4 °C); and

(iii) In the case of other foods, express the volume at 68 °F (20 °C).

(iv) In the case of fluid measure of 1 gallon or more, it shall be expressed in the largest whole unit (gallon (liters)) followed by common or decimal fractions of a gallon (liter) or by the next smaller whole unit or units (quarts, or quarts and pints) with any remainder in terms of fluid ounces (milliliters) or common or decimal fractions of the pint or quart.

(3) Statements of dry measure shall be in terms in both the U.S. bushel of 2,150.42 in^3 and peck (pk), dry quart, and dry pint subdivisions thereof and the SI milliliter or liter.

(c) When the declaration of quantity of contents by numerical count does not give adequate information as to the quantity of food in the package, it shall be combined with such statement of weight or mass, measure, or size of the individual units of the foods as will provide such information.

(d)(1) The declaration may contain common or decimal fractions of the customary inch-pound system units of measure and decimal fractions of SI units. A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds; except that if there exists a firmly established general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, they may be employed. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than 3 places. A statement that includes small fractions of an ounce shall be deemed to permit smaller variations than one which does not include such fractions.

(2) The declaration shall present SI fractions as:

SI PREFIXES

Name	Symbol	Multiplying factor[1]
mega-	M	x 10^6
kilo-	k	x 10^3
hecto-	h	x 10^2
deca-	da	x 10
deci-	d	x 10^{-1}
centi-	c	x 10^{-2}
milli-	m	x 10^{-3}
micro-	μ	x 10^{-6}

[1] e.g., $10^2 = 100$; $10^3 = 1000$; $10^{-1} = 0.1$; $10^{-2} = 0.01$
Thus, 2 km = 2 x 1000 = 2000 m; 3 cm = 3 x 0.01 = 0.03 m

(3) Examples of inch-pound/SI declaration:

(i) "Net Wt 15 oz (425 g)" or "Net Wt 1 lb 8 oz (680 g)" or "Net Wt 3.5 oz (99 g) e" (assumes ounces are known to 3 significant digits).

(ii) "Net 12 fl oz (355 mL)" or "Net Contents 1 gal (3.79 L)."

(iii) "15 oz (425 g)" or "1 lb 8 oz (680 g)" or "3.5 oz (99 g) e."

(4) Examples of metric/inch-pound declaration:

(i) "Net Mass 425 g (15 oz)" or "Net Mass 680 g (1 lb 8 oz)" or "Net Mass 99 g e (3.5 oz)" (assumes ounces are known to 3 significant digits).

(ii) "Net 500 mL (1 pt 0.9 fl oz)" or "Net Contents 1 L (1 qt 1.8 fl oz)."

(iii) "500 mL (1 pt 0.9 fl oz)" or "1 L (1 qt 1.8 fl oz)."

(e) The declaration shall be located on the principal display panel of the label, and with respect to packages bearing alternate principal display panels, it

shall be duplicated on each principal display panel.

(f) The declaration shall appear as a distinct item on the principal display panel, shall be separated (by at least a space equal to the height of the lettering used in the declaration) from other printed label information appearing above or below the declaration and (by at least a space equal to twice the width of the letter "N" of the style of type used in the quantity of contents statement) from other printed label information appearing to the left or right of the declaration. However, the "e" mark, a symbol used to facilitate trade in and among members of the European Community, shall not be considered to be a qualifying word or phrase and may be used as part of the statement of the net quantity of contents where warranted. When used, the "e" mark shall be at least 3 millimeters (mm) in height and shall appear immediately after the metric portion of the quantity of contents statement. The declaration shall not include any term qualifying a unit of weight or mass, measure, or count (such as "jumbo quart" and "full gallon") that tends to exaggerate the amount of the food in the container. It shall be placed on the principal display panel within the bottom 30 percent of the area of the label panel in lines generally parallel to the base on which the package rests as it is designed to be displayed: *Provided*, That on packages having a principal display panel of 5 square inches (32 cm^2) or less, the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply when the declaration of net quantity of contents meets the other requirements of this part.

(g) The declaration shall accurately reveal the quantity of food in the package exclusive of wrappers and other material packed therewith: *Provided*, That in the case of foods packed in containers designed to deliver the food under pressure, the declaration shall state the net quantity of the contents that will be expelled when the instructions for use as shown on the container are followed. The propellant is included in the net quantity declaration.

(h) The declaration shall appear in conspicuous and easily legible boldface print or type in distinct contrast (by typography, layout, color, embossing, or molding) to other matter on the package; except that a declaration of net quantity blown, embossed, or molded on a glass or plastic surface is permissible when all label information is so formed on the surface. Requirements of conspicuousness and legibility shall include the specifications that:

(1) The ratio of height to width (of the letter), except for the "e" mark, shall not exceed a differential of 3 units to 1 unit (no more than 3 times as high as it is wide).

(2) Letter heights pertain to upper case or capital letters, except for the "e" mark. When upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent that shall meet the minimum standards.

(3) When fractions are used, each component numeral shall meet one-half of the minimum height standards.

(i) The declaration shall be in letters and numerals in a type size established in relationship to the area of the principal display panel of the package and shall be uniform for all packages of substantially the same size by complying with the following type specifications:

(1) Not less than one-sixteenth of an inch (1.6 mm) in height on packages the principal display panel of which has an area of 5 square inches (32 cm^2) or less.

(2) Not less that one-eighth of an inch (3.2 mm) in height on packages the principal display panel of which has an area of more than 5 (32 cm^2) but not more than 25 square inches (161 cm^2).

(3) Not less than three-sixteenths of an inch (4.8 mm) in height on packages the principal display panel of which has an area of more than 25 (161 cm^2) but not more than 100 square inches (645 cm^2).

(4) Not less than one-fourth of an inch (6.4 mm) in height on packages the principal display panel of which has an area of more than 100 square inches (645 cm^2), except not less than 1/2 inch (12.7 mm) in height if the area is more than 400 square inches (25.8 dm^2). Where the declaration is blown, embossed, or molded on a glass or plastic surface rather than by printing, typing, or coloring, the lettering sizes specified in paragraphs (h)(1) through (h)(4) of this section shall be increased by one-sixteenth of an in (1.6 mm).

(j) If the net quantity of contents declaration appears on a random package, that is, a package which is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights and with no fixed weight pattern, it may, when the net weight exceeds 1 pound, be expressed in terms of pounds and decimal fractions of the pound carried out to not more than 3 decimal places. When the net weight does not exceed 1 pound, the declaration on the random package may be in decimal fractions of the pound in lieu of ounces. The net quantity of contents declaration on a random package is not required to, but may include a statement in terms of the SI metric system carried out to not more than 3 decimal places.

(k) The declaration may appear in more than one line. The term "net weight" or "net mass" may be used when stating the net quantity of contents in terms of weight or mass. For example: "Net Wt 1 lb (453 g)" or "Net Mass 453 g (1 lb)" or "453 g (16 oz)." Use of the terms "net" or "net contents" in terms of fluid measure or numerical count is also optional. It is sufficient to distinguish avoirdupois ounces from fluid ounces through association of terms; for example, "Net wt. 6 oz" or "6 oz Net wt." and "6 fl oz" or "Net contents 6 fl oz".

(l) The inch-pound portion of the declaration may be expressed both in ounces, with identification by weight or by liquid measure and, if applicable (1 pound or 1 pint or more) followed in parentheses by a declaration in pounds for weight for weight units, with any remainder in terms of ounces or common or decimal fractions of the pound or in the case of liquid measure, in the largest whole units (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart.

(m) For quantities, the following abbreviations and none other may be employed (periods and plural forms are optional):

Unit	Abbreviation
weight	wt
pint	pt
ounce	oz
quart	qt
pound	lb
fluid	fl
gallon	gal
kilogram	kg
meter	m
gram	g
centimeter	cm
decimeter	dm
milligram	mg
millimeter	mm
microgram	µg
square meter	m^2
liter	L
square centimeter	cm^2
milliliter	mL
cubic meter	m^3
cubic centimeter	cm^3

(n) Nothing in this section shall prohibit supplemental statements at locations other than the principal display panel(s) describing in nondescriptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight or mass.

measure, or count that tends to exaggerate the amount of the food contained in the package; for example, "jumbo quart" and "full gallon." Dual or combination declarations of net quantity of contents as provided for in paragraphs (a), (c), and (l) of this section (for example, dual inch-pound declarations, a combination of net weight or mass plus numerical count, net contents plus dilution directions of a concentrate, etc.) are not regarded as supplemental net quantity statements and may be located on the principal display panel.

(o) The declaration of net quantity of contents shall express an accurate statement of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in current good manufacturing practice will be recognized. Variations from stated quantity of contents shall not be unreasonably large.

(p) The declaration of net quantity of contents on pickles and pickle products, including relishes but excluding one or two whole pickles in clear plastic bags which may be declared by count, shall be expressed in terms of the U.S. gal of 231 in^3 and quart, pint and fluid ounce subdivisions thereof and SI liters or milliliters.

(q) On a multiunit retail package, a statement of the quantity of contents shall appear on the outside of the package and shall include the number of individual units, the quantity of each individual unit, and, in parentheses, the total quantity of contents of the multiunit package in terms of the avoirdupois pound and ounce or fluid ounces and SI kilograms and grams or SI liters and milliliters, except that such declaration of total quantity need not be followed by an additional parenthetical declaration in terms of the largest whole units and subdivisions thereof. A multiunit retail package may thus be properly labeled: "6–1 pt bottles—(3 qts)/6–473 mL bottles—(2.8 L)"; or "3–1 lb cans—(net wt. 3 lbs)/3–454 g cans—(net wt. 1.36 kg)". For the purposes of this section, "multiunit retail package" means a package containing two or more individually packaged units of the identical commodity and in the same quantity, intended to be sold as part of the multiunit retail package but capable of being individually sold in full compliance with all requirements of the regulations in this part. Open multiunit retail packages that do not obscure the number of units or prevent examination of the labeling on each of the individual units are not subject to this paragraph if the labeling of each individual unit complies with the requirements of paragraphs (f) and (i) of this section. The provisions of this section do not apply to butter or margarine covered by the exemptions in § 1.24(a)(10) and (a)(11) of this chapter.

(r) For calculating the conversion of SI quantities to inch-pound quantities and inch-pound quantities to SI quantities, the following SI/inch-pound conversion chart and none other shall be employed:

METRIC/INCH-POUND CONVERSION FACTORS

Inch-pound	SI
Length	**Length**
1 inch = 2.54 cm*	1 millimeter = 0.039 370 1 in
1 foot = 30.48 cm*	1 centimeter = 0.393 701 in
1 yard = 0.9144 cm*	
Area	**Area**
1 square inch = 6.4516 cm^2*	1 square centimeter = 0.155 000 in^2
1 square foot = 929.030 cm^2	1 square decimeter = 0.107 639 ft^2
1 square yard = 0.836 127 m^2	1 square meter = 10.769 9 ft^2
Volume or Capacity	**Volume or Capacity**
1 cubic inch = 16.3871 cm^3	1 cubic centimeter = 0.061 023 7 in^3
1 cubic foot = 0.028 316 8 m^3	1 cubic decimeter = 0.035 314 7 ft^3
1 cubic yard = 0.764 555 m^3	1 cubic meter = 35.314 7 ft^3 = 1.307 95 yd^3
1 fluid ounce = 29.573 5 mL	1 milliliter = 0.033 814 0 fl oz
1 liquid pint = 473.177 mL = 0.473 177 L	1 liter = 1.05669 liq qt
1 liquid quart = 964.353 mL = 0.964 353 L	liter = 0.264 172 gal
1 dry pint = 550.610 0 mL	
dry quart = 1.101 221 L	
1 dry peck = 8.809 768 L	
1 gallon = 3.785 41 L	
1 bushel = 35.2391 L	
Weight or Mass	**Weight or Mass**
1 ounce = 28.3495 g	1 milligram = 0.000 035 274 0 oz
1 pound = 453.592 g = 0.453 kg	1 gram = 0.035 274 0 oz
	1 kilogram = 2.294 62 lb

* Exactly

Note: These conversion factors are given to 6 significant digits to provide such accuracy when necessary.

(s) Where the declaration of net quantity of contents is in terms of net weight or mass and/or drained weight or mass or volume and does not accurately reflect the actual quantity of the contents or the product falls below the applicable standard of fill of container because of equipment malfunction or otherwise unintentional product variation, and the label conforms in all other respects to the requirements of this chapter (except the requirement that food falling below the applicable standard of fill of container shall bear the general statement of substandard fill specified in § 130.14(b) of this chapter), the mislabeled food product, including any food product that fails to bear the general statement of substandard fill specified in § 130.14(b) of this chapter, may be sold by the manufacturer or processor directly to institutions operated by Federal, State or local governments (schools, prisons, hospitals, etc.): *Provided*, That:

(1) The purchaser shall sign a statement at the time of sale stating that he is aware that the product is mislabeled to include acknowledgement of the nature and extent of the

mislabeling, (e.g., "Actual net weight may be as low as —percent below labeled quantity") and that any subsequent distribution by him of said product except for his own institutional use is unlawful. This statement shall be kept on file at the principal place of business of the manufacturer or processor for 2 years subsequent to the date of shipment of the product and shall be available to the Food and Drug Administration upon request.

(2) The product shall be labeled on the outside of its shipping container with the statement(s):

(i) When the variation concerns net weight or mass and/or drained weight or mass or volume, "Product Mislabeled. Actual net weight (drained weight or volume where appropriate) may be as low as —percent below labeled quantity. This Product Not for Retail Distribution", the blank to be filled in with the maximum percentage variance between the labeled and actual weight or mass or volume of contents of the individual packages in the shipping container, and

(ii) When the variation is in regard to a fill of container standard, "Product Mislabeled. Actual fill may be as low as —percent below standard of fill. This Product Not for Retail Distribution".

(3) The statements required by paragraphs (s)(2)(i) and (s)(2)(ii) of this section, which may be consolidated where appropriate, shall appear prominently and conspicuously as compared to other printed matter on the shipping container and in boldface print or type on a clear, contrasting background in order to render them likely to be read and understood by the purchaser under ordinary conditions of purchase.

(t)(1) All foods packaged at the retail store level for direct sale to consumers are exempt from the provisions of this section that require that the statement of net quantity of contents include SI units.

(2) None of the requirements of this section concerning the declaration of the net quantity of contents in SI units shall apply to unit pricing, advertising, recipe programs, nutrition labeling, or other general pricing information.

10. Section 101.13 *Nutrient content claims—general principles* is amended in paragraph (d)(2), (g)(1), and (i)(2) by removing "§ 101.105(i)", wherever it appears, and adding in its place "§ 101.7(i)".

PART 104—NUTRITIONAL QUALITY GUIDELINES FOR FOODS

11. The authority citation for 21 CFR part 104 continues to read as follows:

Authority: Secs. 201, 403, 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 371(a)).

§ 104.5 [Amended]

12. Section 104.5 *General principles* is amended in paragraph (b) by removing "§ 101.105" and adding in its place "§ 101.7".

Dated: April 22, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–11945 Filed 5–20–93; 8:45 am]

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Friday
May 21, 1993

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 968

Vacancy Reduction Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

[Docket No. R–93–1659; FR–3398–P–01]

RIN 2577–AB26

Vacancy Reduction Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule and notice of distribution of survey.

SUMMARY: The Department is proposing regulations to implement the Vacancy Reduction Program. Under this program, certain Public Housing Agencies (PHAs) are required to develop and submit a plan regarding vacancies in units owned or operated by the PHA. Each plan will be required to include the elements specified in the statute and this rule. In addition, assessment teams will conduct on-site assessments of the vacancy situations of participating PHAs and may provide assistance to PHAs in developing their plans. Funds from the Vacancy Reduction Program will be made available through competitions to implement the plans. The assistance available under this program is intended to supplement other initiatives of the PHA that will reduce the rate of addressable vacancies in a PHA's inventory.

DATES: Comments must be received by June 21, 1993, to assure their consideration.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Public and Indian Housing, room 4138, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1800. Individuals with hearing or speech impairments may call HUD's TDD number: (202) 708–0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

At the end of the public comment period on this rule, the Department may amend the information collection requirements set out to reflect public comments or OMB comments received concerning the information collection.

Justification for Shortened Comment Period

It is the general practice of the Department to provide for a 60-day public comment period on all proposed rules. However, because of a statutory deadline for the issuance of proposed and final rules, and in order to make it possible to commit program funds during Fiscal Year 1993, the Department is shortening its usual 60-day public comment period to 30 days.

Although section 510 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA) authorized funding for FYs 1991 and 1992, funds were not appropriated for the Vacancy Reduction Program in either year, and the Department took no action toward implementing the program. Instead, the Department pursued other actions to address the vacancy problem, some of which are noted later in this preamble. However, the 1992 Act created an explicit set-aside of modernization funds for implementation of the program. Therefore, the Department interprets the expedited notice-and-comment rulemaking requirements set out in section 191 of the 1992 Act as applying to the Vacancy Reduction Program.

Background

Section 510 of the Cranston-Gonzalez National Affordable Housing Act added a new section 14(p) to the United States Housing Act of 1937 (42 U.S.C. 14371) (1937 Act). Recently section 14(p) was amended by section 115 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act), and funding was made available for the first time for the program.

Section 14(p) requires any public housing agency (PHA) to participate in the Vacancy Reduction Program (program) if the PHA has a vacancy rate that exceeds twice the national average, is designated as troubled under section 6(j) of the 1937 Act, or has been placed under a receiver pursuant to section 6(j)(3) of the 1937 Act. Each PHA participating in the program will be required to develop a vacancy reduction plan that identifies vacant dwelling units in its inventory and the reasons for the vacancies, and describes actions to be taken by the PHA for the following five years to eliminate the vacancies.

In addition, the vacancy situations of every participating PHA will be reviewed on-site by assessment teams consisting of representatives of the Department, independent experts knowledgeable about vacancy problems and management issues relating to public housing, and PHA officials. The assessment teams will submit recommendations to HUD and the PHA, and may assist the PHA in preparing its vacancy reduction plan.

The plans will be the basis for selecting those PHAs that will receive assistance under the program. For troubled PHAs, funding of vacancy reduction activities would be contingent upon the PHA making, or providing reasonable assurances of, substantial progress in remedying any management deficiencies.

Staged Implementation of the Vacancy Reduction Program

Because the appropriated funding is extremely limited in relation to the total

need, the Department proposes to implement the Vacancy Reduction Program in stages. The selection of PHAs to receive assistance for vacancy reduction activities will be based on competitions to be announced in Notices of Funding Availability (NOFAs) that will be published periodically in the **Federal Register**. Each NOFA would be targeted according to certain characteristics that could be identified as being shared by a number of PHAs with vacancy problems. The characteristics targeted in each NOFA would be based on the statements required by statute to be included in a vacancy reduction plan and would function as threshold factors for the NOFA. The targeted characteristics would vary among funding rounds until all PHAs meeting the statutory eligibility criteria for the program are ensured a chance to compete for funds or until funds are no longer appropriated for the program. For example, the first round of funding may focus on PHAs that have a high percentage of their total units vacant because of turnover problems, or where vacant units need not more then $10,000 in repairs or rehabilitation. A PHA will not be excluded from a funding round based on size or other demographic criteria. An objective of the Department is to use the available funds so that the optimal number of units will be reoccupied and the PHAs will continue, through management improvements, to reduce the vacancy problem.

Use of Survey to Determine FY 1993 NOFA Threshold Factors

The Department currently is surveying all PHAs that the Department believes meet the statutory eligibility criteria for the Vacancy Reduction Program. The results of the survey will be used to define the threshold factors for NOFA competitions and to schedule assessments.

Any PHA that has not received a survey form, "survey of vacancy rates in selected low rent public housing agencies and self-assessment of major causes of vacancies," and that has a vacancy rate of 16% or greater (i.e., twice the average vacancy rate), is a troubled or mod-troubled PHA, or is in receivership, should immediately call 1–800–436–1304 to receive a survey form. It is important that all survey forms be completed and returned as requested.

The Department expects that analysis of the survey responses will provide a sufficient basis for identifying appropriate threshold factors for FY 1993 and for determining which PHAs would meet those threshold factors. The Department would then begin to schedule assessment team visits, as discussed under the next heading in this preamble, for those PHAs that the Department believes would meet the threshold factors for the first NOFA. In the event that survey results are not received or cannot be analyzed sufficiently on a timely basis, the Department may rely on vacancy and other data from its existing data systems (including data from PHMAP and HUD Form 51234) to select the FY 1993 threshold factors and schedule assessments. Upon publication of the NOFA, a PHA that could meet the threshold factors and has not already been scheduled for an assessment team visit will be permitted to request an assessment, as discussed later in this preamble.

On-Site Assessments

The Secretary is required to provide for an on-site assessment of the vacancy situation at each PHA by a team including representatives of the Department, independent experts knowledgeable about vacancy problems and management issues relating to public housing, and officials of the PHA. The members of each assessment team will be selected by the Secretary.

Each assessment team will assess the vacancy situation of the PHA to determine the causes of the vacancies, and will examine indicators of the management performance of the PHA relating to vacancies. Recommendations for management improvements will be submitted by the assessment team to both the Secretary and the PHA. In addition, the assessment team may assist the PHA in preparing its vacancy reduction plan.

The Department will determine a priority order for the scheduling of assessments, based on the survey responses or alternative data (as discussed above), and the threshold factors that would be established in NOFAs, and will continue to send teams to assess the vacancy situations of PHAs that are required to participate in the program, until all assessments are complete or funds are no longer available for program activities.

Funding of Activities

From the amounts set aside for the Vacancy Reduction Program from appropriations for modernization activities under section 14 of the 1937 Act, the Secretary is required to provide assistance to PHAs for reasonable costs of implementing management improvements, rehabilitating vacant dwelling units, and carrying out other vacancy reduction activities. Funding decisions will be made based primarily upon the vacancy reduction plans submitted by participating PHAs in response to NOFAs. The Department is eager to make funds available to PHAs for vacancy reduction activities during this fiscal year, and expects to publish this summer, simultaneously with the final rule, the first NOFA for the program. Although it is highly desirable that an assessment be completed for each PHA before it prepares its vacancy reduction plan in response to a NOFA, the Department will permit PHAs that have not had assessments to compete for funds. Selection of such a PHA would be subject to HUD review and approval of the PHA's plan and a requirement that its vacancy reduction plan be revised as necessary in response to a subsequent assessment, which would be conducted before any funds may be provided to the PHA.

Failure to Make Progress

Section 14(p)(3) requires that:

"(A) Upon the expiration of the 24-month period beginning upon the receipt of assistance under paragraph (5) by a public housing agency, the Secretary shall, after reviewing the progress made in complying with the plan, reserve from the annual contribution attributable to each unit vacant for the 24-month period an amount determined by the Secretary but not exceeding 80 percent of such contribution. The Secretary may not reserve any amounts under this subparagraph for any vacant dwelling unit that is vacant because of modernization, reconstruction, or lead-based paint reduction activities.

(B) The Secretary shall deposit any amounts reserved under subparagraph (A) in a separate account established on behalf of the public housing agency, and such amounts shall be available to the agency only for the purpose of carrying out activities in compliance with the vacancy reduction plan of the agency.

(C) If, after the expiration of the 24-month period beginning upon the reservation under subparagraph (A) of amounts for a public housing agency, the Secretary determines that the agency has not made significant progress to comply with the provisions of the vacancy reduction plan of the agency, the amount remaining in the account for the agency established under subparagraph (B) shall be recaptured by the Secretary."

The Department does not intend to implement this portion of the statute at this time, but seeks comment on possible methods of implementing it.

Section-by-Section Analysis

The Department is proposing to establish the Vacancy Reduction Program as new subpart D in 24 CFR part 968, with conforming amendments made as necessary in other sections of

title 24. The following discussion is a section-by-section description of the proposed rule, highlighting areas where the rule would expand on the statutory requirements and indicating areas in which the Department is especially interested in soliciting comment.

Section 968.103 addresses the allocation of funds under section 14 of the 1937 Act. The Department proposes to amend paragraph (c) to account for the new set-aside for the Vacancy Reduction Program. The new language would repeat the statutory scheme for setting aside four percent of the section 14 funds remaining after deducting amounts for emergencies and natural and other disasters. Paragraph (c)(1) would provide that 20 percent of these funds would be available for activities under section 6(j) of the 1927 Act, while the remaining 80 percent would be available for the Vacancy Reduction Program, as would be implemented by this rule. Section 968.103 would also be amended to clarify that the Vacancy Reduction Program does not apply to Indian Housing Authorities (IHAs).

Subpart D of part 968 would be added to implement the Vacancy Reduction Program. Initially, subpart D would encompass §§ 968.401–968.425.

Section 968.401 would state the policy of the Department with respect to achieving high occupancy rates in public housing, in order to ensure maximum use of available housing resources.

Section 968.403 would repeat the statutory definition of PHAs to which the Vacancy Reduction Program is applicable, with some modification. The Department has reviewed the universe of PHAs with vacancy rates exceeding twice the national average, and has developed a list of approximately 400 PHAs meeting that criterion.

Section 968.405 would define terms that are used in subpart D to the extent these terms are not applicable to the remainder of part 968.

Section 968.407 establishes the requirement that eligible PHAs submit a five-year vacancy reduction plan, and specifies the contents of the plan. For purposes of identifying components of a plan that may be identified as eligible for funding, within the limits of appropriated amounts, each submitted plan would be organized in a manner that would facilitate review by the Department. For each action proposed to eliminate vacancies, the plan would include a schedule, which would show the number of vacancies that the PHA expects to eliminate by the end of each 12-month period during the five years of the plan. The number of vacancies projected to be eliminated by 24 months after beginning to receive assistance under the program would be the PHA's vacancy reduction goal, for the purpose of calculating the amounts to be reserved in accordance with § 968.419.

Components of a plan that involve capital improvements to dwelling units would be required to ensure that, after the improvements, the units would meet or exceed the Housing Quality Standards set forth in 24 CFR 882.109, as amended by regulatory requirements concerning lead-based paint hazards.

Section 968.410 would explain the requirement for an on-site assessment of a participating PHA's vacancy situation, including the composition and responsibilities of the assessment teams and the purpose of the assessments. Because of the number of PHAs that would have to be assessed under this program, the possible complexity of some of the assessments, and the statutory ceiling on the funding of program activities, the Department believes that it will not be possible to complete all of the assessments in time to begin funding approved activities in this fiscal year. Therefore, and because the Department wants to make money available as soon as possible for the intended program purposes, assessments will be scheduled on a priority basis.

The Department has sent a survey to PHAs that have been identified as meeting the eligibility criteria for the program (see "Use of Survey to Determine FY 1993 NOFA Threshold Factors," above in this preamble). The responses to this survey or, if necessary, alternative data as described above, will be used to define a universe of vacancy related problems that could feasibly be addressed in a funding round to be completed during FY 1993. At the same time a final rule is published for this program, the Department would publish a NOFA, announcing the available funds and the eligibility and selection criteria.

Meanwhile, as it is preparing the NOFA and final rule for publication, the Department will schedule and begin assessments of those PHAs whose survey responses indicate that they may meet the threshold factors that will be established for the first round of funding competition. (The threshold factors will be based on the survey responses or, if necessary, alternative data, and will be consistent with the statutory parameters for participation in the Vacancy Reduction Program.) Because the Department will consider the results of the on-site assessment in determining the reasonableness of a vacancy reduction plan, a PHA must have an assessment completed before it may use funds for vacancy reduction activities.

