AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

6–3–93
Vol. 58 No. 105

federal register

Thursday
June 3, 1993

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

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

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

6-3-93
Vol. 58 No. 105
Pages 31461–31646

federal register

Thursday
June 3, 1993

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche format and magnetic tape. The annual subscription price for the **Federal Register** paper edition is $375, or $415 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $353; and magnetic tape is $37,500. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $4.50 for each issue, or $4.50 for each group of pages as actually bound; or $1.50 for each issue in microfiche form; or $175.00 per magnetic tape. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 58 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–1530
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–1530
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Magnetic tapes	512–1530
Problems with Federal agency subscriptions	523–5243

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

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 58, No. 105

Thursday, June 3, 1993

Agricultural Marketing Service
Administration
RULES
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 31465
NOTICES
Meetings:
National Organic Standards Board, 31491

Agriculture Department
See Agricultural Marketing Service
See Federal Grain Inspection Service
See Forest Service
See Packers and Stockyards Administration

Army Department
NOTICES
Environmental statements; availability, etc.:
Fort Belvoir Engineer Proving Ground, VA; development, 31511

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Minnesota, 31496

Coast Guard
RULES
Drawbridge operations:
Florida, 31473
Ports and waterways safety:
San Francisco Bay, CA; safety zone, 31474
PROPOSED RULES
Regattas and marine parades:
Quake on the Lake, 31488

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Former Yugoslav Republic of Macedonia, 31509
Mexico, 31510

Customs Service
PROPOSED RULES
Automated Broker Interface entry filers; Customs Forms 28 and 29 electronic transmission; withdrawn, 31487

Defense Department
See Army Department
NOTICES
Meetings:
Wage Committee, 31511

Education Department
NOTICES
Agency information collection activities under OMB review, 31511
Grants and cooperative agreements; availability, etc.:
Education of individuals with disabilities—
Personnel training program, 31512
Postsecondary education:
College facilities loan program, 31616

Employment and Training Administration
RULES
Job Training Partnership Act:
Miscellaneous amendments, 31471
NOTICES
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Defense conversion adjustment program; retraining and readjustment services for dislocated workers; demonstration projects, 31540

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Meetings:
Environmental Restoration and Waste Management Advisory Committee, 31514

Environmental Protection Agency
RULES
Air programs:
Particulate matter (PM 10) prevention of significant deterioration; maximum allowable increases, 31622
Hazardous waste program authorizations:
North Carolina; correction, 31474
NOTICES
Agency information collection activities under OMB review, 31519, 31520
Air pollution control; consent judgments:
Sulfur oxides; national primary ambient air quality standards, 31520
Reports; availability, etc.:
Pesticides in ground water database, 31646

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
Noise-restricted aircraft (SFAR 64), 31640
PROPOSED RULES
Airworthiness directives:
Boeing, 31481
Control zones, 31483, 31485, 31486
Transition areas, 31484
NOTICES
Airport noise compatibility program:
Midland International Airport, TX, 31577
Palo Alto Airport, CA, 31578
Meetings:
Aviation Rulemaking Advisory Committee, 31579
Passenger facility charges; applications, etc.:
Springfield Regional Airport, MO, 31579

Federal Communications Commission
RULES
Radio services, special:
Private land mobile services—
Motion picture radio service eligibility, 31476
Specialized mobile radio license applicants; 800 MHz general category channels frequency coordination options, 31477
NOTICES
Agency information collection activities under OMB review, 31521
Rulemaking proceedings; petitions filed, granted, denied, etc., 31521

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 31594

Federal Energy Regulatory Commission
NOTICES
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Texas Railroad Commission, 31514
Applications, hearings, determinations, etc.:
Arkla Energy Resources Co., 31514, 31515
Clayton et al., DE, 31515
Florida Municipal Power Agency, 31515
Northwest Pipeline Corp., 31515

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Iowa et al., 31491
Kentucky et al., 31492
North Dakota et al., 31492

Federal Highway Administration
NOTICES
Radioactive materials highway routing; preemption determinations:
Oregon, 31580

Federal Maritime Commission
NOTICES
Agreements filed, etc., 31521
Investigations, hearings, petitions, etc.:
Australia/Eastern USA Conference et al., 31522
Nippon Yusen Kaisha Line, 31525

Federal Reserve System
NOTICES
Federal Reserve Bank services; fee schedules and pricing principles:
Check collection—
Funds transfer service enhancements, 31525
Meetings; Sunshine Act, 31594
Applications, hearings, determinations, etc.:
Corporacion Bancaria de Espana, S.A., et al., 31532
Duft, Thelma Holmes, et al., 31533
North Milwaukee Bancshares, Inc., et al., 31533
Peoples State Bancshares, Inc., et al., 31533

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 31534
Marine mammal permit applications, 31534

Food and Drug Administration
NOTICES
Biological products, human drugs, and medical devices:
Serious adverse events and product problems with medications and devices; reporting form availability, 31596

Forest Service
NOTICES
Environmental statements; availability, etc.:
Grand Mesa, Uncompahgre, and Gunnison National Forests, CO, 31493
Idaho Panhandle National Forests, ID, 31493
Meetings:
Allegheny National Wild and Scenic River Northern Advisory Council, 31495

General Services Administration
NOTICES
Multiple Award Federal Supply Schedule:
Self-adhesive labels for dry and wet toners, 31534

Health and Human Services Department
See Food and Drug Administration

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 31516, 31517
Decisions and orders, 31517

Indian Affairs Bureau
NOTICES
Irrigation projects; operation and maintenance charges:
Wind River Irrigation Project, WY, 31644
Liquor and tobacco sale or distribution ordinance:
Mississippi Band of Choctaw Indians, MS, 31618
Tribal-State Compacts approval; Class III (casino) gamblin
Northern Cheyenne Tribe, MT; correction, 31535

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

Internal Revenue Service
NOTICES
Privacy Act:
Computer matching programs, 31587

International Trade Administration
NOTICES
Antidumping:
Alloy and carbon hot-rolled bars, rods, and semifinished products of special bar quality engineered steel from—
Brazil, 31496
Fresh cut flowers from Ecuador, 31503