Upon publication of the NOFA, any PHA that has not already been scheduled for an assessment team visit, but believes that the PHA meets the threshold criteria for the first round of funding competition, will be asked to contact the Department immediately. The Department will work with the PHA to schedule an assessment as soon as possible. A PHA that demonstrates that it meets the other eligibility factors and should be funded under the announced selection criteria will not be denied funding because of the lack of a completed assessment. If necessary, the Department will select the PHA during the funding competition, but will not permit the PHA to begin using the funds awarded to it until an assessment has been completed and either the results of the assessment are found to be consistent with the funding decision, or the PHA's vacancy reduction plan has been revised appropriately.

Section 968.413 would establish eligible uses and limitations on the use of funds available for the Vacancy Reduction Program. Paragraphs (a), (b), and (c) echo the statute establishing the program. Paragraph (d) establishes that funding decisions would be through a competitive process, on the basis of priorities to be established by the Department. The threshold factors for any funding round would be determined in a manner that would parallel the scheduling of assessments, as discussed above with regard to § 968.410.

Section 968.425 would list program requirements that would apply to the Vacancy Reduction Program in addition to the requirements specified in other sections of subpart D and § 968.110.

Other Matters

Public Reporting Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

Submission requirements	Number of respondents*	Number responses per respondent	Total annual responses	Hours per response	Total hours
VRP plans/application	50	1	50	80	4,000
Recordkeeping	50	1	50	2	100
Reporting requirements	50	1	50	4	200
Total Annual Reporting Burden					4,300

*Congress has authorized funding for the Vacancy Reduction Program for two years. HUD estimates that a maximum of 50 agencies will be selected to receive onsite assessments required to received assistance under the program.

Environmental Review

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Major Rule

This rule would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would implement a statutory program that would provide funding to PHAs for limited activities designed to reduce the number of vacant dwelling units in their inventories.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule would merely implement a statutory program that would provide funding to PHAs for limited activities designed to reduce the number of vacant dwelling units in their inventories.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as item 1558 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24433) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 968

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 968 of title 24 of the Code of Federal Regulations is proposed to be amended as follows.

PART 968—PUBLIC HOUSING MODERNIZATION

1. The authority citation for part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d and 14371; 42 U.S.C. 3535(d).

2. Section 968.103 is amended by revising paragraph (c) to read as follows:

§ 968.103 Allocation of funds under section 14.

* * * * *

(c) *Set-asides.* After deducting amounts for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside from the funds remaining:

(1) *Regarding vacancy reduction,* an amount equal to 4 percent of those funds, to be further allocated as follows:

(i) Twenty percent of this four percent shall be available only for carrying out activities under section (6)(j) of the United States Housing Act of 1937; and

(ii) Eighty percent of this four percent shall be available under the vacancy reduction program (see subpart D of 24 CFR part 968).

2. *Regarding the comprehensive grant program,* no more than five percent for the purpose of providing credits to PHAs that were formerly designated as mod troubled agencies under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901). The purpose of this set-aside is to compensate these PHAs for amounts not allocated by HUD because of a PHA's prior designation as a mod troubled agency.

(3) *Nonapplicability to IHAs.* The Vacancy Reduction Program in subpart D of this part does not apply to IHAs. In addition, because the PHMAP performance indicators under 24 CFR part 901 do not apply to IHAs, these agencies cannot be deemed "mod troubled" for purposes of the CGP and are not eligible for funding under paragraph (c)(1)(i) of this section. Hence, IHAs are not subject to any reduction in funding under section 14(k)(5)(A) of the Act, and IHAs do not participate in the set-aside credits established under paragraph (c)(2) of this section.

3. A new subpart D is added to read as follows:

Subpart D—Vacancy Reduction Program

Sec.

968.401 Purpose.
968.403 Applicability.
968.405 Definitions.
968.407 Vacancy Reduction Plan.

Sec.
968.410 Assessments.
968.413 Funding.
968.425 Other Program Requirements.

§ 968.401 Purpose.

Section 14(p) of the United States Housing Act of 1937 establishes the Vacancy Reduction Program, in conjunction with statutory provisions on public and Indian housing modernization. It is the policy of the Department that public housing agencies should maximize the use of housing resources, using every reasonable means to achieve and maintain high levels of occupancy by eligible families in PHA-owned or -operated housing.

§ 968.403 Applicability.

(a) *Participation.* A PHA shall participate in the vacancy reduction program under this subpart if:

(1) The PHA has a vacancy rate among dwelling units owned or operated by the PHA that exceeds twice the average vacancy rate among all public housing agencies;

(2) The PHA is designated as a troubled agency under section 6(j) of the Act; or

(3) A receiver has been appointed for the PHA pursuant to section 6(j)(3) of the Act.

(b) *Exclusions.* Units owned or operated by a PHA that are not eligible for funding under section 14 of the Act are excluded from coverage under this subpart. These units shall not be eligible for funding and shall not be used to calculate the eligibility of a PHA under this subpart.

§ 968.405 Definitions.

In addition to the definitions applicable under § 968.105, the following definitions apply to this subpart:

Average vacancy rate means, for purposes of determining eligibility under this subpart, the average vacancy rate for all public housing agencies.

NOFA means Notice of Funding Availability. NOFAs announcing available funding under the program will be published periodically in the **Federal Register**, and will set out the application requirements and selection criteria applicable to a particular round of funding.

Operating subsidy means the annual contribution for operating subsidy made to the PHA by HUD, which is determined in accordance with part 990 of this chapter.

PHA means public housing agency. For purposes of this subpart, the term excludes Indian Housing Authorities.

Troubled PHA means a public housing agency that has been designated as a troubled agency (including mod troubled) under section 6(j) of the United States Housing Act of 1937.

Vacancy or *vacant unit* means a dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent.

§ 968.407 Vacancy reduction plan.

(a) *Submission of plan.* Each PHA to which this subpart applies, in accordance with § 968.403, shall submit a vacancy reduction plan. The plan shall contain the elements identified in paragraph (b) of this section, and shall be organized so that each of the elements can be identified, reviewed, and funded separately.

(b) *Contents of plan.* The format of a plan submitted for funding under this program will be defined in NOFAs to be published periodically in the **Federal Register**. Each vacancy reduction plan submitted by a PHA under paragraph (a) of this section shall include statements:

(1) Identifying vacant dwelling units administered by the PHA and explaining the reasons for the vacancies;

(2) Describing the actions to be taken by the PHA during the following five years to eliminate the vacancies. The PHA shall:

(i) State project-specific actions that it is taking or intends to take that will eliminate vacancies, such as modernization, demolition, disposition, modification of occupancy policies, and other physical or management improvements; and

(ii) For each project identified, set out a schedule for completing the actions identified in paragraph (b)(2)(i) of this section and removing the dwelling units from the PHA's inventory of vacant units. For each action, the schedule shall include the number of vacancies that will be eliminated by the end of each 12-month period after the PHA begins to receive assistance under this subpart. The projection of the number of vacancies to be eliminated by the end of the second 12-month period (24 months after the PHA begins to receive assistance) will be used to calculate the amount to be deposited in any reserve account in accordance with § 990.104 of this chapter.

(3) Identifying any impediments that will prevent elimination of the vacancies within the five-year period;

(4) Identifying any vacant units funded for comprehensive modernization, major reconstruction, demolition, or disposition activities;

(5) Identifying any vacant dwelling units that are eligible for comprehensive modernization, major reconstruction, demolition, or disposition, but have not been funded or approved for these activities and are not likely to be funded or approved for at least three years. The statement shall include an estimate of the amount of assistance necessary to complete the comprehensive modernization, major reconstruction, demolition, or disposition of these units;

(6) Identifying any vacant units not identified under paragraphs (b)(4) and (b)(5) of this section. The statement shall include a description of any appropriate activities relating to elimination of the vacancies in these units and an estimate of the amount of assistance necessary to carry out the activities identified under this paragraph;

(7) Setting forth an agenda for implementation of management improvements during the first fiscal year beginning after submission of the plan. The statement should include any management improvements recommended by the assessment team pursuant to § 968.410 and an estimate of the amount of assistance necessary to implement the management improvements; and

(8) Of any other information that the Secretary shall deem appropriate, as provided in the applicable NOFA.

(c) *Housing standards.* To the extent that a plan involves modernization, reconstruction, or rehabilitation activities that have not been funded or approved previously and are not planned to be undertaken using Comprehensive Grant Program funds, the plan must reflect cost estimates that are based on compliance with, at a minimum, the Housing Quality Standards, as set forth in 24 CFR 882.109 and amended by the regulations concerning lead-based paint in public housing in 24 CFR part 35.

§ 968.410 Assessments.

(a) *Requirement.* Each PHA participating in the program under this subpart shall cooperate with an onsite assessment of the vacancy situation of the PHA by an assessment team, whose members will be selected by the Secretary in accordance with paragraph (b) of this section. The Secretary will schedule assessments in a priority order, based on:

(1) The nature and extent of each PHA's vacancy problem, and HUD's goal of achieving maximum reoccupancy using the funds available; and

(2) The availability of assessment teams and the expected level of complexity of the assessments to be scheduled.

(b) *Composition of assessment team.* The assessment team shall include representatives of HUD, an equal number of independent experts knowledgeable with respect to vacancy problems and management issues relating to public housing, and officials of the PHA.

(c) *Scope of assessment.* The assessment team shall assess the vacancy situation of the PHA to determine the causes of the vacancies, including any management deficiencies or modernization activities. At least one member of the assessment team shall consult with residents of the PHA's units regarding the vacancy situation of the PHA. The assessment team shall also examine indicators of the management performance of the PHA relating to vacancy, which shall include consideration of the performance of the PHA as measured by the indicators under paragraphs (A) and (E) of section 6(j)(1) of the Act (implemented by 24 CFR 901.10(b)(1) and 901.10(b)(5)).

(d) *Report of assessment team.* The assessment team shall submit to the PHA and the Secretary written recommendations for management improvements to eliminate or alleviate management deficiencies and for strategies to deal with vacant units. The assessment team may assist the PHA in preparing the vacancy reduction plan under § 968.407, including determining appropriate actions to eliminate vacancies.

§ 968.413 Funding.

(a) *Eligible activities.* Except as provided in paragraph (b) of this section, assistance may be provided under this subpart to PHAs submitting vacancy reduction plans for reasonable costs of the following activities:

(1) Implementing management improvements;

(2) Rehabilitating vacant dwelling units identified in the plan in accordance with § 968.407; and

(3) Carrying out vacancy reduction activities described in the plan in accordance with § 968.407.

(b) *Assistance to troubled PHAs.* Assistance may be provided to a troubled PHA for the activities identified in paragraphs (a)(2) and (a)(3) of this section only if the PHA:

(1) Demonstrates substantial progress in remedying any management deficiencies; or

(2) Provides reasonable assurances that substantial progress will be made to remedy any management deficiencies.

(c) *Costs of assessment teams.* The Secretary may use amounts appropriated for activities under this subpart for any travel, administrative, and other necessary expenses of assessment teams under § 968.410.

(d) *Determination of assistance amounts.* (1) Whether a PHA is to receive assistance, and the amount of any assistance, under this subpart will be determined through a competitive process. A portion of a PHA's plan, rather than the entire plan, may be funded. Each round of funding will be described in a Notice of Funding Availability published in the **Federal Register.** Funding rounds will parallel the schedule of assessments determined by the Secretary under § 968.410.

(2) In determining the amount of any assistance to be awarded to a PHA, HUD will consider the adequacy and reasonableness of the PHA's vacancy reduction plan, the capacity of the PHA's management to carry out the proposed activities in a timely and effective manner, the extent to which the proposed activities will improve the PHA's vacancy problem, and any other factors that the Secretary finds to be appropriate for inclusion in a Notice of Funding Availability.

§ 968.425 Other program requirements.

In addition to the program requirements applicable to this subpart under § 968.110, each PHA participating in the vacancy reduction program under this subpart shall certify that any modernization, reconstruction, or rehabilitation activities that are funded under this subpart will bring the affected vacant units into compliance with the Housing Quality Standards, as set forth in 24 CFR 882.109 and amended by the regulations concerning lead-based paint in the public housing at 24 CFR part 35.

Dated: April 29, 1993.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–12063 Filed 5–20–93; 8:45 am]

BILLING CODE 4210–33–M

federal register

Friday
May 21, 1993

Part V

Federal Communications Commission

47 CFR Parts 0 and 76

Cable Television Act and Cable Television Systems; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 76

[MM Docket No. 92–266, FCC 93–177]

RIN 3060–AF41

Cable Television Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order and Further Notice of Proposed Rule Making, which amends the Commission's rules to implement sections 623 (subscriber rate regulation), 612 (commercial leased access), and 622(c) (subscriber bill itemization) of the Communications Act of 1934, as amended by the Cable Act of 1992 is divided into two segments. The Further Notice of Proposed Rule Making (Further NPRM) may be found elsewhere in this **Federal Register.** The Further NPRM examines whether the Commission should refine its initial analysis by excluding the rates of cable systems with less than 30 percent penetration from its analysis of systems facing effective competition. The Report and Order summarized here, primarily: (1) Develops a process for identifying those situations where effective competition exists (and rate regulation is thus precluded); (2) establishes the boundaries between local, state, and federal responsibilities; (3) develops procedural and substantive rules to govern the regulation of basic service tier, cable programming related service, and equipment and service rates, and leased channel rates. The rules and procedures adopted in this decision are intended to ensure that subscribers pay reasonable rates for regulated cable services with minimum regulatory and administrative burden on cable entities.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Judy Herman, Scott Roberts, (202) 632–6302, Gina Harrison, (202) 632–7792, or Beverly McKittrick (202) 632–5414, Mass Media Bureau (information concerning certification, complaints, and procedures); Florence Setzer, (202) 653–5940, Office of Plans and Policy; and Jay Atkinson (202) 632–7500, or Patrick Donovan, (202) 632–1295, Common Carrier Bureau (information concerning rates, formulations, and calculations).

SUPPLEMENTARY INFORMATION: This is a synopsis of the Report and Order segment of the Commission's Report and Order and Further Notice of Proposed Rule Making in MM Docket No. 92–266, FCC 93–177, adopted April 1, 1993, and released May 3, 1993.

The complete text of this Report and Order and Further Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Report and Order

1. This Report and Order, as mandated by the 1992 Cable Act, enacts rate regulations for cable systems that, as a first step, provide for significant reductions in current cable rates. The Further NPRM segment of this decision may be found elsewhere in this **Federal Register.** The Further NPRM examines whether the Commission should refine its initial analysis by excluding the rates of cable systems with less than 30 percent penetration from its analysis of systems facing effective competition, even though such systems are defined as systems that face effective competition under sections of the 1992 Cable Act. In a related decision, the Commission issued an Order (58 FR 17530, April 5, 1993, revised at 58 FR 19616, April 15, 1993) freezing regulated cable service rates at the April 5, 1993, level for 120 days, from April 5, 1993, through August 3, 1993. The Notice of Proposed Rule Making (NPRM) in this proceeding may be found at 58 FR 48 (January 4, 1993). A list of parties commenting in response to the NPRM may be found in Appendix B of the full text of the Report and Order and Further Notice of Proposed Rule Making.

2. This Report and Order reflects a comprehensive approach to cable rate regulation that achieves a reasonable balancing of statutory requirements and that will promote the broad policy objectives reflected in the statute. As required by the 1992 Cable Act, it provides for regulation of cable rates by local franchising authorities and the Commission pursuant to jurisdictional and procedural requirements that have been designed to reduce burdens on cable operators, local authorities, the Commission, and consumers.[1] In addition, the requirements will govern permitted rate levels for cable service and balance the interests of consumers and of cable operators. The required rate reductions should not hinder the ability of the cable industry to continue to provide quality services to consumers. On a going forward basis, price caps for regulated cable systems will reduce administrative burdens and permit the continued growth of services while effectively governing future rate levels.

A. Rate Regulation of Cable Service

(1) Rollback of Cable Service Rates

3. The Report and Order first concludes that Congress was concerned that rates of systems not subject to effective competition reflect undue market power and are unreasonable to the extent they exceed competitive rate levels. This interpretation is buttressed by a Commission survey of cable system rates as of September 30, 1992, which revealed that, on average, rates of systems not subject to effective competition are approximately ten percent higher than rates of comparable systems subject to effective competition, as that term is defined in the statute. The results of this survey, as well as our reading of Congressional intent, thus indicate that the Commission's initial implementation of rate regulation of cable service should and will generally lead to significant reductions from current rate levels for most cable systems.

4. The Commission's rules will enable local franchise authorities to require rates for the basic tier, and the Commission to require rates for cable programming services on the basis of individual complaints, to fall approximately ten percent from their September 30, 1992 levels, unless the operator is already charging rates that are at or under the "competitive" benchmark level or unless the operators can justify a higher rate, based on costs. The Commission estimates that this rollback will affect approximately three-quarters of cable systems, with a total consumer benefit of approximately $1 billion. Rates of all regulated systems will then be subject to a price cap that will govern the extent to which rates can be raised in the future without a cost-of-service showing. The Commission will also examine systems with rates substantially above the benchmark to determine whether further rate reductions are appropriate, and will seek to refine the benchmark through further industry surveys, which could also result in additional rate reductions.

[1] For a more complete analysis of the Commission's program for minimizing the burden placed on small cable operators and on franchising authorities in less populated franchise areas, see the Final Regulatory Flexibility Analysis Statement in the full text of the decision and summarized below.

(2) Standards and Procedures for Identification of Cable Systems Subject to Effective Competition

a. Application of Effective Competition Tests

5. The Report and Order considers the definition of "effective competition." Cable service and equipment rates may only be regulated under the 1992 Cable Act if the cable system is not subject to effective competition. Under the statute, "effective competition" exists if: (a) Fewer than 30 percent of households in the franchise area subscribe to the cable system; (b) the franchise area is served by at least two unaffiliated multichannel video programming distributors (multichannel distributors) each of which offers comparable programming to at least 50 percent of households in the franchise area, and if the number of households subscribing to programming services offered by multichannel distributors other than the largest multichannel distributor exceeds 15 percent of households in the franchise area; or (c) the franchise authority itself is a multichannel distributor and offers video programming to at least 50 percent of the households in the franchise area.

6. The Report and Order, for purposes of applying the second and third statutory tests for effective competition, construes multichannel distributor generally to include entities that distribute more than one channel of video programming in a franchise area. More specifically, the Commission interprets multichannel distributors as including cable systems, multipoint distribution service (MMDS) operators, satellite master antenna television service (SMATV) operators, direct broadcast satellite (DBS) service operators, television receive-only earth station (TVRO) distributors, and video dialtone service providers.[2] However, the Commission finds that, in order to qualify as an entity effectively competing with a cable operator, the facilities a multichannel distributor uses cannot be those of the operator. Therefore, leased access providers operating on cable systems will not be treated as multichannel distributors. The Report and Order defers a ruling on whether a multiplexed broadcast signal qualifies a broadcaster as multichannel distributor until the question can be considered under more concrete circumstances, and also finds it too early in the development of local multipoint distribution service (LMDS) to conclude whether LMDS providers should be treated as multichannel distributors for purposes of the effective competition test.

7. Also, for purposes of applying the three statutory tests for effective competition, the Report and Order clarifies that a multichannel distributor's service is offered in a franchise area when the service is both technically and actually available, with no regulatory, technical, or other impediments to households taking service. Service will be deemed technically available when the multichannel distributor is physically able to deliver service to a household wishing to subscribe, with only minimal additional investment by the distributor, if necessary. The nature of such additional investment by the distributor will be controlling. Specifically, if the additional investment is of a community nature or is necessary to serve an entire neighborhood or community, the service will be held to be not technically available. On the other hand, if the additional investment is necessary to serve only a single subscriber or a few subscribers (*e.g.*, a low power signal booster), the service will be considered technically available. A service will be viewed as actually available if subscribers in the franchise area are reasonably aware through marketing efforts that the service is available. The full text of the Report and Order discusses in greater detail how the technical and actual availability tests apply to various multichannel distributors.

8. The Commission also interprets "household" for purposes of implementing the three statutory tests for effective competition. Each separately billed or billable customer will be counted as a household subscribing to or being offered video programming services, except that individual residences of multiple dwelling units will be treated as separate households. The Report and Order further concludes that, for purposes of applying the 15 percent threshold within the second statutory test for effective competition, the subscribers of alternative multichannel distributors should be determined on a cumulative basis. However, only those multichannel distributors that offer programming to at least 50 percent of households in the franchise area will be included in the 15 percent cumulative measurement.

9. The Report and Order determines that a multichannel distributor will be deemed to offer "comparable programming" to that provided by a cable system if it offers at least twelve channels of video programming, including at least one nonbroadcast channel.

b. Finding of Effective Competition

10. The Report and Order next considers the Commission's statutory mandate to "find" that a cable system is not subject to effective competition before authorizing rate regulation. The Report and Order finds that, for purposes of implementing rate regulation by local franchising authorities, cable operators will be presumed not to be subject to effective competition. Franchising authorities may rely on this presumption when filing a certification to regulate basic rates with the Commission, unless they have knowledge to the contrary. The cable operator will then have the burden of rebutting this presumption with evidence demonstrating that effective competition does in fact exist.

11. In order to ensure that cable operators have access to information necessary to mount a meaningful challenge to the presumption of no effective competition, the Report and Order requires that competitors respond, within 15 days to requests from cable operators for relevant information if such information is not otherwise available. Responses by alternative distributors to requests for information from cable operators may be limited to the numerical totals needed to calculate the distributor's reach and penetration in the franchise area. The Commission plans to initiate a rulemaking shortly proposing a requirement that competitors file with the Commission annual registration statements containing such data.

12. The Report and Order declines to adopt the NPRM's proposal that, as in basic service regulation, a determination of effective competition for cable programming services, subject to regulation by the Commission, be made on a system-wide basis where a single system services more than one franchise area. The Commission is concerned that regulation on a system-wide basis might have the effect of merging for regulatory purposes competitive and non-competitive franchise area. Thus, the Report and Order adopts a franchise-area approach to determining effective competition for cable programming service complaints.

(3) Regulation of the Basic Service Tier

a. Assertion of Jurisdiction Over Basic Service and Equipment Rates

13. The *Report and Order* next discusses several issues pertaining to

[2] One exception is that a joint venture between a telephone company and a cable system located in the same franchise area to offer video dialtone service will not be considered effective competition to that incumbent system.

regulation of the basic cable service tier. It first reviews the matter of jurisdiction over basic rate regulation. Briefly, the 1992 Cable Act requires local authorities wishing to regulate basic service and equipment rates to certify in writing to the Commission that: (1) Their rate regulations will be consistent with the rate regulations prescribed by the Commission; (2) they have the legal authority to adopt, and the personnel to administer, rate regulations; and (3) their procedural rules provide an opportunity for consideration of the views of interested parties. Such certification filed with the Commission by a franchising authority will become effective 30 days after filing unless the Commission finds that the franchising authority has not met one of the three criteria above. If the Commission disapproves the certification, after notice and a reasonable opportunity for the authority to comment, the franchising authority will be notified of any revisions or modifications necessary to gain approval. If certification is disapproved or revoked, the Commission will exercise the franchise authority's regulatory jurisdiction until the authority becomes qualified by filing a new certification that meets the requirements set forth above. Such new certifications will become effective upon approval by the Commission, which approval (or disapproval) will be issued within 90 days of filing.

14. The Report and Order analyzes the division of rate regulation responsibilities between the Commission and local governments. The Commission is concerned about situations where a franchising authority chooses not to file a certification because it knows that it cannot meet certification standards, particularly that it does not have the resources to administer rate regulation or the legal authority to act, but nevertheless believes that rates in the franchise area should be regulated. Where a local franchising authority notifies the Commission that it lacks the legal authority to regulate basic service rates, the Commission will assume jurisdiction until the local government secures such authority. Local governments requesting that the Commission assume jurisdiction on this ground should submit with their request a statement detailing the nature of the legal infirmity. If an otherwise qualified franchising authority does not meet the other certification requirements or its procedural regulations do not provide interested parties an opportunity to comment as provided in section 623(a)(3)(C) of the 1992 Cable Act, the Commission will permit the authority an opportunity to cure the defect. As required by section 623(a)(6) of the 1992 Cable Act, the Commission will assume jurisdiction until the franchising authority cures the defect.

15. If a franchising authority requests that the Commission assume jurisdiction over basic tier rates because the franchising authority lacks sufficient resources, it must demonstrate why its franchise fees are inadequate to provide the necessary resources.

16. The Commission will not regulate basic rates where a local government voluntarily chooses not to seek certification because it is satisfied with the rates charged by the local cable operator.

17. All provisions in cable franchising agreements that prohibit rate regulation by franchise authorities are preempted by the 1992 Cable Act. Where rate regulation is barred at the state level, *i.e.*, where neither the state nor the locality may regulate rates, the franchising authority will be considered to lack the legal authority to regulate cable rates, and the Commission will assume jurisdiction over basic service and equipment rates until the franchising authority can be certified. State laws, however, that prohibit local governments, but not state governments, from engaging in rate regulation are not preempted. In these cases, basic rate regulation will be conducted at the state level. In a related matter, the Massachusetts Community Antenna Television Commission (MCATC) seeks clarification of the term "franchising authority," for rate regulation purposes, and specifically, asks whether MCATA would be considered a franchising authority as authorized by the 1992 Cable Act. In response, the Report and Order cites the definition of "franchising authority" as "any governmental entity empowered by Federal, State, or local law to grant a franchise." In Massachusetts' case, this entity is MCATC.

18. Franchising authorities intending to regulate basic rates must first submit a certification form with the Commission. The form, which will be available from the Commission, is published below. Franchising authorities will be required to serve copies of their certification requests on cable operators on or before the date the certification form is filed with the Commission.

19. The Commission will permit but not require two or more communities served by the same cable system to file a joint certification and exercise joint regulatory jurisdiction. Joint certification for communities served by different systems will also be permitted.

20. Because of the statutory requirement that franchising authority certifications become effective within 30 days of filing unless the Commission finds the certifications requirements are not met, operators will not be afforded an opportunity to contest any of the grounds for certification before certification. Therefore, challenges to certification will be allowed only after the fact, as discussed below. Operators will also not have an opportunity to contest a finding of effective competition at the Commission until after a franchising authority is certified. However, cable operators may challenge a finding of effective competition before rate regulation can be imposed upon them.

21. The certification process will work as follows. Franchising authorities may begin filing certifications with the Commission on June 21, 1993 although there is no deadline by which a franchising authority must seek certification. The franchising authority must use the Commission's certification form and must certify that it has served a copy of the certification request on the cable operator. The franchising authority must either send the certification form by registered mail, "return receipt requested," or hand-deliver the form to the Commission and obtain a date-stamped copy. Franchising authorities will not be notified when their certification becomes effective. The certification will take effect 30 days after it is filed unless the Commission denies certification within that period. The franchising authority will then have 120 days in which to adopt regulations consistent with the Commission's regulations and, if such rules are not already in place, to promulgate rules providing a reasonable opportunity for consideration of the views of interested parties. The franchising authority must notify the cable operator that it has been certified and has adopted appropriate regulations before it can begin regulating rates and, if necessary, ordering refunds.

22. Cable operators may file a petition for reconsideration of the franchising authority's certification, subject to normal Commission requirements and procedures, including the statutory requirement that such a petition be filed within 30 days. The 30-day period will begin to run from the 30th day after the certification was filed with the Commission. A petition for revocation, however, may be filed at any time after the expiration of the reconsideration period. If the petition for reconsideration challenges the finding

that effective competition is absent, rate regulation will be automatically stayed until resolution of the petition, subject to refund liability back to the date the petition was filed if the Commission subsequently determines that there is no effective competition.

23. Challenges to franchising authority certifications on other grounds may also be raised by a petition for reconsideration, if filed within 30 days, or later by a petition for revocation. The Commission will not impose an automatic stay of rate regulation when such challenges are made. However, the party filing the petition may request a stay of rate regulation. If the Commission receives a large volume of petitions for reconsideration of certification requests, the effective competition challenges will be reviewed first. The remaining petitions will then be processed generally on the basis of the size of the community, the largest communities being considered first. Other factors, such as date of filing, however, may also be a factor in determining which challenges will receive priority. Smaller communities in need of immediate relief may petition the Commission for expedited consideration.

24. Where the Commission denies a certification on other than effective competition grounds, the franchising authority will be notified and informed of any modifications that must be made in order to obtain Commission approval. If, after this opportunity to cure, the authority still fails to meet the certification requirements, its certification will be denied and the Commission will regulate basic service rates. Cable operators and franchising authorities may appeal the Commission's decision on reconsideration, subject to normal procedures (47 CFR 1.101–1.120).

25. A franchising authority's certification will be revoked if, after a reasonable opportunity to comment, it is determined that state and local laws and regulations do not conform to the Commissions' rate regulations governing cable rates. A franchising authority's certification may also be revoked if it fails to fulfill one of the three conditions for certification set forth above. However, in the latter cases, the Commission will first remand to the franchising authority with directions on how defects should be corrected. Resubmissions will be considered on an expedited basis. In all cases of revocation, the Commission will assume jurisdiction over basic service rates until an authority becomes recertified. While a petition for revocation on a basis other than the presence of effective competition is pending, however, and absent grant of a stay, the franchising authority may continue to regulate the basic service rates of its franchisees.

26. A petitioner for revocation against a franchising authority must serve a copy of its petition on the franchising authority, and the petition must contain a statement that such service was made. Franchising authorities will be allowed 30 days to file oppositions to such petitions, and 15 days will be allowed for replies.

27. A cable operator once not subject to effective competition that later become subject to effective competition, may petition the franchising authority to change its regulatory status. Oppositions must be filed within 15 days of the time public notice of the petition is given. Oppositions must be served on the operator, who bears the burden of proving the existence of effective competition. Franchising authorities must provide operators with seven days to reply, and must reach a decision on such petitions within 30 days after the pleading cycle closes. That decision must be publicly released. Franchising authorities further must submit to the Commission within ten days any decision changing the regulatory status of the cable system. Such decisions will become final 30 days from the public notice of the decision, unless the Commission receives a petition or other pleading opposing it, or decides on its own motion that the decision is defective. If the initial determination that effective competition exists is upheld, the franchising authority and the Commission would cease regulating basic cable service rates. Operators denied a change in status by a franchising authority would be entitled to seek review of that finding by the Commission, by means of a petition for revocation as discussed above. In situations where a franchising authority has not been certified, an operator may petition the Commission directly for a change in status, and the same time period for filing pleadings as set forth above for local franchising authorities will apply.

28. In order to expedite a finding of changed status, a joint statement may also be submitted by the cable operator and a franchising authority stating that effective competition exists. The joint statement must state which of the three statutory tests for effective competition has been met and explain how the test has been satisfied. The statement must also be released to the public by the franchising authority on or before the day it is submitted to the Commission. Such joint statements will become final decisions within 30 days of filing with the Commission, unless challenged by an interested party.

29. Upon denial or revocation of certification, the Commission will notify the local franchising authority and the cable operator of the action, and inform them that the Commission is assuming jurisdiction over regulation of basic service rates. Cable operators will be required to file their basic rate schedule with the Commission and with the local franchising authority, on the appropriate Commission form, within 30 days of notification. Basic rate filings for existing rates or proposed rate increases for services and equipment (including increases in the average channel charge that result from reductions in the number of channels in a tier) must calculate relevant benchmarks, caps, and permitted adjustment factors as indicated on the appropriate FCC form. Cable operators with existing or proposed rates above the permitted per channel rate must submit a cost-of-service showing sufficient to support a finding that the rates are reasonable.

30. Basic rate filing must be served on the franchising authority on or before the day they are filed with the commission. Such filings will be placed on public notice by the Commission. Filings proposing rates or rate increases within the Commission's reasonableness standard must be made on 30-days notice and can become effective 30 days after public notice of them is given if they are unopposed, unless the Commission issues an order deferring their effective date or denying them.

31. Filings proposing rates above the presumptively reasonable level must be made on 90-days notice and be accompanied by a cost-of-service showing. Petitions opposing filings which propose a rate or rate increase that falls under the presumptively reasonable level must be filed within 15 days after public notice of the filing, and must be served on the cable operator. Oppositions will be due five days after filing of the petition. Petitions opposing filings which propose rates above the presumptively reasonable level should be filed within 30 days after public notice of the rate filing, with oppositions due in ten days after petitions are filed. Although the Commission expects that filings proposing a rate above the presumptively reasonable level can be reviewed within the same 180-day constraint imposed on franchising authorities, extraordinary circumstances, such as the volume of cases, could prevent resolution of all basic rate cases which come to the

Commission within the same 180-day deadline.

32. The Commission will assume basic rate jurisdiction until the franchising authority files a "petition for recertification" and the petition is subsequently approved. The petition should be clearly marked as a "petition for recertification," should contain a clear showing, supported by either objectively verifiable data or affidavit reasons for revocation or denial no longer pertain, and must attach a copy of the earlier decision denying or revoking the original certification. The new certification request must be served on the cable operator and any interested party that participated in the proceeding denying or revoking the original certification. Any party wishing to oppose the new certification request must do so within 15 days after the request is filed. The authority may reply within seven days.

b. Implementation and Enforcement of Basic Tier Rates

33. *Review by Local Franchising Authorities.* The cable operator will then have 30 days to file its schedule of rates for the basic service tier and accompanying equipment with the franchising authority.

34. A two-step approach will be used regarding franchise authority review of a cable operator's current basic service rates and proposed rate increases. Under the first step, if a franchising authority is able to determine that a cable operator's current rates for the basic service tier and accompanying equipment are reasonable under the Commission's rate standards, the rates will go into effect 30 days after filing with the franchising authority. Similarly, if the franchising authority finds that a proposed rate increase is reasonable under the Commission's rules, the increase will go into effect 30 days after filing with the franchising authority.

35. Under the second step, if the franchising authority is unable to determine whether the proposed rates are reasonable, based on the material before it, or if the cable operator has submitted a cost-of-service showing seeking to justify a rate above the reasonable level, the franchising authority may toll the effective date of the proposed rates for 90 additional days if necessary to ensure that a proposed rate is within the Commission's reasonableness standard. It may also toll the effective date of the proposed rates for 150 days to evaluate a cost-of-service showing seeking to justify a rate above the presumptively reasonable level.

36. To toll the effective date of the proposed rates, the franchising authority must issue a brief order, within the initial 30-day period, explaining tha the franchising authority needs additional time to review the proposed rates. If the franchising authority is unable to determine whether the proposed rate complies with the Commission's reasonable rate standard, then the order tolling the effective date of the proposed rate should explain why the franchising authority could not make such a determination. The order should also provide the cable operator an opportunity to cure any deficiencies in its original filing. If the franchising authority fails to take action on proposed rates within these additional 90 or 150 days, the proposed rates will go into effect, subject to subsequent refund orders. If a franchise authority wishes to retain the right to order refunds, it must, at minimum, issue an order stating that it will need additional time to reach a decision on the merits of the proposed rates, and request that the operator keep accurate account of all amounts received by reason of the proposed rate and on whose behalf such amounts are paid.

37. To assure that interested parties have an adequate opportunity to comment, cable operators will be required to notify subscribers in writing of a proposed increase in the rates for the basic service tier and accompanying equipment at approximately the same time it notifies the franchising authority, *i.e.*, at the billing cycle that is at least 30 days before any proposed increase is effective. Cable operators will not, however, be required to publish a notice of a proposed rate increase in newspapers or provide information to subscribers regarding how to lodge complaints. Operators must include in their subscriber notifications the name and address of the local franchising authority, so that the requisite information for public participation in ratemaking proceedings can be readily obtained by a subscriber.

38. The rules adopted leave franchising authorities flexibility regarding the manner in which interested parties will be permitted to participate meaningfully in rate proceedings. In fact, many jurisdictions already have rules governing pleading cycles and public participation in such proceedings. However, any such rules must provide a reasonable opportunity for consideration of the views of interested parties, and should take into account the time periods that franchising authorities have to act on either initial review of basic cable rates or requests for increases.

39. A franchising authority will be required to issue a written decision whenever it disapproves either an initial basic cable rate or a request for an increase in whole or in part, or approves a proposed rate over the objections of interested parties. However, an authority is not required to issue a written decision if it is approving a basic cable rate or rate increase in its entirety and there have been no objections. Franchising authorities can also decide for themselves whether and when to conduct formal or informal hearings as long as they act on rate cases within the prescribed time periods established above, and provide interested parties with notice and a meaningful opportunity to participate. Thus, no rule is adopted to govern this issue.

40. The Report and Order further establishes that the burden of proof should be on the cable operator to demonstrate that its initial rates for the basic service tier and accompanying equipment, or proposed increases in these rates, comply with section 623 of the 1992 Cable Act and the Commission's implementing regulations. If an initial rate or a proposed increase is presumptively reasonable under the Commission's standards, then the cable operator will merely have to show how the rate at issue meets the criteria. However, if an initial rate or a proposed increase exceeds the presumptively reasonable level, then the cable operator will have to make a cost-of-service showing to justify the proposed rate. The filing of existing rates in excess of the Commission's presumptively reasonable level for the basic service tier, whether or not accompanied by a cost-of-service showing could result in a prospective rate reduction or a rate prescription.

41. Pursuant to the new rules, franchising authorities have the right to collect information, including proprietary information, to make a rate determination in those cases where operators have submitted initial rates or have proposed increases that exceed the Commission's presumptively reasonable level, as defined by the Commission's regulations. In cases where initial or proposed rates comply with the Commission's reasonableness standard, however, requests for additional information should relate to having an operator properly document that its prices are in accord with that standard. The Commission will require, to protect the confidentiality of certain business information, that the franchising authorities apply the same procedures that the Commission will apply regarding information submitted to the

Commission in the cable programming services complaint process. (*See* 47 CFR 0.459.)

42. Regarding automatic adjustments, the Report and order states that certain price changes beyond a cable operator's control (discussed further infra) can automatically be passed through to subscribers in addition to the reasonable rate. However, a cable operator must notify a franchising authority 30 days in advance of a rate increase based on automatic adjustment items, and the authority must pass on them within these 30 days.

43. *Remedies and Appeals.* The first remedy available to a franchising authority in conjunction with an initial review of rates for the basic service tier and accompanying equipment is a prospective rate reduction. Under this remedy, after a review of basic service tier and equipment rates, if a franchising authority determines that the rates for the basic service tier or equipment exceed permitted levels, that franchising authority may order a prospective reduction of those rates to bring them into compliance with the Commission's rate standards. In addition, reductions below the permitted basic service tier rate may be ordered if a cable operator opts for a cost-of-service showing.

44. A second remedy, a rate prescription may also be utilized. Under this remedy, a franchising authority may prescribe a reasonable rate in place of a proposed unreasonable rate. The prescribed rate may not be lower than the Commission's permitted rate, unless the operator has sought to justify the proposed basic service tier rate by a cost-of-service showing. In such a case, a franchising authority could reduce an operator's rate for the basic service tier to a level below the Commission's permitted rate level, if indicated by cost-of-service showing.

45. The third remedy the Commission considers is whether and when a franchising authority can order refunds to subscribers. The Commission, while concluding that franchising authorities will be able to order refunds, stresses that this is not an unlimited power, but should be used mainly in three situations. First, if a cable operator fails to comply with a rate decision and continues to charge unreasonable rates, the authority can order refunds back to the effective date of its rate order. Second, as part of its initial review of existing cable rates, an authority has the discretion to order refunds for unreasonable rates that exceed the Commission's permitted levels absent a persuasive cost-of-service showing by the operator. The permissible refund period ends on the date the operator implements a prospective rate reduction or begins charging a prescribed rate and begins either at the effective date of our rules on this matter or one year, whichever is a shorter period. Third, if an authority has tolled a proposed rate increase for 90 or 150 additional days and has not completed its review by the end of these time periods, the proposed rates can go into effect subject to a refund if portions of the rates are later found to be unreasonable. The refund period will be calculated from the date of the accounting order to the point a prospective rate reduction is issued, and then back in time from the date of the accounting order to the effective date of our rules, or to the point where the total refund period would equal one year, whichever is less.

46. A franchising authority must afford cable operators due process by providing notice and an opportunity to participate before ordering refunds. Franchising authorities, in administering the payments of refunds, should follow procedures analogous to those which the Commission is adopting for refunds for cable programming services. Refunds could include interest, computed at the applicable published Internal Revenue Service rates for tax refunds and additional tax payments.

47. While a franchising authority may have such remedies available under local law, the Commission does not believe it necessary for franchising authorities to use punitive sanctions such as fines or forfeitures for violations of rate regulations. Therefore, the Commission preempts local laws to the extent that they permit the use of such sanctions merely upon a determination that either existing rates on a request for an increase is unreasonable.

48. Once a franchising authority issues a rate decision, interested parties, including the operator, may wish to appeal it. The Commission is the sole forum for appeals of local decisions on rates for the basic service tier and accompanying equipment involving whether or not a franchising authority has acted consistently with the 1992 Cable Act or our implementing rules. Appeals must be filed within 30 days of the date a franchising authority publicly releases the text of its rate decision as computed under 47 CFR 1.4(b). Oppositions can be filed within 15 days after the appeal is filed and must be served on the party appealing the rate decision. Replies can be filed within seven days after the last day for filing oppositions and shall be served on the parties to the proceeding. Appeals of local rate decisions that do not depend upon determining whether a franchising authority has acted consistently with the 1992 Cable Act or the Commission's appeal could be heard in state or local courts.

49. *Notification of Availability of Basic Service.* Cable operators must notify subscribers of the availability of basic tier service within 90 days or three billing cycles from the effective date of the rules adopted in this proceeding and notify new subscribers at the time of installation. To the extent that this notification requirement conflicts with local franchise agreements or rules, the commission is preempting local regulations. Operators who can demonstrate that they have satisfied the notification requirement in the 12 months prior to the effective date of our cable regulations will be exempt from this requirement as it pertains to current subscribers, provided that their notice conforms to the format and content requirements of our rules. Such notification must be included with the cable bill, so that it is not lost in promotional material. However, it is not required that this notice be included in all sales literature prior to installation and hookup.

50. Notification of basic service tier availability must state not only that a basic tier service is available, but must also set forth the price of the service and list the services that are included. This notification should be in a written form which "clearly and conspicuously" informs the subscriber of the above information. Finally, although cable companies will not be required to maintain copies of such notifications in their public inspection files, the cable company will bear the burden of providing that it is in compliance, if challenged.

c. Regulation of Basic Service Tier and Equipment Rates

51. *Components of the Basic Service Tier Subject to Rate Regulation.* The 1992 Cable Act requires cable operators to offer subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. The basic tier must include, at a minimum, all must-carry signals, all PEG channels required by the franchising authority to be carried on the basic tier, and all domestic television broadcast signals other than superstations, whether carried pursuant to mandatory carriage provisions or a retransmission consent agreement. The cable operator may add other channels of programming to its basic tier at its discretion. The statutory definition preempts provisions of franchise agreements that require

additional services to be carried on the basic tier.

52. In examining the language of 47 U.S.C. 543(b)(7)(A), and the 1992 Cable Act's legislative history, the Commission finds that subscribers must purchase the basic service tier in order to gain access to any video programming, included that offered on a per-program or per-channel basis. However, purchase of the basic tier is not required in order to buy non-video programming services such as digital cable radio and personal communications services.

53. The *Report and Order* determines that cable operators subject to rate regulation may have only one "basic" tier which must be unbundled from all other tiers. Multiple basic tiers will not be permitted for rate regulation purposes.

54. *Regulations Governing Rates of the Basic Service Tier.* The 1992 Cable Act requires the Commission to establish regulations that will assure reasonable rates for the basic service tier, but does not explicitly define "reasonable." Instead, it requires that regulations be designed to achieve statutory goals and take into account the enumerated statutory factors. We conclude that the statute does not require the Commission to place primary weight on any of the statutory factors governing rates for the basic service tier, but that we may do so as part of a reasoned balancing of statutory requirements and factors. Based on statutory findings and goals, as well as results from the Commission's industry survey, the Commission determines that under the statute we can, and should, place primary weight on the rates of systems subject to effective competition. Accordingly, the Commission's regulations governing rates for the basic service tier are aimed toward achieving rate levels that are closer to rates of systems subject to effective competition.

55. The *Report and Order* examines the relative merits of a benchmarking versus a cost-of-service approach as the primary method for regulating rates for the basic service tier. The Commission concludes a benchmark will be incorporated into the framework for regulation of basic service tier rates because a benchmark formula can protect consumers from excessive rates and keep the costs of administration and compliance low. The Commission's rules, however, allow cable operators to use cost-of-service principles to justify rates higher than permitted by the system's benchmark.

56. Local authorities may not elect cost-of-service regulation as their primary mode of regulation of the basic service tier, because such an approach would be less consistent with Congressional intent than benchmark regulation. Therefore, local governments must apply the benchmark system of rate regulation.

57. The Commission declines to adopt a regulatory framework for cable service that seeks lower per-channel rates for the basic service tier in comparison to higher tiers because any supposed advantages in producing a low priced basic tier would be eviscerated by the incentives for cable operators to reduce offerings on the basic service tier. Accordingly, the Commission establishes a tier-neutral framework for rate regulation that applies the same standards of reasonableness to the basic service tier and to cable programming services.

58. The Report and Order discusses the various benchmark alternatives proposed in the NPRM. The Commission perceives a Congressional concern reflected in the Cable Act of 1992 that current rates for cable service result, in part, from an ability to raise rates to unreasonable levels because of a lack of effective competition, and that rates are unreasonable to the extent they exceed competitive levels. This concern is confirmed by the results of the Commission's industry survey, which finds the rates of systems not subject to effective competition exceed competitive levels by approximately 10 percent on an average industry basis. Thus, the Commission concludes that the reasonableness of rates of the basic service tier shall be determined by reference to the rates of systems subject to effective competition. The Report and Order, therefore, adopts a benchmark formula based on the average September 30, 1992, rates of systems subject to effective competition. In general, the formula will be used to calculate the rate that the average cable system with a given number of channels, subscribers and satellite-delivered signals would charge if it faced effective competition. The Commission's industry survey does not provide a sufficient basis for identifying other system characteristics that would warrant application of different rate structures. As the Commission gains more experience with cable rate regulation, it may reevaluate this conclusion. This competitive benchmark is expressed as a rate per channel. The Commission adopts and provides a table of benchmark rates denied from the formula, for systems with particular numbers of channels, subscribers, and satellite signals.

59. The Commission concludes that it will consider reasonable a per channel rate for the basic service tier that is at, or below, the benchmark level when a system becomes subject to regulation. Where a cable system is not charging rates that are above its competitive benchmark level, the Commission can assume that its rates do not reflect undue market power, even in the absence of effective competition. Therefore, the initial regulated rate for such a system shall be its rate in effect on the date the system becomes subject to regulation, regardless of the amount that rate is below the benchmark.

60. Rates exceeding the applicable benchmark at the time regulation begins are presumptively unreasonable, because they exceed the average rate charged by systems subject to effective competition with a given number of channels, subscribers and satellite-delivered signals. Some systems with rates at the onset of regulation that are above the benchmark may have had rates that were below their benchmark level on September 30, 1992. Such systems are not subject to a rollback from levels in effect on September 30 because the rates were presumptively reasonable on that date. These systems must reduce rates from existing levels to the benchmark, but they may maintain increases from September 30, 1992 levels up to the benchmark, and adjust rates to reflect inflation.

61. For a system with basic tier rates above the benchmark both when it becomes subject to regulation and on September 30, 1992, the maximum permitted rate will be the September 30, 1992 rates reduced up to 10 percent, but no lower than the benchmark rate for that system.

62. Instead of requiring all systems to now reduce rates to benchmark levels, the Commission will take the following steps to address systems with September 30, 1992, rates more than 10 percent above their benchmark level: (1) Conduct further surveys to refine the competitive benchmark, and further assess the competitive rate differential between systems subject, and not subject, to effective competition, and to gather cost information; (2) examine in the Further NPRM whether the Commission can, or should, exclude from competitive benchmark calculations, systems with less than 30 percent penetration; and (3) carefully scrutinize, through cost investigations, rates of cable systems that exceed the benchmark by significant amounts even after the 10 percent rollback.

63. The foregoing determinations define the initial permitted rate for the basic service tier when the system becomes subject to regulation. Those systems with initial rates based on adjusted September 30, 1992 rates, may

further adjust those rates to reflect inflation occurring between September 30, 1992 and the time when regulation of the basic service tier begins. They must also apply an efficiency adjustment, specified in the rules, to those rates if the total number of subscribers or channels on the system changes between September 30, 1992 and the time of regulation. After those adjustments are made, the initial permitted rate for the basic service tier will then be capped as described in the next section.

64. The benchmark formula is set forth as explained in appendix E of the full text of the Report and Order and Further Notice of Proposed Rule Making. However, to assist operators and regulators in applying the formula, and to ensure its uniform application, the Commission has developed FCC Form 393, that sets forth precisely how the formula is to be used in calculating the permitted rate for a regulated cable system. This form must be used when systems submit their basic rate schedule for review to local franchise authorities (or the Commission, where it is regulating basic rates). Similarly, the form must be used by cable operators when responding to subscriber complaints filed at the Commission concerning cable programming service rates.

65. Having applied the benchmark formula to determine a given system's competitive per channel rate, the system must then calculate its current per channel rate using the same methodology, so that it may be compared to the competitive benchmark. Form 393 sets forth the precise computations that should be made to ascertain the system's rate per channel as of the initial date of regulation.

66. The Commission adopts price cap requirements to govern rate increases for the basic service tier once the initial regulated per channel rate has been determined. A price cap approach is an effective alternative to cost-of-service regulation in other regulated areas, and is consistent with the Commission's statutory mandate. At the same time, the Commission has provided for adjustments to the price cap, based on inflation and other factors beyond an operator's control, to assure that the cap does not unduly restrict cable operators' ability to recover costs. The possibility of a cost-of-service showing will also assure that cable operators can recover appropriate costs of service. The price cap rate for the basic service tier will be expressed as a rate per channel to facilitate rate calculations and review.

67. Those systems with rates in effect on the date regulation begins that are below the benchmark, as calculated pursuant to FCC Form 393, are not subject to rollbacks, but will nonetheless have their rates capped at the level in effect on that date. Rate increases for such systems will then be subject to price caps on a going-forward basis, unless a cable system justifies higher rates based on cost-of-service principles.

68. The Report and Order also establishes an annual adjustment index that permits changes in each system's cap for the basic service tier based on general changes in the cost of doing business. The Commission adopts the GNP fixed weight price index (GNP–PI) as the annual adjustment index for the cap for basic service tier rates. Under these rules, cable operators may adjust the capped base per channel rate for the basic service tier annually after the final GNP–PI is published by the Department of Commerce for the preceding year. This approach represents the best balance between the administrative burdens imposed by more frequent rate adjustments and the need to permit prompt adjustments for inflation.

69. There are several categories of costs that cable operators may "pass through" to subscribers without a cost-of-service showing, even if resulting rates exceed the applicable price cap. (For cost reductions in these categories, however, cable operators must make rate reductions to reflect such savings.) The Commission first considers retransmission consent fees, and concludes that such costs should be treated as external to the benchmark. However, the Commission is concerned that external treatment during the initial period in which cable operators and broadcasters will establish retransmission consent agreements may unduly skew incentives away from fair bargaining for reasonable retransmission fees. The Commission believes that a delay in onset of external treatment for retransmission consent fees will serve to protect subscribers from any precipitous increase in rates after October 6, 1993. Hence, the Commission will accord retransmission consent costs external treatment only after October 6, 1994, and only for new or additional fees beyond those already in effect on October 6, 1994. The Commission will also monitor initial retransmission consent agreements and their potential impact on subscribers, and may reexamine external treatment if it appears that retransmission consent fees have an unwarranted impact on subscribers.

70. The Commission will also treat programming costs other than retransmission consent, as external to the benchmark. We will monitor the impact of external treatment of programming cost increases and consider making programming costs subject to the cap if it appears that this treatment is disserving subscribers. The Commission's accounting and cost allocation requirements will determine the share of programming costs to be allocated to the basic service tier. The Report and Order also limits external treatment of programming costs for programming obtained from affiliated entities to the percentage change in the admissions component of the Consumer Price Index between the effective date of the price increase and the date the previous price took effect.

71. The Commission also excludes from the cap, taxes, franchise fees, and the costs of satisfying franchise requirements, including the costs of satisfying franchise requirements for local, public, educational and governmental (PEG) access channels. The Commission's accounting and cost allocation requirements provide that costs associated with PEG channels carried on the basic tier will be directly assigned to the basic tier where possible, and remaining costs will be allocated between tiers in proportion to the number of channels on each tier. Because franchise fees may be assessed on a tier-subscriber, or revenue-sensitive basis, the Commission will require that franchise fees be allocated between tiers and subscribers in a manner reflective of the way they are assessed. The specific methodology to be used in calculating and allocating external costs will be prescribed in Commission forms.

72. The Commission determines that for all categories of external costs other than franchise fees, changes in external costs shall be measured from the date on which the system becomes subject to regulation, or 180 days from the effective date of our regulations (December 20, 1993), whichever occurs first. Thus, any changes in external costs occurring prior to that date, including from September 30, 1992, will not be accorded external treatment. The industry competitive rate level derived from the Commission's survey data which formulated the benchmark formula was adjusted to remove franchise fees. Thus, the Commission permits the full amount of franchise fees to be accorded external treatment at the time the system becomes subject to regulation, rather than only the amount of additional franchise fees incurred after that date.

73. Finally, for all categories of external costs, other than franchise fees, the Commission permits external treatment for increases in such costs only to the extent that they exceed inflation as measured by the GNP–PI. This requirement does not apply to franchise fees, however, because the benchmark and the Commission prescribed formula for determining the permitted per-channel rate, are adjusted to exclude franchise fees. Thus, the total amount of increases in franchise fees will be accorded external treatment. Similarly, since the benchmark does not reflect retransmission consent fees, we will accord external treatment to the total amount of retransmission consent fees, after October 4, 1994.

74. The Commission additionally finds that increases for external costs up to the full extent of inflation will not be permitted if, in fact, they have not increased by the full amount of inflation. Thus, the Commission will also require that permitted per channel rates be adjusted downward from the rate that would result if based on a full inflation adjustment, to the extent one or more external costs increase less than inflation.

75. As detailed above, the Commission's primary method of regulating cable service rates will be a price cap mechanism applied to rates determined in relation to the competitive benchmark. However, the starting price cap level is based on industry-wide data and does not necessarily reflect individual systems' costs of providing cable service. Thus, the Commission cannot be certain that the initial capped rate will permit all cable operators to fully recover the costs of providing basic tier service and to continue to attract capital. Accordingly, a cable operator is permitted to make a cost-of-service showing to determine the reasonable rate for its system anytime it wants to propose a rate higher than its benchmark-derived on price cap-permitted rate. The Commission rejects the alternative of permitting cable operators to exceed the cap only when the rate as applied to them is determined to be confiscatory. Thus, an operator may exceed the benchmark or capped rate if it can make the necessary cost showings in certain circumstances. The fact that an operator has incurred a cost will not establish its right to recover that cost from subscribers. The extent to which costs can be recovered from subscribers will be governed by cost-of service standards. The Commission will permit local authorities to prescribe any rate that is justified by the cost showing, precluding a rate lower than the benchmark in the operator's current rate level.

76. The Report and Order considers cost-of-service standards to govern the extent to which cable operators may exceed capped rates for the basic service tier based on costs. The Commission believes that cost-of-service standards should be established at the national level. However, the current record is not sufficient to permit the crafting of detailed cost-of-service standards for cable service. Accordingly, a Second Further Notice of Proposed Rulemaking will be issued shortly to seek additional comment on the development of appropriate standards.

77. Pending this rulemaking, which the Commission intends to complete on an expedited basis, cable operators may elect to maintain current above benchmark rates and attempt to justify them in their initial rate filings based on cost-of-service showings. Cable operators that reduce rates in accordance with Commission requirements may seek to raise rates above the cap pursuant to the general procedures the Commission is establishing for cable operators seeking rate increases for the basic service tier. Local authorities (or the Commission in situations where it regulates basic rates) will review cost-of-service showings by cable operators seeking to raise rates above capped levels. Cable operators or subscribers may then appeal the local decision to the Commission. The Commission will review such local decisions on a case-by-case basis pending the cost-of-service rulemaking.

78. *Regulations Governing Rates for Equipment.* This segment of the Report and Order establishes regulations which set, on the basis of actual cost, the rates for installation and lease of equipment used by subscribers to receive the basic service tier, and installation and lease of monthly connections for additional television receivers. The Commission first defines what equipment is covered by the mandate in the 1992 Cable Act.

79. The Report and Order concludes that equipment "used to receive the basic service tier" is broadly interpreted and includes converter boxes, remote controls, connections for additional television sets and cable home wiring. The Commission's expansive reading of the phrase "used to receive the basic service tier" means that equipment and installations used to receive both basic tier service and other services, would be regulated according to actual cost guidelines described below. Although the Commission believes that Congress intended the Commission's regulations to encourage a competitive market in the provision of equipment and service installation, the Commission does not have, at this time, the information it would need to establish a separate effective competition test for installation and equipment. The Commission has begun a proceeding to investigate these issues. (See Notice of Inquiry in ET Docket No. 93–7, 58 FR 7205, February 5, 1993.) Therefore, all systems subject to rate regulation must comply with the actual cost standards for equipment and service installations used to receive the basic service tier.

80. The Commission next decides that cable systems must unbundle charges for equipment, installation, and additional outlets from the rates for basic service. In addition, an operator must calculate individual charges for installation, remote control unit, and converter box. An operator may establish one charge for all other customer equipment or develop individual charges for specified other equipment.

81. The Report and Order establishes actual cost standards for setting rates for lease of equipment and installation. Local franchising authorities regulating equipment used to receive the basic service tier shall require cable operators to establish an Equipment Basket to which the operator will assign the direct costs of service installation, leasing, maintaining and servicing customer equipment, but not the direct costs of equipment sold to customers. The Basket will include an allocation of all system joint and common costs that installation, leasing and repairing equipment share with other system activities, excluding general system overhead. The Equipment Basket costs include a reasonable profit. An operator must also calculate an Hourly Service Charge ("HSC") through which it would recover all Equipment Basket costs (including a reasonable profit) except for the operator's costs of purchasing and financing the lease of customer equipment. The HSC will be computed by taking the sum of all annual Equipment Basket costs except purchase cost of all equipment, and dividing that sum by the operator's total annual person hours dedicated to leasing, installing and equipment repair services.

82. Charges for leasing each type of remote control unit shall be designed to recover the operator's cost of purchasing and financing the remote, and expected repair and service charges over the useful life of the equipment. Expected repair and service charges are to be determined by multiplying the estimated annual average number of repair and service hours per remote by the HSC. Charges for leasing converter

boxes and all other equipment shall be calculated in the same manner as for remotes. For installation charges, the cable operator must elect a uniform installation charge that is calculated based upon either: (1) The HSC times the person hours of the visit; or (2) the HSC times the average hours spent per that type of installation visit.

83. The Commission's guidelines do not preclude an operator from selling equipment to subscribers. The equipment price shall be set at no higher than necessary to recover the operator's costs, including all costs incurred for storing and preparing equipment for sale up to the time it is provided to the customer, including a reasonable profit. The purchaser is responsible for maintaining and repairing any purchased equipment, but cable operators may also sell service contracts. The price of these contracts shall be based on the HSC times the estimated average number of hours required for maintenance and repair over the expected life of the equipment. The cable operator shall provide notice at the time of sale that system upgrades might make a customer's purchased equipment incompatible with the new cable system technology.

84. The Commission's rules permit cable operators to offer promotions, including a permanent below cost offering of installations. However, instead of allowing cable operators unlimited discretion to price all equipment and installation below cost, the Commission will require that below cost offerings be reasonable in scope in relation to the operator's overall offerings in the Equipment Basket. Additionally, certain limits on cable operators' discretion to recover their costs are imposed. Specifically, cable operators must exclude the costs of promotions from the Equipment Basket, but may include these costs in general overhead as part of a cost-of-service showing. The Commission will review this treatment of promotional costs when it addresses the issue of whether the Commission should take steps to promote a competitive market for equipment.

85. Concerning connections for additional television receivers, the Commission is requiring that costs associated with the installation of, and equipment used with, additional connections be included in the Equipment Basket. Cable operators will recovery the costs of additional connections in the charges for installation or lease of customer equipment used with the additional connection. The installation charge for additional connections is the HSC times the person hours of the visit or the HSC times the average number of hours spent per visit. If the operator elects to use an average installation time, the Commission is requiring two rates: One for wiring additional connections at the time of the installation and another if the operator makes a separate visit to install the additional connection. Remotes and other equipment involved are to be leased to the customer at the same rate as equipment used with primary outlets. Any network costs for boosting the signal to serve more than one outlet in a home should be treated as part of general system overhead. If a subscriber requests additional connections that exceed network design capabilities and require additional customer premises equipment, the cable operator may recover the costs of the additional equipment through an additional connection charge, developed by using the Commission's actual cost guidelines for other leased equipment.

86. The Commission also allows a cable operator, if it incurs additional charges for programming carried on basic or cable programming services channels that it transmits to additional outlets, to recover these charges through a monthly charge levied for additional outlets in fact receiving that programming. The Commission finds no Congressional intention to prevent cable operators from establishing reasonable limits on the number of additional connections for each primary outlet in commercial or residential installations other than single family installations. Cable operators are thus permitted to establish reasonable multiple primary service charges, including reasonable discounted primary service charges, in such circumstances.

87. *Costs of Franchise Requirements.* The 1992 Cable Act requires that the Commission's rate regulations for the basic service tier include standards to identify costs that are attributable to satisfying franchise requirements to support public educational and governmental channels, to the use of such channels or to any other services. The Report and Order finds that, as proposed in the *NPRM*, costs attributable to satisfying franchise requirements shall include: (1) The sum of per channel costs for the number of channels used to meet franchise requirements for public, educational and governmental channels; (2) any direct costs of providing any other services required under the franchise; and (3) a reasonable allocation of overhead.

88. *Customer Changes.* The Cable Act of 1992 requires that regulations for the basic tier include standards and procedures to prevent unreasonable charges for a customer changing equipment or service tiers. The Commission concludes that these regulations should apply to any changes in the number of service tiers and charges for changing equipment that are initiated at the subscriber's request after the installation of initial service. These same standards should apply to upgrades and downgrades in service tiers. Furthermore, the Commission requires that customers be allowed 30 days after notice of retiering or rate increases to change service tiers at no charge.

89. Operators may impose only a nominal charge for changing service tiers effected solely by coded entry on a computer terminal or by other similarly simple methods. The Commission considers any charge under $2.00 nominal. The Commission will also allow franchising authorities the discretion to consider additional community specific factors in evaluating these charges. However, these charges cannot exceed the actual costs of changing tiers, as discussed below.

90. The Commission recognizes that charges for changing tiers have the potential to increase customer churn, but the Commission lacks specific data on this topic. Therefore, the Commission has created an exception to the cap on rates for changing service tiers effected by coded entry on a computer terminal or other similar methods. Cable operators who believe their system has an increasing and unacceptable level of churn in changing service tiers may establish an increased charge for changing service tiers more than two times in one year, provided that such changes are not requested in response to a rate increase or a restoration of tiered service. The operator must prove to the franchising authority that the churn level in changing service tiers has reached an unacceptable level and that its escalating scale of charges is reasonable. In addition, the cable system must notify all subscribers that they will be subject to an increased charge if they change service tiers more than the specified number of times in one year.

91. For changes in service tiers or equipment that involve more than coded entry on a computer or other similarly simple method, the Commission adopts the actual cost guidelines for equipment and installation. The actual cost charge would be either the HSC times the amount of time it takes to effect the

change or HSC times the average time such changes take.

(4) Regulation of Cable Programming Services

a. Definition of "Cable Programming Service"

92. Under the 1992 Act, regulation of "cable programming service" rates and equipment is to be conducted by the Commission, not local franchising authorities. "Cable programming service" is defined broadly in the statute as all video programming provided over a cable system except that provided on the basic service tier or on a per-channel or per-program basis. The Commission decides to also exclude per-program and per-channel premium services offered repetitively over multiple channels on a multiplexed or time-shifted basis. Further, the Commission will not regulate collective offerings of otherwise exempt per-channel or programming services, as long as two essential conditions are met. First, the price for the combined package must not exceed the sum of the individual charges for each component service. Second, the cable operator must continue to provide the component parts of the package to subscribers separately in addition to the collective offering. This second condition is satisfied when the offering provides consumers with a realistic service choice. Under the requirements of the evasion provision of Section 623(h), we retain the discretion to review such situations on a case-by-case basis.

b. Complaints Regarding Cable Programming Service Rates

93. *Procedures for Receiving, Considering, and Resolving Complaints.* The 1992 Act provides that rate regulation of cable programming services and equipment will occur only in response to specific complaints—i.e., the Commission will not regulate cable programming service rates until it receives a complaint that a particular operator's rates are unreasonable. The 1992 Cable Act affords complainants 180 days from the effective date of the Commission's rules to challenge existing rates. The 1992 Cable Act provides that complaints regarding a change, in rates must be filed within "a reasonable period of time" following that change in rates, including a change in rates resulting from a tiering change. The Report and Order allows that such complaints must be filed within 45 days from the time a subscriber receives a bill from the cable operator that reflects the rate increase. Late filed complaints will be dismissed with prejudice, i.e., without an opportunity to refile.

94. In order to make the "minimum showing" required in the 1992 Cable Act, and avoid dismissal of a complaint, *e.g.*, the name and address of the cable operator, the tier price the number of channels on the challenged tier. The complainant must allege that the rate is unreasonable because it violates the Commission's rate regulations. The complainant will not, however, be required to provide the underlying information and calculations necessary to judge the particular rate against the Commission's rate standards. Complainants must use the complaint form adopted by the Commission, and serve a copy on the cable operator and franchising authority by first class mail.

95. Complainants whose complaints fail initially to meet this minimum showing required and are thus dismissed, without prejudice, will be sent a copy of the standard complaint form and instructions for completing the form. In addition, such complainants will receive an information letter describing why the original complaint was defective and outlining the complainant's right to refile their complaint. For a complaint filed on the standard form, but which is otherwise defective, complainants will have an additional 30 days from the date of the Commission's notice to file a correct complaint. If the corrected complaint again fails to meet the minimum showing, the Commission will dismiss it with prejudice and will notify the complainant and the cable operator accordingly.

96. The Commission adopts a standardized form for use in filing complaints, as attached below. This form will be widely available, not only from the Commission, but also from franchising authorities and cable operators. Complainants must attach to the standard complaint form a copy of the most recent bill reflecting the disputed rate or rate increase. Complainants must also serve a copy of the complaint both on the cable operator and on the franchising authority. Service must be accomplished at the same time the complainant files the complaint with the Commission. Subscribers need not obtain the franchising authority's concurrence before filing a complaint with the Commission. Franchising authorities will not be permitted to formally review and adjudicate cable programming service complaints in the first instance.

97. Cable operators are not obliged to respond to any complaint that the Commission has determined is defective and notified the parties accordingly. Absent such notification, however, the cable operator must respond, using the standardized form. The burden in such cases will be on the cable operator to prove the rate in question is not unreasonable. A cable operator must file its response with the Commission within 30 days from the date of service of the complaint, unless the Commission notifies the operator during the 30-day filing period that the complaint fails to satisfy the minimum showing requirement. In addition to its response on the merits, the cable operator may also include a motion to dismiss stating with particularity the reasons the operator thinks the complaint is procedurally defective.

98. In the event there are multiple complaints regarding the identical rate increase, the cable operator may file a consolidated response to all complaints. The cable operator shall serve its response on the complainant and the local franchising authority by first class mail. To simplify the procedure, the Commission will not require a reply by the complainant. Any cable operator failing to file and serve a response to a valid complaint may be deemed in default, and an order may be entered against the cable operator finding the rate in question to be unreasonable and mandating appropriate relief.

99. The rules delegate authority to the Commission's staff to adjudicate cable programming service complaints and order appropriate relief. A party to a complaint my petition the Commission for a review of the staff's decision, and existing procedures governing reconsideration and review will apply to decisions granting or denying a complaint. Final Commission decisions are subject to judicial review.

100. The Commission's existing *ex parte* rules concerning adjudicative proceeding to complaint proceedings will apply. Cable programming service rate complaints will be considered informal complaints and become "restricted proceedings" once a formal opposition is filed by the cable operator. From that point on, *ex parte* presentations will be prohibited. The Commission may be required to apply special *ex parte* procedures in instances where numerous complaints are filed against a single cable system's rates, presenting a particular burden on all parties involved to serve copies on each complainant of every pleading or decision document.

101. The Commission will use its existing rules and procedures regarding proprietary information submitted in the cable programming service complaint process. Such information will be considered routinely available

for public inspection absent a cable operator's request for confidential treatment pursuant to 47 CFR 0.459. The Commission declines to adopt formal rules at this time regarding limited access for parties to information submitted by the cable operator that the Commission has determined to be confidential within the meaning of Exemption 4 of the Freedom of Information Act.

102. Finally, the Commission reemphasizes its commitment to the use of alternative dispute resolution technique to expedite and improve the administrative process. Parties wishing to employ such techniques in the cable programming service context in lieu of Commission adjudication of a complaint may so advise Commission staff. The Commission will hold in abeyance any complaint in which the parties are actively exploring alternative dispute resolution in lieu of Commission adjudication. Persons seeking information regarding the use of alternative dispute resolution may contact the Commission's Designated ADR Specialist in the Office of the General Counsel.

103. *Remedial and Enforcement Procedures for Rates Found to be Unreasonable.* If cable programming service rates are found to be unreasonable, the Commission will order the operator to reduce rates to a specific reasonable level and to reflect the reduced rate in prospective bills to customers. By rule, the Commission's decision requiring a prospective rate reduction shall remain binding on the cable operator for one year unless a different time period is indicated in the mandating order, or the one year requirement is waived. The operator will also be required to refund overages (plus interest) to all subscribers, with refunds being calculated from the date the first relevant complaint was filed until the date the operator implements the reduced rate prospectively in bills to subscribers. The cable operator will have the option of either identifying actual subscribers who paid the unreasonable charge and refunding the overage directly, or refunding the overage by means of a prospective percentage reduction in the service rate for all subscribers to cover the cumulative overcharge.

104. The cable operator must implement any reduction in rates or refunds within 60 days from the date the Commission releases an order finding the contested rate to be unreasonable and mandating a remedy. Any unreasonable charges paid by customers after the filing of a complaint but prior to receiving a bill reflecting a reduced rate will be included in the calculation of refunds. The Commission also affirms its authority, under the 1992 Cable Act, to reduce rates and order refunds for the class of subscribers that paid unreasonable rates for a particular service, even if our determination with respect to a particular service rate was based on a complaint filed by a single consumer.

105. One exception to this general approach to calculating refunds concerns the provision allowing complainants 180 days to challenge cable programming service rates as of the effective date of the Commission's rules. The 1992 Cable Act bars complaints against that rate thereafter, unless the cable operator subsequently raises its rate. Should a complaint be filed challenging a subsequent rate increase the refund shall be no greater than the difference between the operator's disputed rate and its (unchallenged) rate in existence as of the effective date of our rules. As with all refunds for cable programming service rates, the refund liability will extend from the date a valid complaint is filed with the Commission.

106. The Commission will use its existing procedures concerning the effectiveness of rate reductions or refund requirements during the period of appeal of cable programming service rate decisions. These procedures provide that the Commission staff, acting on delegated authority, or the Commission, may stay remedial requirements pending disposition of a petition for reconsideration of an application for review. Cable operators may petition the Commission for a stay of remedial requirements.

107. The Commission also adopts a requirement that cable operators must certify their compliance with Commission orders requiring prospective rate reductions, refunds, or other remedial relief to subscribers. This certification must be signed by an authorized representative of the cable operator, must reference the applicable Commission order, and must state that the cable operator has complied fully with all provisions of that order. The certification shall also include a description of the precise measures the operator has taken to implement the remedies ordered by the Commission. The cable operator must file this certification with the Commission within 90 days of the release date of the order requiring remedial relief.

108. Cable operators that fail to effect cable programming service rate reductions, refunds or other remedial measures mandated by the Commission will be subject to enforcement action. Such enforcement action may include monetary forfeitures pursuant to Section 503(b) of the Communications Act. The Commission will not impose forfeitures on a cable operator simply because a rate is found to be unreasonable.

109. Finally, although the Commission appreciates any informal assistance provided by local authorities, the 1992 Cable Act does not authorize the Commission to give local authorities any formal powers over implementation and enforcement of our cable programming service rate complaints.

c. Regulations Governing Rates

110. The Commission concludes that standards for identifying cable programming services rates that are unreasonable in individual instances will comply with the Cable Act of 1992 if they reflect a reasoned balancing of the statutory factors and if we explain how our standards reflect these statutory factors. The Commission finds, while not mandated by the statute, that primary weight should be given to the rates of systems subject to effective competition.

111. The Commission further believes that a "bad actor" test for cable programming service rates, designed to reach those cable operators whose rates for cable programming services are "egregious" would not fulfill the mandate of the Cable Act. We conclude that Congress used the term "unreasonable" in provisions regarding cable programming services rather than "reasonable" as a reflection of the different procedural regulatory scheme for protecting consumers from excessive rates for basic and for cable programming services. Congress did not require different substantive standards. Therefore, when assessing a complaint that a cable system's cable programming service rates are unreasonable, the Commission will use the same test of reasonableness adopted for basic service rate regulation.

112. As is the case for the basic service tier, the Commission will use a benchmark approach as the principal form of rate regulation for cable programming services, with cost-of-service showings used only by cable systems whose rates exceed the benchmark.

113. The Commission has explained and justified in detail above, adoption and application of the benchmark approach that will be used to set the initial per channel rate for the basic service tier, and application of the price cap to govern future rate increases once the initial rate level has been set by comparison to the benchmark. The same considerations that applied to basic tier

rates apply to the cable programming services tier as well. Accordingly, the Commission adopts the same benchmark approach for purposes of resolving complaints regarding cable programming services as for the basic service tier and applies it in the same manner to determine the initial permitted per channel rate for cable programming services. The Commission also adopts the same price cap requirements for cable programming service as for the basic service tier, including the same annual adjustment index, and requirements for, and treatment of, external costs.

114. Systems with a per-channel rate for cable programming services at or below the benchmark at the time the system becomes subject to regulatory review will be considered reasonable, and that rate will be its permitted rate with rates that are below the benchmark capped at that level. For systems with rates at the time of regulation that are above the benchmark, the permitted level for such systems will be determined by a further comparison to the rates in effect on September 30, 1992.

115. For systems with September 30, 1992, rates that are above the benchmark, the rate shall be the September 30, 1992, per-channel rate reduced by 10 percent, but no lower than the benchmark, and then adjusted forward by inflation. For systems with rates on September 30, 1992, that were below the benchmark, the permitted rate shall be the benchmark rate adjusted forward by inflation. The price cap will then be applied to the per channel rate determined by the above comparison of rates to the benchmark. Price cap requirements will be the same as for the basic service tier.

116. As for basic service, the Commission will permit cable operators to exceed the benchmark rate for cable programming services based on costs. Similarly, the Commission will adopt cost-of-service standards for application by the Commission to determine the extent to which cable operators may exceed capped rates for cable programming services. However, as for the basic service tier, the record does not permit the Commission to fashion cost-of-service standards at this time. Accordingly, the Commission will adopt and issue separately a Second Further Notice of Proposed Rule Making to establish cost-of-service standards for cable services including cable programming services.

117. Regarding equipment subject to regulation as cable programming services, the Report and Order states that complaints concerning rates for equipment and installation used to receive cable programming services, either solely or in conjunction with unregulated programming, shall be subject to the same actual cost standard implemented for basic tier equipment and installation. The costs of equipment and installation used to receive cable programming services shall be included in the Equipment Basket and the charges associated with this equipment shall be determined on the same basis as charges for other equipment subject to the actual cost methodology. However, because the Commission has jurisdiction over cable programming services, it will review any complaints or issues concerning such equipment or installation.

118. The Commission further concludes that cable operators will be required to unbundle equipment and installation rates from rates for cable programming services. The Commission also concludes that cable operators shall be required to unbundle installation rates for cable programming services from rates for equipment leasing.

(5) Provisions Applicable to Cable Service Generally

a. Geographically Uniform Rate Structure

119. The 1992 Cable Act requires cable operators to "have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system." The Commission concludes that this requirement does not preclude operators from establishing reasonable categories of customers and services. The Commission concludes that for purposes of the 1992 Cable Act a "geographic area" means the franchise area. Thus, a cable operator is generally required by this provision to have a uniform rate structure within each franchise area. The Commission also decides that bulk discounts may be permitted if they pass on cost savings of volume offerings to the subscribers affected, provided that all multiple dwelling buildings in the franchise area receive the same bulk discount rate structures and the operator can demonstrate that it derives some economic benefit from providing the bulk discount.

b. Discrimination

120. Section 623(e) of the Cable Act states that no federal, state or local government can be prohibited from (1) prohibiting discrimination among subscribers (except that reasonable discounts to senior citizens or other economically disadvantaged groups may not be prohibited) and (2) regulation of equipment facilitating the reception of cable service by hearing-impaired individuals. The Report and Order finds that a cable operator may offer reasonable discounts to senior citizens and other economically disadvantaged individuals. For this purpose, an "economically disadvantaged individual" is defined as a person who receives federal, state or local welfare assistance. Further, the Commission strongly encourages cable operators to carry more closed-captioned video programming. Franchising authorities are free to adopt specific regulations regarding the installation an offering of equipment for reception of cable service by the hearing impaired, but in the absence of evidence indicating that Federal intervention in this area is necessary, the Commission declines to adopt specific closed-captioning rules for cable at this time.

c. Negative Option Billing

121. The 1992 Act provides that an operator may not charge a subscriber for "any service or equipment that the subscriber has not affirmatively requested by name." This limitation on so-called "negative option billing" applies whenever a new tier or single channel service is added. However, the Commission recognizes that, on balance, consumer benefits from giving operators the ability to diversify, improve, or otherwise modify their offerings in a tier outweighs the slight reduction in consumer choice that would result from exempting such changes from the negative option billing requirements. Thus, restructuring undertaken to respond to the Commission's new rate regulations will not bring the negative option billing provision into play as long as subscribers continue to receive the same number of channels and the same equipment, and the total price for the services does not change. On a going-forward basis, the provision does not apply to changes in the mix of channels in a tier, or restructurings of service, even when those changes are accompanied by a rate increase, unless the changes alter the fundamental nature of the service tier.

d. Collection of Information

122. The 1992 Cable Act envisions that within one year of its enactment, cable operators will file with the Commission financial information necessary for the enforcement and administration of the statute. The Commission has already taken steps to satisfy this requirement by directing a random sample of cable systems to submit certain rate and other

information to aid in fashioning benchmarks. Therefore, the Report and Order does not establish collection of information requirements, but the Commission will explore this issue in a Second Further Notice of Proposed Rule Making in the future.

e. Prevention of Evasions

123. The 1992 Cable Act requires that the Commission establish and periodically review regulations to prevent evasion of its cable rate regulations. The Report and Order defines prohibited "evasions" as any practice or action which avoid the rate regulation provisions of the 1992 Cable Act or the Commission's rules contrary to the intent of the Act or its underlying policies. The rules the Commission has adopted in this proceeding, particularly the initial rate freeze describe above, parallel substantive standards for basic tier and cable programming service tiers, and cost based equipment regulations, are all intended to address potential evasions, including those that might result from retiering of services. The Commission will review its cable rate rules two years from their effective date, and every three years thereafter, unless circumstances indicate more or less frequent reviews would be in the public interest. Additionally, franchising authorities and subscribers may address specific instances of evasive behavior in rate regulation proceedings, in which the burden will be on the cable operator to demonstrate that the alleged evasion was primarily for a legitimate business purpose and not an attempt to evade rate regulation.

124. However, in order to provide some guidance to the public, franchising authorities, and the industry regarding the Commission interpretation of the prevention of evasion provisions of the 1993 Cable Act and the Commission's implementing regulations, the Commission addresses certain practices that have been questioned as evasive behavior in this proceeding. The Report and Order clarifies that all retiering is not potentially evasive. Retiering otherwise permitted under the Commission's rules will not be deemed an evasion. The Commission also does not believe that retiering effectuated between the date the 1992 Cable Act was enacted and the effective date of the rate regulations is a *per se* evasion. Finally, the Commission believes that the following practices, if established by evidence, are evasions: (1) Implicit rate increases; (2) a significant decline in customer service without a similar decline in price; and (3) deceptive practices such as improper cost shifting or intentionally misstating revenues.

f. Small System Burdens

125. Franchise authorities regulating small cable systems are permitted to exempt those systems from having to file an initial rate schedule with the franchising authority. In such cases, the small system need simply certify to the authority that its rates for basic service and equipment are reasonable under the Commission's rate standards. However, a small system whose rates exceed the benchmark, a small system proposing to increase its basic service rates or a small system that is the subject of a cable programming service complaint is not exempted from the procedures the Commission has established. For these purposes, a "small system" is a system served by an integrated headend with fewer than 1,000 subscribers.

126. Although the Commission does not agree with those commenters who support complete exemption for small systems from substantive rate regulation, the unique characteristics of small systems justify application of a somewhat different standard to them. This Commission reflects its awareness of this difference in several aspects of its program for implementing the rate provisions of the 1992 Cable Act. For example, the rate formula the Commission develops for evaluating the reasonableness of cable rates accounts for characteristics unique to small system operators, as does the Commission's rate approach which permits the pass through of many external costs beyond the operator's control.

127. The Commission finds that no distinction should be made between small systems that are independent and those controlled by MSOs, and therefore will apply small system relief to systems with under 1,000 subscribers, regardless of whether the system is an independent one or owned by an MSO.

128. Regarding measurement of small system size, for rate regulation purposes, the Commission will determine system size by a system's headend, including any other headends or microwave receive sites that are technically integrated to the system's principal headend, rather than on a franchise basis.

g. Grandfathering of Rate Agreements

129. The Report and Order concludes that section 623(j) of the 1992 Cable Act provides that franchising authorities already regulating rates pursuant to a franchise agreement executed before July 1, 1990, may continue to regulate basic service and equipment rates for the remainder of the franchise term without following the Commission's substantive rate standards and without filing a certification with the Commission. In lieu of filing certification, franchising authorities with such "grandfathered" agreements will simply notify the Commission of its intent to continue regulating basic cable rates. The Commission declines, however, to grandfather agreements executed after July 1, 1990, as suggested by some commenters.

130. The Commission also finds that section 623(j) of the Cable Act does not supersede the Commission's regulation of cable programming services. Thus, the Commission shall regulate basic cable programming service rates in all cases, irrespective of whether there is a grandfathered rate agreement regulating basic cable rates. Consistent with this decision, grandfathered agreements will not be enforceable to the extent they seek to limit a cable operator's ability to retier service offerings.

h. Reports on Average Prices

131. In order to comply with the requirements of section 623(k) of the 1992 Cable Act, which requires the Commission to annually publish statistical reports regarding average cable rates and associated fees (including a comparison between systems which are and which are not subject to effective competition), the Report and Order finds a need to collect certain cable system data, including: (a) Rates charged for basic cable service, cable programming services, and other cable programming; (b) fees for converter boxes, remote control units, installation and disconnection; and (c) any other charges for equipment or service levied on subscribers. The Commission will also collect information on system size (measured by number of subscribers), system channel capacity, and other characteristics such as percent of distribution plant above or below ground, length of distribution plant, subscriber density per mile. The Commission will address this issue in more detail in an upcoming Second Further Notice of Proposed Rule Making. This information will be collected either on a sample basis or from the industry as a whole.

132. The Commission will also solicit specific information from cable operators on their leased access channel usage and rates. This information collection may, or may not, be part of the process of collecting system rate data and financial information to satisfy the collection of information provisions in section 623(g) of the 1992 Cable Act.

i. Effective Date

133. The Commission establishes June 21, 1993, as the effective date of the regulations adopted in this decision.

B. Leased Commercial Access

(1) Leased Access: Background

134. Section 612 of the Cable Act of 1984 (Communications Act, section 612(a), 47 U.S.C. 532(a)) established a federal scheme through channel leasing to assure access to cable systems by third parties unaffiliated with the cable operator. Specifically, these provisions require that a cable system with 36 or more activated channels make available a portion of their channel capacity for lease by outside unaffiliated parties. Each system operator subject to this requirement was to establish "the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operator, financial condition, or market development of the cable system." The Cable Act of 1992 revised these provisions to provide the Commission with expanded authority to regulate the commercial leasing of cable channels for those cable systems required to make such channel capacity available. The legislative history of the 1992 Cable Act shows particular Congressional concern that some cable operators may have established unreasonable terms or may have had financial incentives to refuse to lease channel capacity to potential leased access users out of competitive motives, especially if the operator had a financial interest in the programming services it carried. Congress and the Commission appear to be in agreement that commercial leasing of cable channels could serve important diversity and competition objectives and that more centralized regulatory oversight would assist in the achievement of these objectives. The Commission will now be in a position to take a more active role in administering these requirements.

135. Given the other matters pending in this proceeding, the Commission did not receive a large number of comments on leased access issues. Thus the rules the Commission adopts in this regard should be viewed as a starting point that will need refinement both through the rulemaking process and as the Commission addresses issues on a case-by-case basis. The Commission is aware that leasing issues may need to be addressed in quite different fashions depending upon the nature of the service involved. Thus, the Report and Order is not attempting to comprehensively address all the issues potentially involved, many of which can better be resolved in a more specific concrete factual setting.

136. In the rules adopted, the Commission sets a standard for maximum leased access rates based on the highest implicit fee charged a nonaffiliated programmer within the same program category. The Commission also addresses issues regarding access terms and conditions, tier placement, technical standards for use, technical support, security deposits, conditions based on content and requirements for billing and collection service. A procedure for the expedited resolution of disputes is also established. Finally, the Commission decides that the leased access rules and related rate controls adopted will be applicable to systems regardless of the effective competition test governing basic tier and programming service rate regulation.

(2) Leased Access: Terms and Conditions of Use

137. The cable operator and commercial leased access user may negotiate channel placement and tier access for leased programming. Parties must take into account the nature of the service being offered; the relationship between the charge imposed and the desirability of the channel; and, the need to provide competition in delivery service and diversity of programming. In order to guarantee that a variety of individuals and groups have access to the channels, each lessee will only be allowed to lease up to one channel's capacity if there are other users demanding use of the additional designated channels. Cable operators may not apply programming production standards to leased access users that are any higher than those applied to PEG channels. Operators must provide the minimal amount of technical support necessary for users to air their material, and leased access programmers must reimburse operators for the reasonable cost of any technical support operators provide. Cable operators will have the discretion to require reasonable security or other assurances from programmers who are unable to prepay in full for access to leased commercial channels. Cable operators may not set terms and conditions for users based on content except to the extent necessary to establish a reasonable price for use of channel capacity and to comply with the Commission's indecency standards. Cable operators are also required to provide billing and collection services for leased access users, unless the operator demonstrates the existence of third party billing and collection services which in terms of cost and accessibility, offer leased access users an alternative substantially equivalent to that offered comparable non-leased programmers. Finally, the Report and Order finds that the 1984 and 1992 Cable Acts do not authorize the Commission to require that operators apply the same rates, terms and conditions for the leasing of channel capacity by both affiliated and nonaffiliated programmers.

(3) Leased Access: Maximum Reasonable Rates

a. Leased Access

138. The maximum commercial leased access rates that a cable operator may charge is the highest net implicit fee charged any nonaffiliated programmer within the same program category. The implicit rate is calculated by determining the amount paid per month by subscribers for the service and amounts explicitly paid by the programmer and deducting from that the amount that is paid per month to the programming service vendor. The difference between the amount received and the amount paid is the net implicit leased channel rate. Such rates are to be calculated separately for (1) pay-per-program or pay channels, (2) channels containing more than fifty percent direct sales (home shopping networks), (3) and all other channels.

b. Access Rates for Not-for-Profit-Programmers

139. The Commission declines to establish special rates for not-for-profit programmers, or to require that operators set aside capacity for such purposes. The Report and Order finds that the procedures adopted for establishing maximum reasonable rates adequately ensure that the interests of such programmers are considered.

(4) Leased Access: Reporting Requirements

140. Although specific reporting requirements for leased access will not be implemented, the Commission will gather necessary information on leased channel usage and rates in its general reporting and monitoring process mechanisms for cable systems. The Commission believes it possible to efficiently collect such information as part of the process in which data relating to system rate and financial information are collected for purposes of compliance with sections 623(g) and 623(k) of the 1992 Cable Act, and will address the gathering of leased access data in that context.

(5) Leased Access: Procedures for Resolution of Disputes

141. The Report and Order states that review of leased access rates or terms and conditions will be triggered by the filing of a complaint with the Commission. To guard against determinations based on a stale record, and to forestall development of patterns of abuse, petitions must be filed within 60 days of the alleged violation. A petitioner will be required to state concisely the facts constituting a leased access rule violation, and the specific rule or regulation allegedly violated, and to serve a copy of the petition of the operator. The operator will then have 30 days from the date the petition is filed to respond. In the case of a rate dispute, an operator would be required to submit data showing the rate charged was not higher than the highest implicit fee it charged for a comparable category of service. Operators will also be required to submit the affidavit of a responsible company official to support their response. If after reviewing the operator's submission, the Commission finds a *prima facie* violation of the leased access rules, the operator may be required to produce additional information.

142. After the evidence has been submitted, the complainant must show by clear and convincing evidence that the operator has violated the leased access rules or otherwise acted unreasonably or in bad faith. For successful complainants, relief could take various forms, including, but not limited to, refunds, and injunctive measures. The Commission will also use, where necessary, forfeitures. Pending resolution of a dispute, the operator will be required to provide access if the leased access provider is willing to take access under the rates, terms, and conditions set by the operator, subject to any refund or other relief the Commission orders.

143. The Commission again encourages parties in disputes, including leased access related disputes, to try to resolve their differences through informal means such as the ADR process described above. The Commission believes that ADR can offer an exceptionally swift and economical way to resolve disputes, and because ADR is voluntary, parties may elect it at any time.

(6) Leased Access: Minority and Educational Programmers Alternative

144. In accordance with the statutory provisions, up to 33 percent of a system's designated leased channel capacity may be used for qualified minority or educational programming purchased by the system operator, rather than for leased channel programming. For purposes of implementing this provision, the Commission clarifies that programming that covers "minority viewpoints" or is "directed at members of minority groups" has to cover the viewpoints of or be targeted to members of minority groups as defined in section 309(i)(3)(c)(ii) of the Communications Act. (That section identifies Blacks, Hispanics, American Indians, Alaska natives, Asians and Pacific islanders as minority groups.) The Commission further believes that 90 percent of programming must be devoted to the coverage of minority or educational programming to qualify as a statutory source of minority or educational programming, devoting "substantially all" its programming to qualifying purposes.

C. Subscriber Bill Itemization

145. Section 622(c) of the 1992 Cable Act provides that cable operators may identify as a separate line item on each regular customer bill: (1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid; (2) the amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels; and (3) the amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. The purpose of this provision is to ensure that cable operators are not prevented, by a franchise agreement or otherwise, from itemizing the specific costs enumerated in section 622(c). System operators are not required by the provision to undertake any such itemization, nor does the provision, by itself, preclude the itemization of additional costs (whether or not governmentally imposed) or otherwise mandate that subscriber bills have any particular format or content.

146. The *Report and Order* states that costs that may be itemized include those that are direct and verifiable, as well as reasonable allocation of overhead, and for Public Education Governmental (PEG) channel costs, and the sum of the per channel costs for the number of channels used to meet franchise requirements. To the extent a franchising authority imposes special costs not of benefit to all subscribers in consideration of the award or renewal of a franchise, these may be included in an itemization as either a franchise fee or PEG cost, as appropriate. If required under a franchise agreement, these costs could include support of institutional networks, free wiring of public buildings, provision of special municipal video services, and voice and data transmissions.

147. *Copyright and Retransmission Fees.* The Commission finds that costs such as copyright and retransmission consent fees are not within the category of fees or taxes imposed by governmental authority. Thus, such costs are not encompassed within the protections of section 622(c) of the 1992 Cable Act.

148. *Format.* The Commission finds that any bill itemized pursuant to section 622(c) may require only one payment for the operator's services on the part of a consumer, the total for which must include all fees and costs itemized pursuant to section 622(c). The language of the 1992 Cable Act expressly permits the itemization of certain governmentally imposed costs. Beyond the guidelines given above, the Commission refrains from dictating how a cable operator choosing to itemize may format its bill and implement section 622(c). Local franchising authorities may adopt regulations for format consistent with those adopted in this Report and Order. However, the Commission underscores that it would frustrate the intent of the statute if a franchising authority imposed burdensome additional itemization on an operator choosing to itemize.

D. Cost Accounting/Cost Allocation Requirements

149. The rate regulations that the Commission adopts impose a price cap on cable service rates with certain categories of costs defined as external to the cap. Cost accounting and cost allocation requirements are necessary to assure that costs that are intended to receive external treatment are in fact accorded such treatment. The regulations additionally authorize cable operators to make cost-of-service showings to justify a rate higher than the capped level. Cost accounting and cost allocation requirements are also necessary to permit identification of costs that will justify a rate above the cap.

150. The Commission has an insufficient record on which to determine the optimum level of rate averaging for the cable industry. Accordingly, while the Commission is adopting in the Report and Order requirements that will permit immediate implementation of the rules,

the Commission has determined that it will include in a Second Further Notice of Proposed Rule Making issues pertaining to what cost accounting and cost allocation requirements should be adopted on a permanent basis.

151. The cost accounting rules the Commission adopts will nevertheless permit a successful immediate implementation of rate regulations. Cable operators are required to identify certain locally incurred costs such as franchise fees and local taxes at the franchise level.

152. Instead of mandating that other costs be identified at any level, for purposes of calculating external costs or cost of service, cable operators shall identify costs at the level at which, for accounting purposes, they identified the category of costs on April 3, 1993. Cable operators in any cost-of-service showing must justify and explain this identification and demonstrate that it is, in fact, the level used to identify costs on April 3, 1993. Costs will then be allocated to the franchise level on a per subscriber basis. Costs allocated to, or directly identified at, the franchise level will then be allocated between tiers in proportion to the number of channels on each tier. Programming costs and retransmission consent fees will be allocated to the tier on which the programming or broadcast signal is offered. Because franchise fee determinations may be revenue, tier, or subscriber sensitive, franchise fees must be allocated between tiers and subscribers in a manner most consistent with the way the franchise fee is assessed by franchise authorities.

153. It is important to note that the regulations adopted in this Report and Order may change over time. In accordance with the statute, the Commission will review and monitor the effect of its initial rate regulations on the cable industry and consumers, and refine and improve the rules as necessary. In addition, the Commission will issue in the near future, a separate Second Further Notice of Proposed Rule Making to obtain a better record for adoption of cost-of-service showing by cable operators seeking to raise rates above capped level.

Final Regulatory Flexibility Analysis Statement

154. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have a strong impact on a substantial number of small entities. As detailed in the Commission's response to the comment submitted by the Office of Advocacy of the United States Small Business Administration (Office of Advocacy), in reply to the Initial Regulatory Flexibility Statement contained in the *NPRM*, the Commission has attempted, wherever possible within the statutory constraints, to balance the weight of the 1992 Cable Act implementation burden evenly between cable operators and franchising authorities. (The Commission's extensive reply to the Office of Advocacy may be found in the complete Final Regulatory Flexibility Act in the full text of this decision.) However, the intent of the 1992 Cable Act, to ensure cable subscribers of quality programming and service at reasonable cost, requires some unavoidable new responsibility for operators and for franchise authorities, as well as for the Commission. There will be, for example, extensive additional recordkeeping and reporting requirements; franchising authorities will need to file for certification and will play a major role in determining whether, for rate regulation purposes, a cable system in their franchise area faces effective competition; cable operators will need to notify customers periodically of the availability of basic services. With this in mind, the Commission, as stated above, will continue to monitor its cable rate regulations to evaluate its effectiveness not only in realizing the goals set out in the 1992 Cable Act, but to assess the weight and the appropriateness of the burdens imposed on the affected parties. The full text of the Final Regulatory Flexibility Analysis Statement may be found in the complete text of this Report and Order/Further NPRM.

155. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

156. Accordingly, it is ordered that, pursuant to Sections 4(i), 4(j), 303(r), 612, 622(c), and 623 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 303(r), 532, 542(c), and 543, the REPORT AND ORDER is adopted amending part 76 of the Commission's rules, as indicated below.

157. It is further ordered that the Secretary shall send a copy of this Report and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

158. It is further ordered that the requirements and regulations established in this Report and Order shall become effective on June 21, 1993.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendatory Text

Parts 0 and 76 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.61 is amended by adding paragraphs (j) through (n) to read as follows:

Mass Media Bureau

§ 0.61 Functions of the Bureau.

* * * * *

(j) After Commission assumption of jurisdiction to regulate cable television rates for basic service and associated equipment, acts upon cable operator requests for approval of existing or increased rates.

(k) Reviews appeals of local franchise authorities rate making decisions involving rates for the basic service tier and associated equipment, except when such appeals raise novel or unusual issues.

(l) Acts upon complaints involving cable programming service rates except for final action on complaints raising novel or unusual issues.

(m) Evaluates certification requests filed by cable system franchising authorities pursuant to subpart N, part 76 of this chapter

(n) Periodically reviews and, when appropriate, revises standard forms used in administering:

(1) The Commission's complaint process regarding cable programming service rates;

(2) The certification process for local franchising authorities wishing to regulate rates, and

(3) The substantive rate regulation standards prescribed by the Commission.

3. Section 0.455 is amended by adding paragraphs (a) (11) and (12) to read as follows:

§ 0.455 Other locations at which records may be inspected.

(a) * * *

(11) All complaints against cable television operators filed under

§§ 76.950 and 76.951 of this chapter, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

(12) All cable operator requests for approval of existing or increased cable television rates for basic service and associated equipment over which the Commission has assumed jurisdiction pursuant to 47 CFR 76.913, and 76.943 of this chapter, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

* * * * *

PART 76—CABLE TELEVISION SERVICE

4. The authority citation for part 76 is revised to read as follows:

Authority Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat. 1460.

§ 76.5 [Amended]

5. Section 76.5 is amended by removing paragraph (gg).

§ 76.10 [Removed]

6. Section 76.10 is removed.

§ 76.33 [Removed]

7. Section 76.33 is removed.

8. Section 76.900, added at 58 FR 19627, April 15, 1993, which would have become effective October 6, 1993, is withdrawn.

§§ 76.800–76.899 [Reserved]

9. Sections 76.800 through 76.899 are reserved.

10. Subpart N is added to part 76 to read as follows:

Subpart N—Cable Rate Regulation

Sec.

76.900 Temporary freeze of cable rates.
76.901 Definitions.
76.905 Standards for identification of cable systems subject to effective competition.
76.906 Presumption of no effective competition.
76.910 Franchising authority certification.
76.911 Petition for reconsideration of certification.
76.912 Joint certification.
76.913 Assumption of jurisdiction by the Commission.
76.914 Revocation of certification.
76.915 Change in status of cable operator.
76.916 Petition for recertification.
76.920 Composition of the basic tier.
76.921 Buy-through of other tiers prohibited.
76.922 Rates for the basic service tier and cable programming service tiers.
76.923 Rates for equipment and installation used to receive the basic service tier.
76.924 Cost accounting and cost allocation requirements.
76.925 Costs of franchise requirements.
76.930 Initiation of review of basic cable service and equipment rates.
76.931 Notification of basic tier availability.
76.932 Notification of proposed rate increase.
76.933 Franchising authority review of basic cable rates and equipment costs.
76.934 Small systems.
76.935 Participation of interested parties.
76.936 Written decision.
76.937 Burden of proof.
76.938 Proprietary information.
76.940 Prospective rate reduction.
76.941 Rate prescription.
76.942 Refunds.
76.943 Fines.
76.944 Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.
76.945 Procedures for Commission review of basic service rates.
76.950 Complaints regarding cable programming service rates.
76.951 Standard complaint form; other filing requirements.
76.952 Information to be provided by cable operator on monthly subscriber bills.
76.953 Limitation on filing a complaint.
76.954 Initial review of complaint; minimum showing requirement; dismissal of defective complaints.
76.955 Additional opportunity to file corrected complaint.
76.956 Cable operator response.
76.957 Commission adjudication of the complaint.
76.960 Prospective rate reductions.
76.961 Refunds.
76.962 Implementation and certification of compliance.
76.963 Forfeiture.
76.964 Advance written notification of rate increases.
76.970 Commercial leased access rates.
76.971 Commercial leased access terms and conditions.
76.975 Commercial leased access dispute resolution.
76.977 Minority and educational programming used in lieu of deregulated commercial leased access capacity.
76.980 Charges for customer changes.
76.981 Negative option billing.
76.982 Continuation of rate agreements.
76.983 Discrimination.
76.984 Geographically uniform rate structure.
76.985 Subscriber bill itemization.

Subpart N—Cable Rate Regulation

§ 76.900 Temporary freeze of cable rates.

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under Section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined under rates in effect on April 5, 1993, for a period of 120 days.

(b) The average monthly subscriber bill shall be calculated by determining for a monthly billing cycle the sum of all billed monthly charges for all cable services subject to regulation under section 623 of the Communications Act and dividing that sum by the number of subscribers receiving any of those services. The average monthly subscriber bill determined under rates in effect on April 5, 1993, shall be calculated based on customer charges for the most recent monthly billing cycle ending prior to April 5, 1993.

§ 76.901 Definitions.

(a) *Basic service.* The basic service tier shall, at a minimum, include all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system) any public, educational, and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming signals a service added to the basic tier by the cable operator.

(b) *Cable programming service.* Cable programming service includes any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

(1) Video programming carried on the basic service tier as defined in this section;

(2) Video programming offered on a pay-per-channel or pay-per-program basis; or

(3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:

(i) Consists of commonly-identified video programming; and

(ii) Is not bundled with any regulated tier of service.

(c) *Small system.* A small system is a cable television system that serves fewer than 1,000 subscribers. The service area of a small system shall be determined by the number of subscribers that are served by a system's principal headend, including any other headends or microwave receive sites that are technically integrated to the system's principal headend.

§ 76.905 Standards for identification of cable systems subject to effective competition.

(a) Only the rates of cable systems that are not subject to effective competition may be regulated.

(b) A cable system is subject to effective competition when any one of the following conditions is met:

(1) Fewer than 30 percent of the households in its franchise area subscribe to the cable service of a cable system.

(2) The franchise area is:

(i) Served by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.

(3) A multichannel video programming distributor, operated by the franchising authority for that franchise area, offers video programming to at least 50 percent of the households in the franchise area.

(c) Each separately billed or billable customer will count as a household subscribing to or being offered video programming services, with the exception of multiple dwelling buildings billed as a single customer. Individual units of multiple dwelling buildings will count as separate households.

(d) A multichannel video program distributor, for purposes of this section, is an entity such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a video dialtone service provider, or a satellite master antenna television service provider that makes available for purchase, by subscribers or customers, multiple channels of video programming.

(e) Service of a multichannel video programming distributor will be deemed offered:

(1) When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and

(2) When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.

(f) For purposes of determining the number of households subscribing to the services of a multichannel video programming distributor other than the largest multichannel video programming distributor, under paragraph (b)(2)(ii) of this section, the number of subscribers of all multichannel video programming distributors that offer services to at least 50 percent of the households in the franchise area will be aggregated.

(g) In order to offer comparable programming within the meaning of paragraph (b)(2)(i) of this section, a competing multichannel video programming distributor must offer at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.

§ 76.906 Presumption of no effective competition.

In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.

§ 76.910 Franchising authority certification.

(a) A franchising authority must be certified by the Commission in order to regulate the basic service tier and associated equipment of a cable system within its jurisdiction.

(b) To be certified, the franchising authority must file with the Commission a written certification that:

(1) The franchising authority will adopt and administer regulations with respect to the rates for the basic service tier that are consistent with the regulations prescribed by the Commission for regulation of the basic service tier;

(2) The franchising authority has the legal authority to adopt, and the personnel to administer, such regulations;

(3) Procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties; and

(4) The cable system in question is not subject to effective competition. Unless a franchising authority has actual knowledge to the contrary, the franchising authority may rely on the presumption in § 76.906 that the cable operator is not subject to effective competition.

(c) The written certification described in paragraph (b) of this section shall be made by filing the FCC form designated for that purpose. The form must be filed by

(1) Registered mail, return receipt requested, or

(2) Hand-delivery to the Commission and a date-stamped copy obtained. The date on the return receipt or on the date-stamped copy is the date filed.

(d) A copy of the certification form described in paragraph (c) of this section must be served on the cable operator before or on the same day it is filed with the Commission.

(e) Unless the Commission notifies the franchising authority otherwise, the certification will become effective 30 days after the date filed, *provided, however,* That the franchising authority may not regulate the rates of a cable system unless it:

(1) Adopts regulations:

(i) Consistent with the Commission's regulations governing the basic tier; and

(ii) Providing a reasonable opportunity for consideration of the views of interested parties, within 120 days of the effective date of certification; and

(2) Notifies the cable operator that the authority has been certified and has adopted the regulations required by paragraph (e)(1) of this section.

(f) If the Commission denies a franchising authority's certification, the Commission will notify the franchising authority of any revisions or modifications necessary to obtain approval.

§ 76.911 Petition for reconsideration of certification.

(a) A cable operator (or other interested party) may challenge a franchising authority's certification by filing a petition for reconsideration. The petition may allege either of the following:

(1) The cable operator is not subject to rate regulation because effective competition exists as defined in § 76.905.

(2) The franchising authority does not meet the certification standards set forth in 47 U.S.C. 543(a)(3).

(b)(1) The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition, as defined in § 76,905, exists in the franchise area.

(2) For purposes of paragraph (a)(1) of this section, if the evidence establishing effective competition is not otherwise available, cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days. Such responses may be limited to numerical totals.

(c) Stay of rate regulation. (1) The filing of a petition for reconsideration pursuant to paragraph (a)(1) of this section will automatically stay the imposition of rate regulation pending the outcome of the reconsideration proceeding.

(2) A petitioner filing pursuant to paragraph (a)(2) of this section may request a stay of rate regulation.

(3) In any case in which a stay of rate regulation has been granted, if the petition for reconsideration is denied, the cable operator may be required to refund any rates or portion of rates above the permitted tier charge which were collected from the date the petition was filed.

(d) The filing of a petition for reconsideration alleging the presence of effective competition based on frivolous grounds is prohibited, and may be subject to forfeitures.

(e) If the Commission upholds a challenge to a certification filed pursuant to paragraph (a)(2) of this section, the Commission will notify the franchising authority of the revisions necessary to secure approval and provide the authority an opportunity to amend its certification however necessary to secure approval. *Provided, however,* That pending approval of certification, the Commission will assume jurisdiction over basic cable service rates in that franchise area.

§76.912 Joint certification.

(a) Franchising authorities may apply for joint certification and may engage in joint regulation, including, but not limited to, joint hearings, data collection, and ratemaking. Franchising authorities jointly certified to regulate their cable system(s) may make independent rate decisions.

(b) Franchising authorities may apply for joint certification regardless of whether the authorities are served by the same cable system or by different cable systems and regardless of whether the rates in each franchising area are uniform.

§76.913 Assumption of jurisdiction by the Commission.

(a) Upon denial or revocation of the franchising authority's certification, the Commission will regulate rates for cable services and associated equipment of a cable system not subject to effective competition, as defined in § 76.905, in a franchise area. Such regulation by the Commission will continue until the franchising authority has obtained certification or recertification.

(b) A franchising authority unable to meet certification standards may petition the Commission to regulate the rates for basic cable service and associated equipment of its franchisee when:

(1) The franchising authority lacks the resources to administer rate regulation; *Provided, however,* That the request must be accompanied by a demonstration that franchise fees are insufficient to fund any additional activities required to administer basic service rate regulation; or

(2) The franchising authority lacks the legal authority to regulate basic service rates; *Provided, however,* That the authority must submit with its request a statement detailing the nature of the legal infirmity.

(c) The Commission will regulate basic service rates pursuant to this Section until the franchising authority qualifies to exercise jurisdiction pursuant to § 76.916.

§76.914 Revocation of certification.

(a) A franchising authority's certification shall be revoked if:

(1) After the franchising authority has been given a reasonable opportunity to comment, it is determined that state and local laws and regulations do not conform to the Commission's rate regulations governing cable rates, §§ 76.922 through 76.925.

(2) After being given an opportunity to cure the defect, a franchising authority fails to fulfill one of the three conditions for certification, set forth in 47 U.S.C. 543(a)(3), or any of the provisions of § 76.910(b).

(b) In all cases of revocation, the Commission will assume jurisdiction over basic service rates until an authority becomes recertified. The Commission will also notify the franchising authority regarding the corrective action that may be taken.

(c) A petition for revocation must be served on the franchising authority and contain a statement that service was made. The franchising authority may file an opposition within 30 days of filing of the petition. A reply may be filed within 15 days of filing the opposition.

(d) While a petition for revocation is pending, and absent grant of a stay, the franchising authority may continue to regulate the basic service rates of its franchisees.

§76.915 Change in status of cable operator.

(a) A cable operator that becomes subject to effective competition, may petition the franchising authority for change in its regulatory status. The operator bears the burden of proving the existence of effective competition. Oppositions may be filed within 15 days of public notice of the filing of the petition, and must be served on the operator. Cable operators may reply within 7 days of filing of oppositions.

(b) Franchising authority decisions on petitions for change in status must be made within 30 days after the pleading cycle set forth in paragraph (a) of this section closes. Franchising authorities must notify the Commission within ten days of any decision changing status. Unless the Commission receives an opposition to such change in status, the decision will become final 30 days after adoption by the franchising authority.

(c) After an initial determination of the franchising authority that effective competition exists becomes final, the franchising authority will then cease regulating basic cable service rates, and the Commission's regulatory authority over cable programming services for the system in the franchise area will also cease.

(d) A cable operator and a franchising authority may submit a joint statement that effective competition exists. The joint statement must stipulate which of the three statutory tests for effective competition has been met and explain how the test has been satisfied. These joint statements will become final decisions within 30 days of filing with the Commission, unless challenged by an interested party.

(e) Cable operators denied a change in status by a franchising authority may seek review of that finding at the Commission by filing a petition for revocation.

(f) In cases where a local franchising authority has not been certified to regulate rates, a cable operator may petition the Commission for change in its regulatory status. The time periods in paragraph (a) of this section will apply to oppositions and replies concerning these petitions.

§76.916 Petition for recertification.

(a) After its request for certification has been denied or its existing certification has been revoked, a franchising authority wishing to assume jurisdiction to regulate basic service and associated equipment rates must file a "Petition for Recertification" accompanied by a copy of the earlier decision denying or revoking certification.

(b) The petition must:

(1) Meet the requirements set forth in 47 U.S.C. 543(a)(3);

(2) State that the cable system is not subject to effective competition; and

(3) Contain a clear showing, supported by either objectively verifiable data such as a state statute, or by affidavit, that the reasons for the

earlier denial or revocation no longer pertain.

(c) The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification.

(d) Oppositions may be filed within 15 days after the petition is filed, and must be served on the petitioner. Replies may be filed within seven days of filing of oppositions, and must be served on the opposing party(ies).

§ 76.920 Composition of the basic tier.

Every subscriber of a cable system must subscribe to the basic tier in order to subscribe to any other tier of video programming or to purchase any other video programming.

§ 76.921 Buy-through of other tiers prohibited.

(a) No cable system operator may require the subscription to any tier other than the basic service tier as a condition of subscription to video programming offered on a per channel or per program charge basis. A cable operator may, however, require the subscription to one or more tiers of cable programming services as a condition of access to one or more tiers of cable programming services.

(b) A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per-channel or per-program charge basis.

(c) Prior to October 5, 2002, the provisions of paragraph (a) of this section shall not apply to any cable system that lacks the capacity to offer basic service and all programming distributed on a per channel or per program basis without also providing other intermediate tiers of service:

(1) By controlling subscriber access to nonbasic channels of service through addressable equipment electronically controlled from a central control point or

(2) Through the installation, noninstallation, or removal of frequency filters (traps) at the premises of subscribers without other alteration in system configuration or design and without causing degradation in the technical quality of service provided.

(d) Any retiering of channels or services that is not undertaken in order to accomplish legitimate regulatory, technical, or customer service objectives and that is intended to frustrate or has the effect of frustrating compliance with paragraphs (a) through (c) of this section is prohibited.

§ 76.922 Rates for the basic service tier and cable programming services tiers.

(a) *Basic and cable programming service tier rates.* Basic service tier and cable programming service rates shall be subject to regulation by the Commission and by state and local authorities, as is appropriate, in order to assure that they are in compliance with the requirements of 47 U.S.C. 543. Rates that are demonstrated, in accordance with these rules, not to exceed the "Initial Permitted Per Channel Charge" or the "Subsequent Permitted Per Channel Charge" as described below, or the equipment charges as specified in § 76.923, will be accepted as in compliance. The maximum monthly charge per subscriber for a tier of regulated programming services offered by a cable system shall consist of a permitted per channel charge multiplied by the number of channels on the tier, plus a charge for franchise fees. The maximum monthly charges for regulated programming services shall not include any charges for equipment or installations. Charges for equipment and installations are to be calculated separately pursuant to § 76.923 of these rules.

(b) *Initial permitted per channel charge.* (1) The permitted per channel charge on the initial date of regulation shall be, at the election of the cable operator, either:

(i) A charge determined pursuant to a cost-of-service proceeding; or

(ii) The charge specified in paragraphs (b)(1)(ii) (A), (B), or (C) of this section as applicable;

(A) If the operator's per channel charge for regulated programming services and equipment in effect on the date of initial regulation is equal to or below the benchmark per channel charge, as adjusted forward for inflation from September 30, 1992, to the date of initial regulation, then the permitted per channel charge shall be the per channel charge in effect on the date of initial regulation, adjusted for equipment.

(B) If (*1*) The operator's per channel charge for regulated programming services and equipment in effect on the date of initial regulation is above the benchmark per channel charge, as adjusted forward for inflation from September 30, 1992, until the initial date of regulation, and:

(*2*) The operator's per channel charge for regulated programming services and equipment in effect on September 30, 1992, was above the benchmark per channel charge, then the permitted per channel charge is nine-tenths of the per channel charge in effect on September 30, 1992, but no lower than the benchmark per channel charge, additionally adjusted for inflation from September 30, 1992, to the initial date of regulation, for equipment, and for any charges in the number of channels offered on all regulated tiers.

(C) If: (*1*) The operator's per channel charge for regulated programming services and equipment in effect on the date of initial regulation is above the benchmark per channel charge, as adjusted forward for inflation from September 30, 1992, until the initial date of regulation, and:

(*2*) The operator's per channel charge for regulated programming services and equipment in effect on September 30, 1992, was below the benchmark per channel charge, then the permitted per channel charge is the benchmark rate per channel adjusted for inflation from September 30, 1992, to the initial date of regulation, for equipment, and for any charges in the number of channels offered on all regulated tiers.

(2) For purposes of this section, the initial date of regulation for the basic service tier shall be the date on which local notice is given pursuant to § 76.910 of our rules, that the provision of the basic service tier is subject to regulation. For a cable programming services tier, the initial date of regulation shall be the first date on which a complaint on the appropriate form is filed with the Commission concerning rates charged for the cable programming services tier.

(3) For purposes of this section, rates in effect on the initial date of regulation or on September 30, 1992, shall be the rates charged to subscribers for service received on that date.

(c) *Subsequent permitted per channel charge.* After the initial date of regulation, the permitted channel charge for regulated programming services shall be, at the election of the cable operator, either:

(1) A per channel rate determined pursuant to a cost-of-service showing, or:

(2) The prior permitted per channel charge previously approved by a regulatory authority, adjusted for inflation and external costs in accordance with the price cap requirements set forth in paragraph (d) of this section.

(d) *Price cap requirements*—(1) *Inflation adjustments.* Permitted per channel charges for regulated programming services may be adjusted periodically on account of inflation. Adjustments to permitted per channel charges on account of inflation shall be based on changes in the Gross National Product Price Index published by the Bureau of Economic Analysis of the United States Department of Commerce.

(2) *External costs.* Permitted per channel charges for regulated programming services may also be adjusted for changes in external costs measured on a per channel per subscriber basis. To the extent external cost increases are greater or less than the GNP-PI for the relevant period, the per-channel charge will be adjusted accordingly. Per channel charges may not be increased if external costs increase at a rate less than inflation. Permitted per channel charges also shall be decreased on account of external costs to the extent such costs decrease from previous levels.

(i) *Categories.* External Costs shall consist of costs in the following categories:

(A) State and local taxes applicable to provision of cable television service;

(B) Franchise fees;

(C) Costs of complying with franchise requirements, including costs of providing public, educational, and governmental access channels as required by the franchising authority;

(D) Retransmission consent fees; and

(E) Programming costs.

(ii) The permitted per channel charge for a tier of regulated programming services shall be adjusted on account of programming costs and retransmission consent fees only for programming or broadcast signals offered on that tier.

(iii) The permitted per channel charge shall not be adjusted for costs of retransmission consent fees or charges in those fees incurred prior to October 6, 1994.

(iv) The starting date for adjustments on account of external costs for a tier of regulated programming service shall be the initial date of regulation of the tier or 180 days from the effective date of these rules, if the initial date of regulation occurs on or after 180 days from the effective date of these rules.

(v) Changes in franchise fees shall not result in an adjustment to permitted per channel charges, but rather shall be calculated separately as part of the maximum monthly charge per subscriber for a tier of regulated programming services.

(vi) Adjustments to permitted per channel charges on account of increases in costs of programming obtained from affiliated programmers, as defined in § 76.901 of the rules, shall be the lesser of actual increases or the previous permitted rate level increased by the amount of inflation.

(vii) Adjustments to permitted per channel charges on account of increases in costs of programming shall be further adjusted to reflect any revenues received by the operator from the programmer.

§ 76.923 Rates for equipment and installation used to receive the basic service tier.

(a) *Scope.* The equipment regulated under this section consists of all equipment in a subscriber's home that is used to receive the basic service tier, regardless of whether such equipment is additionally used to receive other tiers of regulated programming service and/or unregulated service. Such equipment shall include, but is not limited to:

(1) Converter boxes;

(2) Remote control units;

(3) Connections for additional television receivers; and

(4) Other cable home wiring.

Subscriber charges for such equipment shall not exceed charges based on actual costs in accordance with the requirements set forth below.

(b) *Unbundling.* A cable operator shall establish rates for remote control units, converter boxes, other customer equipment, installation, and additional connections separate from rates for basic tier service. In addition, the rates for such equipment and installations shall be unbundled one from the other.

(c) *Equipment basket.* A cable operator shall establish an Equipment Basket, which will include all costs associated with providing customer equipment and installation under this section. Equipment Basket costs shall be limited to the direct and indirect material and labor costs of providing, leasing, installing, repairing, and servicing customer equipment, as determined in accordance with the cost accounting and cost allocation requirements of § 76.924. The Equipment Basket shall not include general administrative overhead including general marketing expenses. The Equipment Basket shall include a reasonable profit.

(d) *Hourly service charge.* A cable operator shall establish charges for equipment and installation using the Hourly Service Charge (HSC) methodology. The HSC shall equal the operator's annual Equipment Basket costs, excluding the purchase cost of customer equipment, divided by the total person hours involved in installing, repairing, and servicing customer equipment during the same period. The HSC is calculated according to the following formula:

$$HSC = \frac{EB - CE}{H}$$

Where, EB=annual Equipment Basket Cost; CE=annual purchase cost of all customer equipment; and H=person hours involved in installing and repairing equipment per year. The purchase cost of customer equipment shall include the cable operator's invoice price plus all other costs incurred with respect to the equipment until the time it is provided to the customer.

(e) *Installation charges.* Installation charges shall be either:

(1) The HSC multiplied by the actual time spent on each individual installation; or

(2) The HSC multiplied by the average time spent on a specific type of installation.

(f) *Remote charges.* Monthly charges for rental of a remote control unit shall consist of the average annual unit purchase cost of the type of remote leased, including acquisition price and incidental costs such as sales tax, financing and storage up to the time it is provided to the customer, added to the product of the HSC times the average number of hours annually repairing or servicing a remote, divided by 12 to determine the monthly lease rate for a remote according to the following formula:

$$\text{Monthly Charge} = \frac{UCE + (HSC \times HR)}{12}$$

Where, HR=average hours repair per year; and UCE=average annual unit cost of remote. Separate charges shall be established for each significantly different type of remote control unit.

(g) *Other equipment charges.* The monthly charges for rental of converter boxes and other customer equipment shall be calculated in the same manner as for remote control units. Separate charges shall be established for each significantly different type of converter box and each significantly different type of other customer equipment.

(h) *Additional connection charges.* The costs of installation and monthly use of additional connections shall be recovered as charges associated with the installation and equipment cost categories, and at rate levels determined by the actual cost methodology presented in the foregoing paragraphs (e), (f), and (g) of this section. An operator may recover additional programming costs and the costs of signal boosters on the customers premises, if any, associated with the additional connection as a separate monthly unbundled charge for additional connections.

(i) *Charges for equipment sold.* A cable operator may sell customer

premises equipment to a subscriber. The equipment price shall recover the operator's cost of the equipment, including costs associated with storing and preparing the equipment for sale up to the time it is sold to the customer, plus a reasonable profit. An operator may sell service contracts for the maintenance and repair of equipment sold to subscribers. The charge for a service contract shall be the HSC times the estimated average number of hours for maintenance and repair over the life of the equipment.

(j) *Promotions.* A cable operator may offer equipment or installation at charges below those determined under paragraphs (e) through (g) of this section, as long as those offerings are reasonable in scope in relation to the operator's overall offerings in the Equipment Basket and not unreasonably discriminatory. Operators may not recover the cost of a promotional offering by increasing charges for other Equipment Basket elements, or by increasing programming service rates above the maximum monthly charge per subscriber prescribed by these rules. As part of a general cost-of-service showing, an operator may include the cost of promotions in its general system overhead costs.

(k) *Franchise fees.* Equipment charges may include a properly allocated portion of franchise fees.

§ 76.924 Cost accounting and cost allocation requirements.

(a) *Applicability.* The requirements of this section are applicable to cable operators for which the basic service tier is regulated by local franchising authorities or the Commission, or, with respect to a cable programming services tier, for which a complaint has been filed with the Commission. The requirements of this section are applicable for purposes of rate adjustments on account of external costs and for cost-of-service showings.

(b) *Generally accepted accounting principles.* Cable operators shall maintain their accounts in accordance with generally accepted accounting principles, except as otherwise directed by the Commission.

(c) *Accounts required.* Cable operators shall maintain accounts in a manner that will enable identification of appropriate costs and application of the Commission's cost assignment and allocation procedures, to cost categories necessary for rate adjustments due to changes in external costs and for cost-of-service showings. Such categories shall be sufficiently detailed and supported to permit verification and audit against the company's accounting records.

(d) *Accounting level.* Except to the extent indicated below, cable operators shall aggregate expenses and revenues at either the franchise, system, regional, or company level in a manner consistent with practices of the operator as of April 3, 1992. However, in all events, cable operators shall identify at the franchise level their costs of franchise requirements, franchise fees, local taxes, and local programming.

(e) *Cost allocation requirements.* (1) For purposes of establishing expenses at the franchise level, cable operators shall allocate expenses and revenues aggregated at higher levels to the franchise level based on the ratio of the total number of subscribers served at the franchise level to the total number of subscribers served at the higher level.

(2) Except to the extent indicated below, all categories of costs allocated to, or identified at, the franchise level shall be allocated to the basic service tier based on the ratio of channels in the basic tier to the total number of channels offered in the franchise area, including nonregulated and leased commercial access channels. These costs shall be allocated to each tier of cable programming services based on the ratio of channels in that tier to the total number of channels offered in the franchise area.

(3) Costs of programming and retransmission consent fees, however, shall be allocated only to the tier on which the programming or broadcast signal at issue is offered.

(4) Costs of franchise fees shall be allocated among equipment and installations, program service tiers and subscribers in a manner that is most consistent with the methodology of assessment of franchise fees by local authorities.

(5) Costs of public, educational, and governmental access channels carried on the basic tier shall be directly assigned to the basic tier where possible.

(f) *Common costs.* Expenses which cannot be assigned to any single expense or service category shall be described as common costs. Common costs shall be allocated to expense categories as follows:

(1) Wherever possible, common costs are to be allocated to service cost categories based on direct analysis of the origin of the costs themselves.

(2) When direct analysis is to possible, common costs shall, if possible, be allocated to service cost categories based on an indirect, cost-causative linkage to other costs directly assigned or allocated to the service cost category.

(3) When neither direct nor indirect measures of cost allocation can be found, common costs shall be allocated to each service cost category based on the ratio of all costs directly assigned and attributed to a service cost category over total costs directly assignable and attributable.

(g) *Unrelated expenses and revenues.* Cable operators shall exclude from cost categories used to develop rates for the provision of regulated cable service, equipment, and leased commercial access, any direct or indirect expenses and revenues not related to the provision of such services. Common costs of providing regulated cable service, equipment, and leased commercial access and unrelated activities shall be allocated between them in accordance with paragraph (f) of this section.

(h) *Part-time channels.* In situations where a single channel is divided on a part-time basis and is used to deliver service associated with different tiers or with pay per channel or pay per view service, a reasonable and documented allocation of that channel between services shall be required along with the associated revenues and costs.

§ 76.925 Costs of franchise requirements.

(a) The costs of satisfying franchise requirements to support public, educational, and governmental channels shall consist of the sum of:

(1) All per channel costs for the number of channels used to meet franchise requirements for public, educational, and governmental channels;

(2) Any direct costs of meeting such franchise requirements; and

(3) A reasonable allocation of general and administrative overhead.

(b) The costs of satisfying any other requirement under the franchise shall consist of the direct and indirect costs including a reasonable allocation of general and administrative overhead.

§ 76.930 Initiation of review of basic cable service and equipment rates.

A cable operator shall file its schedule of rates for the basic service tier and associated equipment with a franchising authority within 30 days of receiving written notification from the franchising authority that the franchising authority has been certified by the Commission to regulate rates for the basic service tier.

§ 76.931 Notification of basic tier availability.

A cable operator shall provide written notification to subscribers of the

availability of basic tier service by September 19, 1993, or three billing cycles from June 21, 1993, and to new subscribers at the time of installation. This notification shall include the following information:

(a) That basic tier service is available;

(b) The cost per month for basic tier service;

(c) A list of all services included in the basic service tier.

§ 76.932 Notification of proposed rate increase.

A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

§ 76.933 Franchising authority review of basic cable rates and equipment costs.

(a) After a cable operator has submitted for review its existing rates for the basic service tier and associated equipment costs, or a proposed increase in these rates (including increases in the baseline channel change that results from reductions in the number of channels in a tier), the existing rates will remain in effect or the proposed rates will become effective after 30 days from the date of submission: *Provided, however,* That the franchising authority may toll this 30-day deadline for an additional time by issuing a brief written order as described in paragraph (b) within 30 days of the rate submission explaining that it needs additional time to review the rates.

(b) If the franchising authority is unable to determine, based upon the material submitted by the cable operator, that the existing or proposed rates are within the Commission's permitted basic service tier charge or actual cost of equipment as defined in §§ 76.922 and 76.923, or if a cable operator has submitted a cost-of-service showing pursuant to §§ 76.937(c) and 76.924, seeking to justify a rate above the Commission's basic service tier charge as defined in §§ 76.922 and 76.923, the franchising authority may toll the 30-day deadline in paragraph (a) of this section to request and/or consider additional information or to consider the comments from interested parties as follows:

(1) For an additional 90 days in cases not involving cost-of-service showings; or

(2) For an additional 150 days in cases involving cost-of-service showings.

(c) If a franchising authority has availed itself of the additional 90 or 150 days permitted in paragraph (b) of this section, and has taken no action within these additional time periods, then the proposed rates will go into effect at the end of the 90 or 150 day periods, or existing rates will remain in effect at such times, subject to refunds if the franchising authority subsequently issues a written decision disapproving any portion of such rates: *Provided, however,* That in order to order refunds, a franchising authority must have issued a brief written order to the cable operator by the end of the 90 or 150-day period permitted in paragraph (b) of this section directing the operator to keep an accurate account of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid.

§ 76.934 Small systems.

A franchising authority that has been certified, pursuant to § 76.910 to regulate rates for basic service and associated equipment may permit a small system as defined in § 76.901 to certify that the small system's rates for basic service and associated equipment comply with § 76.922, the Commission's substantive rate regulations.

§ 76.935 Participation of interested parties.

In order to regulate basic tier rates or associated equipment costs, a franchising authority must have procedural laws or regulations applicable to rate regulation proceedings that provide a reasonable opportunity for consideration of the views of interested parties. Such rules must take into account the 30, 120, or 180-day time periods that franchising authorities have to review rates under § 76.933.

§ 76.936 Written decision.

(a) A franchising authority must issue a written decision in a ratemaking proceeding whenever it disapproves an initial rate for the basic service tier or associated equipment in whole or in part, disapproves a request for a rate increase in whole or in part, or approves a request for an increase in whole or in part over the objections of interested parties. A franchising authority is not required to issue a written decision that approves an unopposed existing or proposed rate for the basic service tier or associated equipment.

(b) Public notice must be given of any written decision required in paragraph (a) of this section, including releasing the text of any written decision to the public.

§ 76.937 Burden of proof.

(a) A cable operator has the burden of proving that its existing or proposed rates for basic service and associated equipment comply with 47 U.S.C. 543, and §§ 76.922 and 76.923.

(b) For an existing or a proposed rate for basic tier service or associated equipment that is within the permitted tier charge and actual cost of equipment as set forth in §§ 76.922 and 76.923, the cable operator must submit the appropriate FCC form.

(c) For an existing or a proposed rate for basic tier service that exceeds the permitted tier charge as set forth in §§ 76.922 and 76.923, the cable operator must submit a cost-of-service showing to justify the proposed rate.

§ 76.938 Proprietary information.

A franchising authority may require the production of proprietary information to make a rate determination and in such cases must apply procedures analogous to those set forth in § 0.459 regarding requests for confidentiality.

§ 76.940 Prospective rate reduction.

A franchising authority may order a cable operator to implement a reduction in basic service tier or associated equipment rates where necessary to bring rates into compliance with the standards set forth in §§ 76.922 and 76.923

§ 76.941 Rate prescription.

A franchising authority may prescribe a reasonable rate for the basic service tier or associated equipment after it determines that a proposed rate is unreasonable.

§ 76.942 Refunds.

(a) A franchising authority may order a cable operator to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted tier charge or above the actual cost of equipment, unless the operator has submitted a cost-of-service showing which justifies the rate charged as reasonable. Before ordering a cable operator to refund previously paid rates to subscribers, a franchising authority must give the operator notice and opportunity to comment.

(b) An operator's liability for refunds in limited to a one-year period, *except that* an operator that fails to comply with a valid rate order issued by a franchising authority or the Commission shall be liable for refunds commencing from the effective date of such order until such time as it complies with such order.

(c) The refund period shall run as follows:

(1) From the date the operator implements a prospective rate reduction

back in time to June 21, 1993, or one year, whichever is shorter.

(2) From the date a franchising authority issues an accounting order pursuant to § 76.933(c), and ending on the date the operator implements a prospective rate reduction ordered by a franchising authority or one year, whichever is shorter.

(d) The cable operator, in its discretion, may implement a refund in the following manner:

(1) By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified credit to those subscribers' bills; or

(2) By means of a prospective percentage reduction in the rates for the basic service tier or associated equipment to cover the cumulative overcharge. This shall be reflected as a specifically identified, one-time credit on prospective bills to the class of subscribers that currently subscribe to the cable system.

(e) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments.

§ 76.943 Fines.

(a) A franchising authority may impose fines or monetary forfeitures on a cable operator that does not comply with a rate decision or refund order directed specifically at the cable operator, provided the franchising authority has such power under state or local laws.

(b) A cable operator shall not be subject to forfeiture because its rate for basic service or equipment is determined to be unreasonable.

§ 76.944 Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.

(a) The Commission shall be the sole forum for appeals of decisions by franchising authorities on rates for the basic service tier or associated equipment involving whether or not a franchising authority has acted consistently with the Cable Act or §§ 76.922 and 76.923. Appeals of ratemaking decisions by franchising authorities that do not depend upon determining whether a franchising authority has acted consistently with the Cable Act or §§ 76.922 and 76.923, may be heard in state or local courts.

(b) Any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with the Commission within 30 days of release of the text of the franchising authority's decision as computed under § 1.4(b) of this chapter. Oppositions may be filed within 15 days after the appeal is filed, and must be served on the party(ies) appealing the rate decision. Replies may be filed 7 days after the last day for oppositions and shall be served on the parties to the proceeding.

§ 76.945 Procedures for Commission review of basic service rates.

(a) Upon assumption of rate regulation authority, the Commission will notify the cable operator and require the cable operator to file its basic rate schedule with the Commission within 30 days, with a copy to the local franchising authority.

(b) Basic service and equipment rate schedule filings for existing rates or proposed rate increases (including increases in the baseline channel change that results from reductions in the number of channels in a tier) must use the appropriate FCC forms. Cable operators with existing or proposed rates above the permitted tier rate must submit a cost-of-service showing sufficient to support a finding that the rates are reasonable.

(c) Filings proposing annual adjustments or rates within the rates regulation standards in §§ 76.922 and 76.923, must be made 30 days prior to the proposed effective date and can become effective on the proposed effective date unless the Commission issues an order deferring the effective date or denying the rate proposal. Petitions opposing such filings must be filed within 15 days of public notice of the filing by the cable operator and be accompanied by a certificate that service was made on the cable operator and the local franchising authority. The cable operator may file an opposition within five days of filing of the petition, certifying to service on both the petitioner and the local franchising authority.

(d) Filings proposing a rate not within the rate regulation standards of §§ 76.922 and 76.923, must be made 90 days before the requested effective date. Petitions opposing such filings must be filed within 30 days of public notice of the filing, and be accompanied by a certificate that service was made on the cable operator and the local franchising authority. The cable operator may file an opposition within 10 days of the filing of the petition, and certifying that service was made on the petitioner and the local franchising authority.

§ 76.950 Complaints regarding cable programming service rates.

Any subscriber, franchising authority, or other relevant state or local government entity may file with the Commission a complaint challenging the reasonableness of a cable operator's rate for cable programming service, or the reasonableness of a cable operator's charges for installation or rental of equipment used for the receipt of cable programming service.

§ 76.951 Standard complaint form; other filing requirements.

(a) Any complaint regarding a cable operator's rate for cable programming service or associated equipment must be filed using standard complaint form, FCC 329. The cable operator must provide a copy of the standard complaint form to any subscriber upon request.

(b) The following information must be provided on the standard complaint form:

(1) The complainant's name, mailing address, and daytime telephone number;

(2) The name, mailing address, and FCC community unit identifier of the relevant cable operator.

(Note: pursuant to § 76.952, the cable operator must provide its FCC community unit identifier on monthly bills to subscribers);

(3) The name and address of the relevant franchising authority.

(Note: pursuant to § 76.952, the cable operator must provide this information on monthly bills to subscribers);

(4) An indication whether the complainant is challenging the reasonableness of:

(i) A rate concerning cable programming service or associated equipment in effect on June 21, 1993; or

(ii) A rate increase for cable programming service or associated equipment;

(5) For subscriber complaints regarding a rate increase, the date the complainant first received a bill from the cable operator reflecting the increased rate;

(6) A description of the cable programming service or associated equipment involved and, if applicable, how the service or associated equipment has changed;

(7) The current rate for the cable programming service or associated equipment at issue and, if the complainant is challenging the reasonableness of a rate increase, the most recent rate for the service or associated equipment immediately prior to the rate increase;

(8) An indication whether the complainant is filing:

(i) a complaint regarding this specific rate for the first time; or

(ii) a corrected complaint that was dismissed without prejudice;

(9) If the complainant is filing a corrected complaint, an indication of the date the complainant filed the prior complaint and the date the complainant received notification from the Commission that the prior complaint was defective;

(10) A certification that a copy of the complaint, including all attachments, is being served contemporaneously via first class mail on the cable operator and, if the complainant is a subscriber, on the relevant franchising authority;

(11) An allegation that the rate in question is unreasonable because it violates the Commission's rate regulations; and

(12) A certification that, to the best of the complainant's knowledge, the information provided on the form is true and correct.

(c) The complainant must attach to the standard complaint form a copy of the most recent bill reflecting the disputed rate or rate increase.

(d) A complaining subscriber may, but is not required to, attach to the standard complaint form a statement from the relevant franchising authority presenting its views on the reasonableness of the rate in question.

§ 76.952 Information to be provided by cable operator on monthly subscriber bills.

All cable operators must provide the following information to subscribers on monthly bills:

(a) The name and mailing address of the relevant franchising authority; and

(b) The FCC community unit identifier for the cable system.

§ 76.953 Limitation on filing a complaint.

(a) *Complaint regarding a rate in effect on June 21, 1993.* Notwithstanding paragraph (b) of this section, a complaint regarding a rate for cable programming service or associated equipment in effect on June 21, 1993, must be filed by December 20, 1993.

(b) *Complaint regarding a rate increase.* Except as provided in paragraph (a) of this section, a complaint alleging an unreasonable rate for cable programming service or associated equipment may be filed against a cable operator only in the event of a rate increase. A complaint regarding a rate increase for cable programming or associated equipment must be filed with the Commission within 45 days from the date the complainant receives a bill from the cable operator that reflects the increased rate.

(c) Late-filed complaints will be dismissed with prejudice.

§ 76.954 Initial review of complaint; minimum showing requirement; dismissal of defective complaints.

(a) The Commission will conduct an initial review of a complaint to determine if it meets the minimum showing required to allow the complaint to go forward. The minimum showing shall be satisfied if the complaint is filed using the standard complaint form described in § 76.951 and includes all information and attachments required by that form. A complainant will not be required, as part of the minimum showing, to provide the underlying information and calculations necessary to judge the cable programming service rate in question against the Commission's rate standards.

(b) A complaint that does not meet the minimum showing requirement described in paragraph (a) of this section will be considered defective. A defective complaint will be dismissed without prejudice to filing a corrected complaint as provided by § 76.955. The Commission will notify the complainant by mail of the dismissal. The filing of a complaint on the applicable form, but which is otherwise defective, will toll the limitation period established by § 76.953.

§ 76.955 Additional opportunity to file corrected complaint.

(a) If the Commission dismisses an initial complaint without prejudice pursuant to § 76.954, the complainant shall have one additional opportunity to cure the defect and file a corrected complaint.

(b) For a complaint filed on the applicable form but is otherwise defective, the complainant must cure the defect and file a corrected complaint with the Commission within 30 days from the date of the Commission's dismissal notice. Failure to cure the defect and file a corrected complaint within this time period will result in dismissal of the complaint with prejudice.

§ 76.956 Cable operator response.

(a) Unless the Commission notifies a cable operator to the contrary, the cable operator must file with the Commission a response to a complaint filed on the applicable form, within 30 days of the date of service of the complaint. The response shall indicate when service occurred. Service by mail is complete upon mailing. *See* § 1.47(f). The response shall include the information required by the appropriate FCC form. The cable operator must serve its response on the complainant (and, if the complainant is a subscriber, the relevant franchising authority) via first class mail.

(b) The burden shall be on the cable operator to prove that the service rate or equipment charge in question is not unreasonable. The cable operator may carry its burden in the following manner:

(1) For a service rate at or below the permitted level, by providing information and calculations that demonstrate that the rate in question falls at or below the permitted level;

(2) For a service rate that exceeds the permitted level;

(i) By providing proof that the cable system has reduced the rate for the cable programming service at issue to a level at or below the permitted level; or

(ii) By providing detailed cost-based information that demonstrates that the rate in question is reasonable despite the fact that it exceeds the permitted level.

(3) For a charge for equipment installation or rental, by providing information that demonstrates that the charge is based on the cable operator's actual cost.

(c) In addition to responding to the merits of a complaint, the cable operator may also move for dismissal of the complaint for failure to meet the minimum showing requirement. Any such motion for dismissal must state with particularity the reasons the cable operator believes the complaint is defective and shall not relieve the cable operator of its obligation to respond to the merits of the complaint.

(d) A cable operator may file a consolidated response to multiple complaints regarding the identical rate or rate increase. A consolidated response must be filed within 30 days from the date of service of the first complaint received, unless the Commission notifies the cable operator to the contrary. A cable operator may amend a consolidated response to address new issues raised by complaints received after the cable operator's initial response.

(e) A cable operator that fails to file and serve a response to a valid complaint may be deemed in default. If the Commission deems a cable operator in default, the Commission may enter an order against the cable operator finding the rate to be unreasonable and mandating appropriate relief.

(f) A cable operator need not respond to any complaint that is:

(1) Not filed on the applicable form; or

(2) That the Commission determined is defective *and* has so notified the cable operator.

§ 76.957 Commission adjudication of the complaint.

The Commission will consider the complaint and the cable operator's response and then determine by written decision whether the rate for the cable programming service or associated equipment is unreasonable or not. If it determines that the rate in question is unreasonable, the Commission will grant the complaint and may order appropriate relief, including, but not limited to, prospective rate reductions and refunds. If it determines that the rate in question is reasonable, the Commission will deny the complaint.

§ 76.960 Prospective rate reductions.

Upon a finding that a rate for cable programming service or associated equipment is unreasonable, the Commission may order the cable operator to implement a prospective rate reduction to the class of customers subscribing to the cable programming service at issue. The Commission's decision regarding a prospective rate reduction shall remain binding on the cable operator for one year unless the Commission specifies otherwise.

§ 76.961 Refunds.

(a) Upon a finding that a rate for cable programming service or associated equipment is unreasonable, the Commission may order the cable operator to refund to subscribers that portion of previously paid rates which is deemed unreasonable.

(b) The cumulative refund due subscribers shall be calculated from the date a valid complaint is filed until the date a cable operator implements a prospective rate reduction as ordered by the Commission pursuant to § 76.960.

(c) The cable operator, in its discretion, may implement a refund in the following manner:

(1) By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified, one-time credit to those subscribers' bills; or

(2) By means of a prospective percentage reduction in the unreasonable cable programming service rate or equipment charge to cover the cumulative overcharge. This shall be reflected as a specifically identified, one-time credit on prospective bills to the class of subscribers that currently subscribe to the cable programming service or associated equipment at issue.

(d) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments. Interest shall accrue from the date a valid complaint is filed until the refund issues.

§ 76.962 Implementation and certification of compliance.

(a) *Implementation.* A cable operator must implement remedial requirements, including prospective rate reductions and refunds, within 60 days from the date the Commission releases an order mandating a remedy.

(b) *Certification of compliance.* A cable operator must certify to the Commission its compliance with any Commission order mandating remedial requirements. Such certification shall:

(1) Be filed with the Commission within 90 days from the date the Commission releases an order mandating a remedy;

(2) Reference the applicable Commission order;

(3) State that the cable operator has complied fully with all provisions of the Commission's order;

(4) Include a description of the precise measures the cable operator has taken to implement the remedies ordered by the Commission; and

(5) Be signed by an authorized representative of the cable operator.

§ 76.963 Forfeiture.

(a) If any cable operator willfully fails to comply with the terms of any Commission order, including an order mandating remedial requirements after a finding of unreasonable cable programming service or equipment rates, or any Commission rule, the Commission may, in addition to other remedies, impose a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b).

(b) A cable operator shall not be subject to forfeiture because its rate for cable programming service or equipment is determined to be unreasonable.

§ 76.964 Advance written notification of rate increases.

In addition to the requirement of § 76.309(c)(3)(i)(B) regarding advance notification to customers of any changes in rates, programming services or channel positions, a cable operator shall give the relevant franchising authority a minimum of 30 days advance written notification of any changes in rates for cable programming service or associated equipment.

§ 76.970 Commercial leased access rates.

(a) Cable operators shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the requirement of 47 U.S.C. 532.

(b) The maximum commercial leased access rates that a cable operator may charge is the highest implicit net fee charged any nonaffiliated programmer (excluding leased access programmers) within the same program category.

(c) The implicit fee charged an unaffiliated programmer shall be calculated by determining the monthly price per subscriber that the operator pays to carry the programming of nonaffiliated providers and deducting the monthly price subscribers pay to view the programming of the nonaffiliated provider. This difference is multiplied by the percentage of subscribers able to receive the nonaffiliated provider's programming. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (*e.g.*, billing and collection, marketing, or studio services).

(d) For each of the three program categories as defined in paragraph (f) of this section, the highest implicit net fee charged any nonaffiliated provider in each category shall be the maximum monthly leased access rate per subscriber that the operator could charge a commercial leased access programmer in that category. The highest implicit net fee shall be based on contracts in effect in the previous calendar year. Maximum rates for shorter periods can be calculated by prorating the monthly maximum rate.

(e) Upon request, a schedule of commercial leased access rate shall be provided to prospective leased access programmers. Operators shall maintain, for Commission inspections, sufficient supporting documentation to justify the scheduled rates, including supporting contracts, calculations of the net implicit fees, and justifications for all adjustments.

(f) For purposes of paragraph (b) of this section there are three program categories:

(1) Programming for which a per-event or per channel charge is made;

(2) Programming more than fifty percent of the capacity of which is used to sell products directly to customers; and

(3) All other programming.

§ 76.971 Commercial leased access terms and conditions.

(a)(1) The cable operator and unaffiliated commercial leased access user may negotiate channel placement and tier access for leased programming, taking into account:

(i) The nature of the service (pay or general distribution channel, complete channel or individual program);

(ii) The relationship between the charge imposed and the desirability of the channel; and

(iii) The need to provide competition in program delivery and to afford users a genuine outlet for their programming.

(2) Where demand for commercial leased access capacity exceeds available supply, each lessee will be allowed to lease up to one channel's capacity.

(b) Cable operators may not apply programming production standards to leased access that are any higher than those applied to public, educational and governmental access channels.

(c) Cable operators are required to provide unaffiliated leased access users the minimal level of technical support necessary for users to present their material on the air, and may not unreasonably refuse to cooperate with a leased access user in order to prevent that provider from obtaining channel capacity, *provided however*, That leased access providers must reimburse operators for the reasonable cost of any technical support that operators actually provide.

(d) Cable operators may require reasonable security deposits or other assurances from users who are unable to prepay in full for access to leased commercial channels.

(e) Cable operators may not set terms and conditions for commercial leased access use based on content, *except*:

(1) To the limited extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person; or

(2) To comply with 47 U.S.C. 532 (h), (j) and § 76.701.

(f)(1) A cable operator shall provide billing and collection services for commercial leased access cable users, unless the operator demonstrates the existence of third party billing and collection services which in terms of cost and accessibility, offer leased access users an alternative substantially equivalent to that offered comparable non-leased programmers.

(2) If an operator can make the showing required in paragraph (f)(1) of this section, it must, to the extent technically feasible make available data necessary to enable a third party to bill and collect for the leased access user.

§ 76.975 Commercial leased access dispute resolution.

(a) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communications Act may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available.

(b) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the provisions of title VI of the Communications Act, or our implementing regulations, §§ 76.970 and 76.971, may file a petition for relief with the Commission.

(c) A petition must contain a concise statement of the facts constituting a violation of the statute or the Commission's Rules, the specific statute(s) or rule(s) violated, and certify that the petition was served on the cable operator.

(d) A petition must be filed within 60 days of the alleged violation.

(e) The cable operator or other respondent will have 30 days from the filing of the petition in which to file a response. If a leased access rate is disputed, the response must show that the rate charged is not higher than the highest implicit fee the operator charges for a comparable category of service, and submit the affidavit of a responsible company official in support. If, after a response is submitted, the staff finds a *prima facie* violation of our rules, the staff may require a respondent to produce additional information, or specify other procedures necessary for resolution of the proceeding.

(f) The Commission, after consideration of the pleadings, may grant the relief requested, in whole or in part, including, but not limited to ordering refunds, injunctive measures, or forfeitures pursuant 47 U.S.C. 503, denying the petition, or issuing a ruling on the petition or dispute.

(g) To be afforded relief, the petitioner must show by clear and convincing evidence that the cable operator has violated the Commission's leased access provisions in 47 U.S.C. 532 or §§ 76.970 and 76.971, or otherwise acted unreasonably or in bad faith in failing or refusing to make capacity available or to charge lawful rates for such capacity to an unaffiliated leased access programmer.

(h) During the pendency of a dispute, a party seeking to lease channel capacity for commercial purposes, shall comply with the rates, terms and conditions prescribed by the cable operator, subject to refund or other appropriate remedy.

§ 76.977 Minority and educational programming used in lieu of deregulated commercial leased access capacity.

(a) A cable operator required by this section to designate channel capacity for commercial use pursuant to 47 U.S.C. 532, may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming sources, whether or not such source is affiliated with cable operator. The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this Section may not exceed 33 percent of the channel capacity designated pursuant to 47 U.S.C. 532.

(b) For purposes of this section, a qualified minority programming source is a programming source that devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned.

(c) For purposes of this section, a qualified educational programming source is a programming source that devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, or the arts and has a documented annual expenditure on programming exceeding $15 million. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

(d) For purposes of paragraphs (b) and (c) of this section, *substantially all* means that 90% or more of the programming offered must be devoted to minority or educational purposes, as defined in paragraphs (b) and (c) of this section, respectively.

(e) For purposes of paragraph (b) of this section, "minority" is defined as in 47 U.S.C. 309(i)(3)(c)(ii) to include Blacks, Hispanics, American Indians, Alaska Natives, Asians and Pacific Islanders.

§ 76.980 Charges for customer changes.

(a) This section shall govern charges for any changes in service tiers or equipment provided to the subscriber that are initiated at the request of a subscriber after initial service installation.

(b) The charge for customer changes in service tiers effected solely by coded entry on a computer terminal or by other similarly simple methods shall be a nominal amount, not exceeding actual costs, as defined in paragraph (c) of this section.

(c) The charge for customers changes in service tiers or equipment that involve more than coded entry on a computer or other similarly simple method shall be based on actual cost. The actual cost charge shall be either the HSC, as defined in Section 76.923 of the rules, multiplied by the number of persons hours needed to implement the change, or the HSC multiplied by the average number of persons hours involved in implementing customer changes.

(d) A cable operator may establish a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, subject to approval by the franchising authority, for a subscriber changing service tiers more than two times in a twelve month period, except for such changes ordered in response to a change in price or channel line-up. If a cable system adopts such an increased charge, the cable system must notify all subscribers in writing that they may be subject to such a charge for changing service tiers more than the specified number of times in any twelve month period.

(e) Downgrade charges that are the same as, or lower than, upgrade charges are evidence of the reasonableness of such downgrade charges.

(f) For 30 days after notice of retiering or rate increases, a customer may obtain changes in service tiers at no additional charge.

§ 76.981 Negative option billing.

A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. This provision, however, shall not preclude the addition or deletion of a specific program from a service offering, the addition or deletion of specific channels from an existing tier of service, or the restructuring or division of existing tiers of service that do not result in a fundamental change in the nature of an existing service or tier of service provided that such change is otherwise consistent with applicable regulations. A subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A subscriber's affirmative request for service or equipment may be made orally or in writing.

§ 76.982 Continuation of rate agreements.

During the term of an agreement executed before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, the franchising authority may regulate basic cable rates without following section 623 of the 1992 Cable Act or §§ 76.910 through 76.942. A franchising authority regulating basic cable rates pursuant to such a rate agreement is not required to file for certification during the remaining term of the agreement but shall notify the Commission of its intent to continue regulating basic cable rates.

§ 76.983 Discrimination.

(a) No Federal agency, state, or local franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or to economically disadvantaged groups.

(1) Such discounts must be offered equally to all subscribers in the franchise area who qualify as members of these categories, or any reasonable subcategory thereof.

(2) For purposes of this section, members of economically disadvantaged groups are those individuals who receive federal, state or local welfare assistance.

(b) Nothing herein shall preclude any Federal agency, state, or local franchising authority from requiring and regulating the reception of cable service by hearing impaired individuals.

§ 76.984 Geographically uniform rate structure.

(a) The rates charged by cable operators subject to §§ 76.922 and 76.923 shall be provided pursuant to a rate structure that is uniform throughout each franchise area in which cable service is provided.

(b) This section does not prohibit the establishment by cable operators of reasonable categories of service and customers with separate rates and terms and conditions of service, within a franchise area.

§ 76.985 Subscriber bill itemization.

(a) Cable operators may identify as a separate line item of each regular subscriber bill the following:

(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. In order for a governmental fee or assessment to be separately identified under this section, it must be directly imposed by a governmental body on a transaction between a subscriber and an operator.

(b) The charge identified on the subscriber bill as the total charge for cable service should include all fees and costs itemized pursuant to this section.

(c) Local franchising authorities may adopt regulations consistent with this section.

BILLING CODE 6712-01-M

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
3060-XXXX
Expires 00/00/00

INSTRUCTIONS FOR FCC 329
CABLE PROGRAMMING SERVICE RATE COMPLAINT FORM

1 This FCC form is to be used by subscribers, franchising authorities, and other relevant state or local government entities seeking to file a complaint with the FCC challenging the reasonableness of a cable company's rates for cable programming service or for installation or rental of equipment used to receive cable programming service.

2 The term "cable programming service" includes all video programming provided by a cable company **except**: (1) programming provided on the basic service tier; or (2) programming provided on a pay-per-channel or pay-per-program basis. See Question 9.

3 The "basic service tier" is the tier that includes over-the-air television broadcast signals and public, educational and governmental access channels. Under federal law, in most instances, your local franchising authority rather than the FCC regulates rates for the basic service tier or associated equipment. Therefore, if you believe that your rate for the basic service tier or associated equipment is unreasonable, you should contact your local franchising authority to determine if it is authorized to regulate basic service tier rates.

4 Under federal law, video programming provided on a pay-per-channel or pay-per-program basis (for example, a premium movie channel such as HBO or a pay-per-view sports event) is not subject to rate regulation by either the FCC or your local franchising authority.

5 If you are concerned about your rates for cable programming service or associated equipment, then you may fill out this form and submit **an original and one copy** to the FCC. The FCC will examine the reasonableness of your cable programming service rate according to a specific formula. If the rate the cable company currently is charging you for the cable programming service is greater than the rate produced by the FCC's formula, the cable company's rate will be presumed unreasonable. In these circumstances, unless the cable company can provide cost information to justify the reasonableness of its rate, the FCC may order a refund and/or a prospective rate reduction for the cable programming service at issue.

6. Please note the following time limitations for filing a complaint:

• If you are challenging the reasonableness of a rate increase for cable programming service or associated equipment, your complaint must be actually received by the FCC within 45 days from the date you receive a bill from your cable company reflecting the rate increase. (Note: a reduction in number of channels may constitute an effective rate increase even though the existing rate for the cable programming service remains unchanged.)

• The only exception to the 45 day time limitation concerns cable programming service and associated equipment rates in effect when the FCC's rules become effective – that is, June 21, 1993. You may challenge the reasonableness of such rates, but you must file your complaint within 180 days from June 21, 1993 – that is, by December 18, 1993.

• After December 18, 1993, you may only file complaints about rate increases and you must follow the general 45-day filing requirement described above.

• Late-filed complaints will be dismissed with no opportunity to refile.

7 In addition to the cable company's name and mailing address, you should provide the cable company's "FCC Community Unit Identifier." (The FCC Community Unit Identifier is a number assigned to each cable system by the FCC for administrative purposes.) Also, you must provide the name and mailing address of the local franchising authority. (The local franchising authority is the local municipal, county or other government organization that regulates cable television in your community.) FCC rules require the cable company to furnish all this information to you on your monthly bill. If this information does not appear either on the front or back of your monthly bill, contact your cable company, your local franchising authority, or your local government to obtain the necessary information before filling out this form.

8 You must indicate whether you are challenging the reasonableness of: (1) a rate concerning cable programming service or associated equipment in effect on June 21, 1993; or (2) a rate increase. Except for a limited opportunity to challenge existing rates in effect on June 21, 1993, complaints may be filed only in the event of a rate increase.

9. If you are a subscriber, you must attach two copies of your monthly cable bill reflecting the rate or rate increase about which you are complaining. If you are challenging the reasonableness of a rate concerning cable programming service or associated equipment in effect on June 21, 1993, the bill should reflect that rate. If you are challenging the reasonableness of a rate increase, the bill should reflect the increased rate. (If you are challenging the reasonableness of a rate increase and have a previous bill which reflects the rate immediately prior to the increase, please attach two copies of the previous bill – note, however, that this is optional.)

10. You must check the box stating your belief that the cable programming service rate is unreasonable. The FCC staff will apply the formula mentioned in paragraph 5 to determine whether the cable company's rate is presumed reasonable or not – you do not need to make this calculation.

11. You must fill in all information required by this form.

12. You may contact your local franchising authority for assistance in filling out this form. In addition, you may attach two copies of a statement from your local franchising authority describing its views on the reasonableness of the cable programming service rate in question. This is not a requirement. If you do attach such a statement, you should also mail a copy of it to the cable company.

13. You must sign and date this form.

14. Once you complete the form copies must be mailed, including all attachments, to the following: Original and one copy: Federal Communications Commission, Attn: Cable Programming Service Rate Complaint, Room L-16, 1919 M Street, N.W., Washington, D.C. 20554; the cable company (at the address listed on your complaint); and the local franchising authority (at the address listed on your complaint).

Please be sure to send all copies to the correct address. If you do not, we may not be able to process your complaint.

15. **NOTE: If you do not mail a copy of this form, including all attachments, to the cable company at the same time you mail your complaint to the FCC, the cable company will not be required to respond and your complaint may be dismissed.**

16. If your complaint meets the requirements listed above, the FCC will require the cable company to respond to your complaint within thirty days and provide a justification for the reasonableness of your rate. The cable company must provide you with a copy of its response to the FCC.

17 The FCC staff will examine your complaint and the cable company's response and then rule on the reasonableness of the cable programming service rate. This ruling will be in writing, and you will receive a copy by mail. If the FCC staff determines that the rate in question is unreasonable, it may order refunds and/or prospective rate reductions. If it determines that the rate in question is reasonable, the FCC staff will deny the complaint.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine the reasonableness of a cable company's rates. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. All information provided in this form will be available for public inspection. Your response is required to obtain the requested relief.

Public reporting burden for this collection of information is estimated to average 30 minutes, 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, AMD-PIRS, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-XXXX), Washington, D.C. 20503

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1975, 5 U.S.C. 522aXeXE) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-XXXX
Expires 00/00/00

FCC 329
CABLE PROGRAMMING SERVICE RATE COMPLAINT FORM

(Carefully read instructions on reverse before filling out form)

1. Complainant's Name		
Mailing Address		
City	State	ZIP Code
Daytime Telephone No. (include area code):		

2. Local Franchising Authority's Name		
Mailing Address		
City	State	ZIP Code

3. Cable Company's Name		
Mailing Address		
City	State	ZIP Code
Cable Company's FCC Community Unit Identifier (if known):		

4. Indicate whether this is the first time you have filed a complaint with the FCC or whether you are filing a corrected complaint to cure a defect in a prior complaint. CHECK ONE.

☐ First time complaint
☐ Corrected complaint

5. If you are filing a corrected complaint to cure a defect in a prior complaint, indicate the date the prior complaint was filed with the FCC and the date you received notification from the FCC that the prior complaint was defective.

	Month	Date	Year
Date prior complaint filed:			
Date you received FCC notification that the prior complaint was defective:			

6. Indicate whether you are challenging the reasonableness of: (1) a rate concerning cable programming service or associated equipment in effect on June 21, 1993; or (2) a rate increase. (See the Instructions for different filing deadlines depending on which type of complaint you are filing.) CHECK ONE.

☐ Rate in effect on June 21, 1993
☐ Rate increase

7. If you are a subscriber challenging the reasonableness of a rate increase, indicate the date you first received a bill from the cable operator reflecting the rate increase about which you are complaining.

Month	Date	Year

8. Indicate the current monthly rate for the cable programming service or associated equipment and, if you are challenging the reasonableness of a rate increase, the most recent rate in effect immediately prior to the rate increase.

	Month	Year
Current Monthly Rate: $		
Previous Monthly Rate: $		

9. In the tables below, describe the cable programming service to which the complaint is addressed and, if applicable, how it has changed. If this space is insufficient, include any additional comments on a separate page attached to this form.

List channels by name included in the service:

List channels by name deleted from the service (if any):

List channels by name added to the service (if any):

10. If you are a subscriber, you must attach two copies of your current bill reflecting the rate or rate increase about which you are complaining. NOTE: Failure to attach two copies of your current bill reflecting the rate or rate increase may result in dismissal of your complaint.
I have attached two copies of my current bill. ☐ Yes ☐ No

11. Optional: If you are a subscriber challenging the reasonableness of a rate increase, attach two copies of a previous bill (if available) reflecting the rate immediately prior to the rate increase.
I have attached two copies of my previous bill. ☐ Yes ☐ No

12. I certify that I am sending a copy of this complaint, including all attachments, to the cable company and the local franchising authority at the addresses listed above via first class mail, postage prepaid, at the same time I am sending two copies of this complaint to the FCC. NOTE: Failure to satisfy this requirement may result in dismissal of your complaint. The cable company will not be required to respond unless you send a copy of the complaint to the cable company by mail.
☐ Yes ☐ No

Date sent:	Month	Date	Year

13. I believe that the cable company's rate for the cable programming service or associated equipment described above is unreasonable because it violates the FCC's rate regulations. (CHECK BOX) ☐

14. I certify that, to the best of my knowledge, the information supplied on this form is true and correct.

Signature
Date

(Note to complainant: This complaint form will be maintained in the FCC's records under the cable company's community unit number. It will not be filed under your name.)

FCC 329
June 1993

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
3060-XXXX
Expires 00/00/00

INSTRUCTIONS FOR FCC 328
FRANCHISING AUTHORITY CERTIFICATION

1. The Cable Television Consumer Protection and Competition Act, enacted in October 1992, changes the manner in which cable television systems that are not subject to effective competition are regulated. In general, rates for the basic service tier (the tier required as a condition of access to all other video services and containing, among other services, local broadcast station signals and public, educational, and public access channels) and associated equipment will be subject to regulation by local or state governments ("franchising authorities"). Rates for cable programming services and associated equipment (all services except basic and pay channels) will be subject to regulation by the FCC. Rates for pay channels (channels for which there is a specific per-channel or per-program charge) are not regulated.

2. Only cable systems that are not subject to effective competition may be regulated. Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.

3. In order to regulate basic service tier rates, a franchising authority must be certified by the FCC. In order to be certified, a franchising authority must complete this form. **An original and one copy of the completed form and all attachments must be returned to the FCC by registered mail, return receipt requested, to the FCC at the address on the form.**

4. A copy of the form must be served on the cable operator by first-class mail on or before the date the form is sent or delivered to the FCC.

5. The franchising authority's certification will become effective 30 days after the date stamped on the postal return receipt unless otherwise notified by the Commission by that date. The franchising authority cannot begin to regulate rates, however, until it has actually adopted the required regulations (see below) and until it has notified the cable operator that it has been certified and that it has adopted the required regulations.

6. In order to be certified, franchising authorities must answer "yes" to Questions 3, 4, and 5, which are explained as follows:

7. Question 3: The franchising authority must adopt rate regulations consistent with the Commission's regulations for basic cable service. To fulfill this requirement for certification, the franchising authority may simply adopt a regulation indicating that it will follow the regulations established by the FCC.

   The franchising authority has 120 days to adopt these regulations after the time it is certified. The franchising authority may not, however, begin to regulate cable rates until after it has adopted these regulations and until it has notified the cable operator that it has been certified and has adopted the required regulations.

8. Question 4(a): The franchising authority's "legal authority" to regulate basic service must come from state law. In some states, only the state government may regulate cable rates. In those states, the state government should file this certification. Provisions in franchise agreements that prohibit rate regulation are void, and do not prevent a franchising authority from regulating the basic service tier and associated equipment.

   Question 4(b): The franchising authority must have a sufficient number of personnel to undertake rate regulation.

   A franchise authority unable to answer "yes" to questions 4(a) or 4(b) may wish to review the FCC's Report and Order in Docket 92-266, FCC 93-177 (released May 3, 1993) for further information on the establishment of alternative federal regulatory procedures.

9. Question 5: Franchising authorities must have procedural regulations allowing for public participation in rate regulation proceedings. If a franchising authority does not have these regulations already in place, it must adopt them within 120 days of certification and before it may undertake rate regulation.

10. Question 6: Most cable systems are not subject to effective competition, as defined by the Cable Act. (The definition is included above and on the form.) The franchising authority may presume that the cable system in its jurisdiction is not subject to effective competition.

    For purposes of applying the definition of effective competition (see Item 2 above), "multichannel video programming distributors" include a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a video dialtone service, and a satellite master antenna television system. A multichannel video programming distributor's services will be deemed "offered" when they are both technically and actually available. Service is "technically available" when the multichannel distributor is physically able to deliver the service to a household wishing to subscribe, with only minimal additional investment by the distributor. A service is "actually available" if subscribers in the franchise area are reasonably aware through marketing efforts that the service is available. Subscribership of those multichannel video programming distributors offering service to at least 50 percent of the households in a franchise area will be aggregated to determine whether at least 15 percent of the households in the franchise area are served by competitors. A multichannel video programming distributor must offer at least 12 channels of programming, at least one channel of which is nonbroadcast, to be found to offer "comparable" video programming.

11. This certification form must be signed by a government official with authority to act on behalf of the franchising authority.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine if the franchise authority should be authorized to regulate cable rates. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. All information provided in this form will be available for public inspection. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 30 minutes, 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, AMD-PIRS, Washington, D. C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-XXXX), Washington, D. C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1975, 5 U.S.C. 522a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-XXXX
Expires 00/00/00

FCC 328

CERTIFICATION OF FRANCHISING AUTHORITY TO REGULATE BASIC CABLE SERVICE RATES AND INITIAL FINDING OF LACK OF EFFECTIVE COMPETITION

1 Name of Franchising Authority		
Mailing Address		
City	State	ZIP Code
Telephone No. (include area code):		
Person to contact with respect to this form:		

2. a. Name (s) and address(es) of cable system(s) and associated FCC community unit identifiers within your jurisdiction. (Attach additional sheets if necessary.)

Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

2. b. Name (s) of system(s) and associated community unit identifiers you claim are subject to regulation and with respect to which you are filing this certification. (Attach additional sheets if necessary.)

Name of System	Community Unit Identifier

Name of System	Community Unit Identifier

2. c. Have you served a copy of this form on all parties listed in 2.b.? ☐ Yes ☐ No

3. Will your franchising authority adopt (within 120 days of certification) and administer regulations with respect to basic cable service that are consistent with the regulations adopted by the FCC pursuant to 47 U.S.C. Section 543(b)? ☐ Yes ☐ No

4. With respect to the franchising authority's regulations referred to in Question 3,

   a. Does your franchising authority have the legal authority to adopt them? ☐ Yes ☐ No

   b. Does your franchising authority have the personnel to administer them? ☐ Yes ☐ No

5. Do the procedural laws and regulations applicable to rate regulation proceedings by your franchising authority provide a reasonable opportunity for consideration of the views of interested parties? ☐ Yes ☐ No

6. The Commission presumes that the cable system(s) listed in 2.b. is (are) not subject to effective competition. Based on the definition below, do you have reason to believe that this presumption is correct? ☐ Yes ☐ No

(Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.)

Signature
Title
Date

Return the original and one copy of this certification form (as indicated in Instructions), along with any attachments, to:

Federal Communications Commission
Attn: Cable Franchising Authority Certification
Room L-16
1919 M Street, N.W.
Washington, D. C. 20554

[FR Doc. 93–12079 Filed 5–20–93; 8:45 am]
BILLING CODE 6712–01–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-266; FCC 93-177]

Broadcast Services; Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposed rule is one segment of the Report and Order/Further Notice of Proposed Rule Making (Report/Further NPRM). The final rules adopted in this decision may be found elsewhere in this issue. In the Notice of Proposed Rule Making (NPRM) in this proceeding, the Commission sought comment on whether or not a cable system is subject to effective competition. This Report/Further NPRM seeks comment on whether the Commission should exclude the rates of systems in low penetration areas in calculating the competitive rate differential. This action is taken in order to comply with the Cable Act of 1992.

DATES: Comments are due on or before June 17, 1993 and Reply comments are due on or before July 2, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Common Carrier Bureau, (202) 632-1295.

SUPPLEMENTARY INFORMATION: This is a synopsis of the proposed rules segment of the Commission's Report and Order/Further Notice of Proposed Rule Making in MM Docket No. 92-266, FCC 93-177, adopted April 1, 1993, and released May 3, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service (ITS), at (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Further Notice of Proposed Rule Making

1. The Commission, as part of its Report/Further NPRM, seeks additional comment on whether it should exclude the rates of systems in low penetration areas in calculating the competitive rate differential. The NPRM, 58 FR 48 (January 4, 1993) in this proceeding sought comment on how to determine when a cable system is subject to effective competition.

2. In order to assure that the Commission adequately consider the rates of systems subject to effective competition, as required by the Cable Act of 1992, the Commission conducted in December 1992 an industry survey in this proceeding, which collected data from cable systems subject and not subject to effective competition, for determining whether rates were reasonable or unreasonable. That survey was based on data from systems subject to effective competition under each of the three independent statutory criteria used to define effective competition in Section 623 of the 1992 Cable Act, including systems in areas expected to have less than 30 percent cable penetration. The comparison of rates of systems subject to and those systems not subject to effective competition produces a competitive rate differential of approximately 10 percent.

3. The Commission notes that it is possible, however, that exclusion of rates of systems in low penetration areas may produce a better measure of competitive rate differential, because the low penetration of cable systems in some areas may be attributable to factors other than the presence of competing video distribution services. The preliminary analysis reveals that exclusion of low penetration areas would produce a competitive rate differential of approximately 28 percent. For these reasons, the Commission seeks comment on whether it should include within the data upon which the competitive rate differential is founded, only rates of systems that face effective competition in the form of competing multichannel service providers.

4. The Commission seeks comment on whether it should in fact exclude or give substantially less weight to systems in low penetration areas in calculating the competitive rate differential. The Commission also seeks comment on whether the rates of such systems provide an accurate measure of competitive rate levels. Given the inclusion of such systems in section 623(l)(1) of the Communications Act, which identifies those systems exempt from rate regulation, the Commission seeks comment on whether it may lawfully exclude the rates of such systems from its competitive rate calculations.

5. Should the record demonstrate that excluding the rates of low penetration systems would better reflect competitive rates, and, if making such an exclusion is lawful under the Act, then the Commission proposes to further reduce rates. In that event, the Commission seeks comment on how it should give effect to the resulting competitive rate differential. Should the Commission redefine the benchmark formula and per channel rate tables? Should the Commission require systems above a new benchmark to lower rates additional amounts to achieve a total rate reduction of approximately 28 percent from preregulated levels, and should the Commission phase-in any further rate reductions? What would be the impact on consumers and the industry? The Commission further seeks comment on whether it should apply any new competitive rate differential in a manner different than that selected in the Report and Order.

Administrative Matters

Initial Regulatory Flexibility Analysis

6. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds:

I. *Reason for action.* The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rate of cable systems subject to effective competition, as defined in the Cable Act of 1992. This Further NPRM proposes a comparison to rates of cable systems subject to effective competition, excluding those systems with less than 30 percent market penetration.

II. *Objectives.* To propose rules to implement section 623 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

III. *Legal Basis.* Action as proposed for this rulemaking is contained in sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.

IV. *Description, potential impact and number of small entities affected.* Until we receive more data, we are unable to estimate the number of small cable systems that would be affected by any of the proposals discussed in the Further Notice of Proposed Rulemaking. We have, however, attempted to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by section 623(i) of the Cable Act of 1992.

V. *Reporting, record keeping and other compliance requirements.* The proposals under consideration in this Further Notice of Proposed Rulemaking

do not include the possibility of new reporting and record keeping requirements for cable systems.

VI. *Federal rules which overlap, duplicate or conflict with this rule.* None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives.* Wherever possible, the Further NPRM proposes general rules, or alternative rules for small systems, to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by section 3(i) of the Cable Act of 1992.

7. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further NPRM, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Further NPRM, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

8. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.203, and 1.206(a).

Comment Dates

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 17, 1993, and reply comments on or before July 2, 1993. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC 20554.

Ordering Clauses

10. Authority for this proposed Rule Making is contained in sections 4(i), 4(j), 303(r), 612(c) and 623 of the Communications Act of 1934, as amended 47 U.S.C. 154(i), 154(j), 303(r), 532(c), 542(c) and 543.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–12146 Filed 5–20–93; 8:45 am]

BILLING CODE 6712–01–M

federal register

Friday
May 21, 1993

Part VI

Department of the Interior

Bureau of Land Management

Public and Private Lands in Mohave County, Arizona; Realty Action; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-03-4210-04; AZA-27785]

Realty Action Exchange of Public and Private Lands in Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public and private lands.

SUMMARY: The following described public lands have been found suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713):

Gila and Salt River Meridian, Arizona

Township 16 North, Range 19 West
Sec. 18, Lots 1, 5, 8, 10, and 12, NE¼NW¼,N½NE¼;
Township 16 North, Range 20 West
Sec. 6, Lots 1 to 17, incl., S½NE¼, SE¼NW¼, W½SW¼, SE¼;
Sec. 15, Lots 1, 4, 6, and 9, N½N½;
Sec. 17, Lots 1, 3, 4, and 6 N½N½;
Sec. 18, Lots 1, 2, 5, 6, 10, and 13, N½NE¼, E½NW¼.
Township 16½, North, Range 20 West
Sec. 30, Lots 1 to 4, incl., E½,E½W½;
Sec.32, All.
Township 16 North, Range 20½ West
Sec. 1, Lots 1 to 4, incl., S½,N½, S½;
Sec. 3, Lots 1 to 5, incl., SE¼NE¼, E½SE¼;
Sec. 10, Lots 3 to 4, E½NE¼NE¼, E½SE¼;
Sec. 11, E½, NW¼, N½SW¼, SE¼SW¼;
Sec. 12, All.
Sec. 13, Lots 1, 4, 6, and 7, N½.
Township 16½ North, Range 20½ West
Sec. 22, Lots 1 to 5, incl., SE¼NE¼, E½SE¼;
Sec. 23, Lots 1 to 4, incl., S½N½, S½;
Sec. 25, All.
Sec. 26, All.
Sec. 27, Lots 1 to 4, incl., E½E½;
Sec. 34, Lots 1 to 4, incl., E½E½;
Sec. 35, All.
Comprising 9,224,22 acres of public lands, more or less

In exchange for these lands, the United States will acquire the following described lands from Antigua Development Corporation, or its nominee:

Gila and Salt River Meridian, Arizona

Township 34 North, Range 7 West
Sec. 3, SW¼NW¼, NW¼SW¼;
Sec. 4, Lot 2, S½NE¼, N½SE¼, SW¼SE¼;
Sec 29, NW¼, and portion of NE¼ and S½;
Sec 31, Lots 1 to 4 incl., E½W½, E½.
Township 35 North, Range 7 West
Sec 3, Lot 1 to 4 incl., S½N½, S½;
Sec 18, SE¼SE¼;
Sec 19, NE¼NE¼;
Sec 20, N½, E½SW¼, SE¼;
Sec 27, SW¼NE¼, S½NW¼, N½SW¼;
Sec 28, SE¼NE¼, S½SW¼, SE¼;
Sec 33, NW¼NE¼, N½NW¼, SW¼NW¼.
Township 34 North, Range 8 West
Sec 19, NW¼NE¼.
Township 35 North, Range 8 West
Sec 14, S½SW¼;
Sec 15, S½SE¼;
Sec 20, SW¼.
Township 33 North, Range 9 West
Sec. 3, Lots 2 to 4, incl., S½N½, S½;
Sec. 5, Lots 1 to 4, incl., S½N½, S½;
Sec. 7, Lots 1 to 4, incl., E½W½, E½;
Sec. 9, All;
Sec. 11, E½, E½NE¼NW¼, NW¼NE¼NW¼, E½SE¼NW¼, E½NE¼SW¼, W½SW¼SW¼, S½SE¼SW¼SW¼, S½SW¼SE¼SW¼, E½SE¼SW¼.
Township 34 North, Range 9 West
Sec. 9, SE¼SE¼;
Sec. 31, Lots 1 to 4, incl., E½W½, E½;
Sec. 33, All.
Township 33 North, Range 10 West
Sec. 1, Lots 1 to 4, incl., S½N½, S½.
Township 34 North, Range 10 West
Sec. 35, NW¼NE¼, S½NE¼, NW¼, S½.
Township 21 North, Range 20 West
Sec. 11, A portion of the W½.
Township 25 North, Range 21 West
Sec. 25, E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 35, N½, SW¼, W½SE¼, SE¼SE¼.
Comprising 10,505.50 acres of private lands, more or less.

If, for some unforeseen reason, the above offered private lands become unavailable for acquisition the following private lands will be acquired:

Gila and Salt River Meridian, Arizona

Township 19 South, Range 18 East
sec. 9, SW¼SW¼NE¼;
sec. 10, SW¼, SW¼NW¼;
sec. 15, W½SW¼;
sec. 21, E½NE¼, NE¼SE¼;
sec. 22, E½SW¼, NW¼SW¼, NW¼;
sec. 23, N½NE¼, SE¼NE¼;
sec. 27, W½;
sec. 28, E½.
Comprising 1,450 acres of private lands, more or less.

The purpose of this exchange is to acquire the non-Federal lands which have high public values for recreation, historical and scenic qualities, wild burro herd management, water rights, wildlife habitat for bighorn sheep, antelope, turkey, kaibab squirrel, and mule deer. It will also serve to block up intermingled public and private lands to provide for better, more efficient management. The public interest will be served by completing the exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by Antigua Development Corporation of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation for all existing and valid land uses.

3. A reservation of powerline right-of-way AZA–8891 to the Bureau of Reclamation.

4. A reservation of powerline right-of-way AZPHX 085193 to the Department of Energy.

5. A reservation of powerline access road right-of-way AZAR 01868 to the Department of Energy.

6. Subjects to rights-of-way AZA–24993, AZAR 03870, AZAR 011116 and AZPHX 086056 for El Paso Natural Gas pipelines.

7. Subject to right-of-way AZA–11890 for Citizens Utilities Rural telephone line.

8. Subject to right-of-way AZA–12068 for Citizens Utilities powerline.

9. Subject to right-of-way AZPHX 086796 for Atchison Topeka and Santa Fe railroad.

10. Subject to road reservation AZA–27586 for Bureau of Land Management, Warm Springs Wilderness Area access.

Publication of this notice segregates the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. Further information concerning the exchange, including the Environmental Analysis is available for review at the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, AZ 86401.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Kingman Resource Area, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: May 19, 1993.

David J. Miller,

District Manager.

[FR Doc. 93–12287 Filed 5–20–93; 9:45 am]

BILLING CODE 4310–02–M

federal register

Friday
May 21, 1993

Part VII

The President

Proclamation 6563—World Trade Week, 1993

Federal Register
Vol. 58, No. 97
Friday, May 21, 1993

Presidential Documents

Title 3—

The President

Proclamation 6563 of May 19, 1993

World Trade Week, 1993

By the President of the United States of America

A Proclamation

Each year, World Trade Week allows us to highlight the importance of international trade, which links the United States with other nations in partnership for economic prosperity. It is also a time to recognize the importance of our efforts to stimulate domestic economic growth through the sale of American products and services abroad.

For Americans, trade has buttressed our Nation's standing as the world's largest and most productive economy. Exports support millions of American jobs and account for nearly one-sixth of the employment in the U.S. manufacturing and agricultural sectors. In fact, each $1 billion of American merchandise exports supports nearly 19,000 domestic jobs. As a result, companies have been formed, factories built, and new industries created. And these export-related jobs are good ones, paying on average 17 percent more than the overall average wage.

Indeed, it is our ability to modernize and expand our industrial production that serves as the foundation for export growth, allowing us to develop and produce quality products while identifying marketing opportunities at home and abroad. Our ingenuity and our determination to be the best make America's products and services among the world's most competitive.

For U.S. products and services to succeed in an increasingly competitive global marketplace, however, we must be equally competitive at home and abroad. Recently, this Administration announced a broad new economic strategy to enhance government/industry cooperation in creating new technologies. Through commercialization, these technologies will be made available to smaller companies. Small and medium-size businesses create half the new jobs in this country and two-fifths of our Gross National Product, and many of these firms will seek to increase exports of their products. The high-technology sector, which employed about 10 million people and accounted for more than $100 billion worth of U.S. exports in 1992, is crucial to advancing the industrial competitiveness of the United States and assuring us of an edge in world markets.

Creating a climate for American exports requires not only a strong domestic economy, but also free and fair access for U.S. products to markets abroad. This Administration, therefore, is building a trade agenda that will allow U.S. exports to compete on a level playing field with our trading partners.

A top trade-related priority is the North American Free Trade Agreement (NAFTA), which will link the United States, Canada, and Mexico into a single market of 360 million consumers currently spending $6 trillion annually. Mexico, once economically isolated from the United States, has emerged as our Nation's third largest trading partner. With supplemental agreements to address environmental and labor issues, NAFTA will be a positive force for creating American jobs.

In addition to our focus on the NAFTA negotiations, this Administration is determined to complete the General Agreement on Tariffs and Trade (GATT) Uruguay Round agreement. GATT is an agreement binding more than 100 nations to a mutual interest in strengthening the global environment

for trade. As part of these negotiations, this Administration is seeking provisions that ensure free and fair trade for American industry, as well as effective bilateral dispute settlement mechanisms. A successful Uruguay Round would lower tariff and nontariff barriers to manufactured products and other commodities, thereby increasing cumulative world output by more than $5 trillion and cumulative U.S. output by more than $1 trillion over the next 10 years.

While advancing our Nation's interests through the GATT negotiations, the United States and other countries must provide financial assistance to ensure key political and economic reforms in Russia and the former Soviet republics. By carefully targeting this assistance, our Nation will not only encourage progress toward global stability, arms control, and nonproliferation, but also help create an environment in which trade with that region can flourish.

Creating a secure and prosperous global environment for trade also hinges on continued U.S. efforts to benefit from the great opportunities that are available in the high-growth East Asian and Latin American markets, two of the fastest growing regions for American exports.

Although thousands of U.S. companies continue to boost their profit margins through exports, thousands of other American firms have yet to market their goods abroad. In fact, just 15 percent of American companies account for 85 percent of our Nation's exports. With U.S. merchandise exports totaling more than $448 billion in 1992, "World Trade Week" reminds us of the merits of international commerce and the vast export opportunities yet to be explored by American business.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week beginning May 16, 1993, as World Trade Week. I invite the people of the United States to join in appropriate observances to reaffirm the potential of international trade for creating prosperity for all.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, 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. 93–12308
Filed 5–20–93; 10:58 am]
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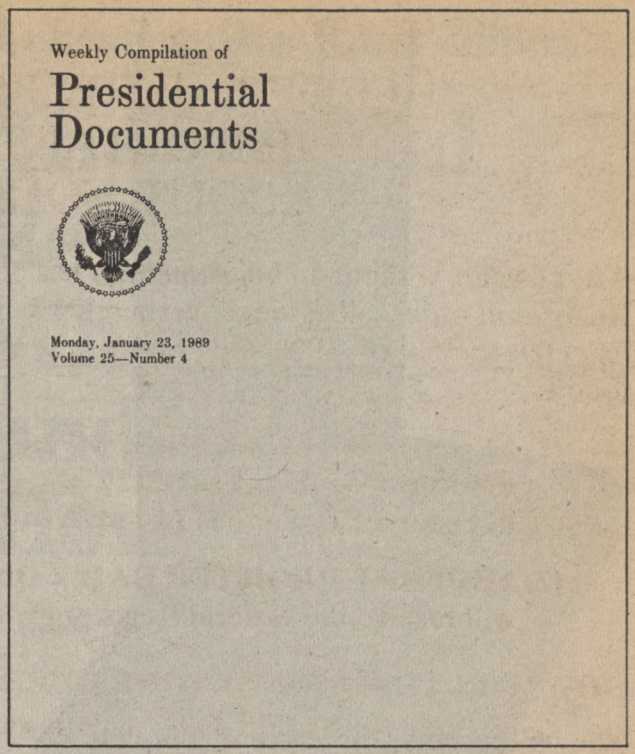
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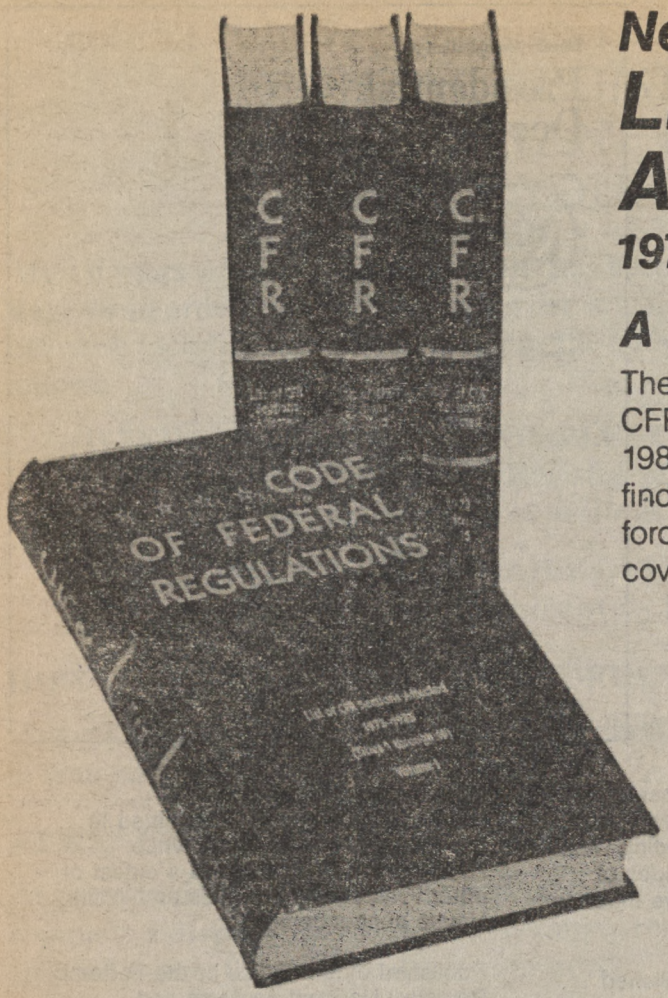
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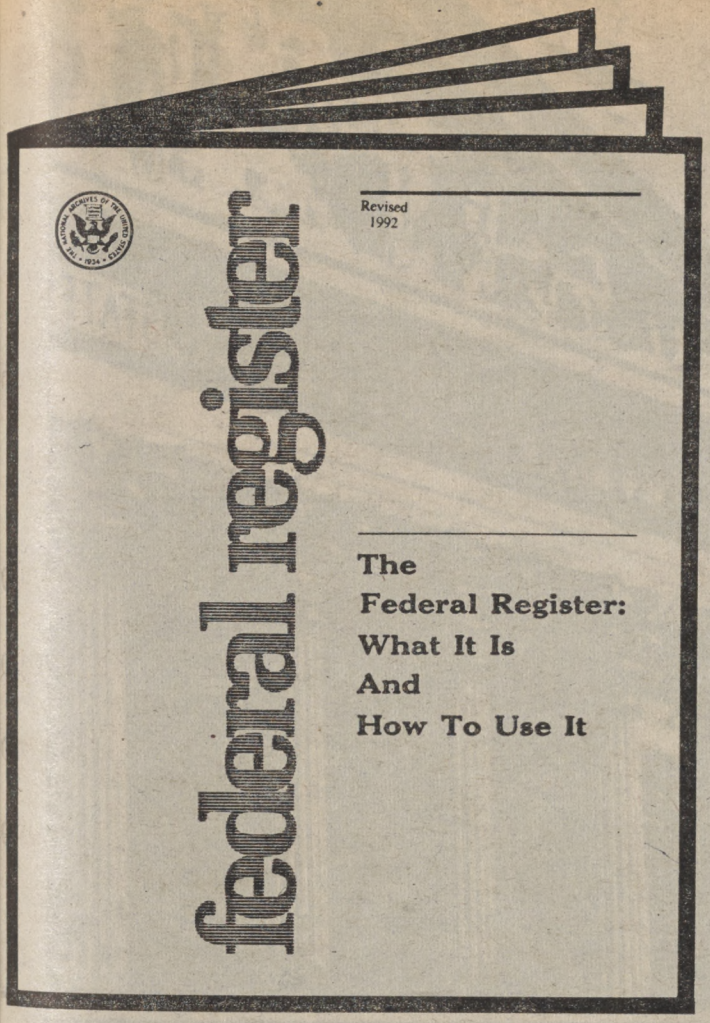
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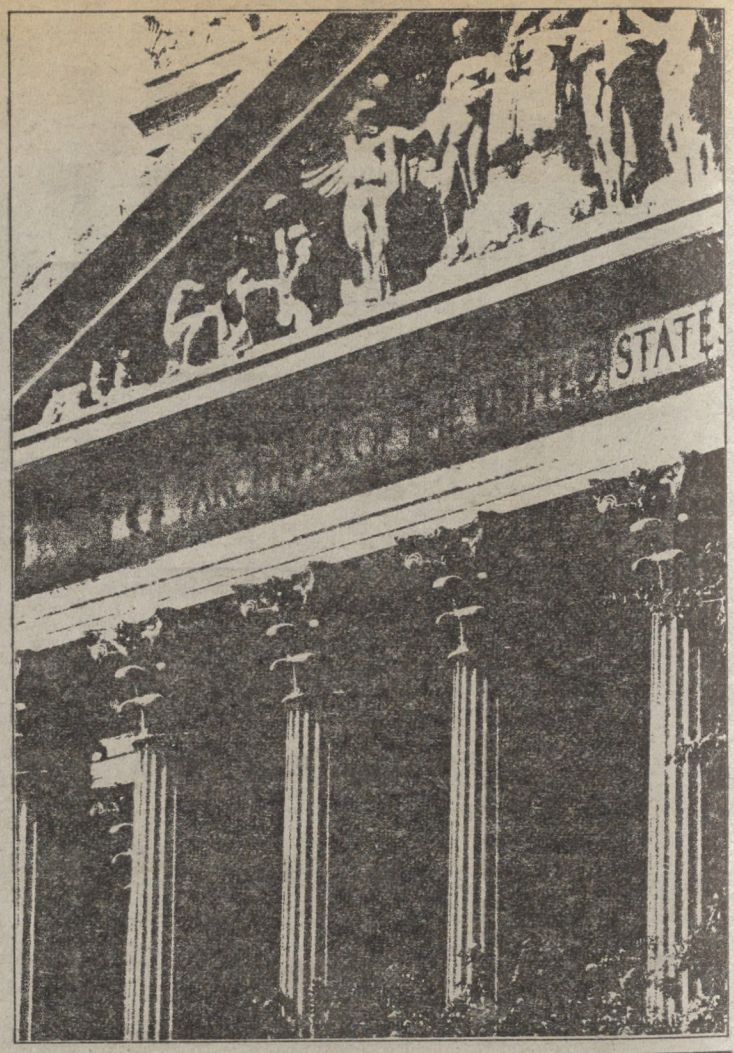
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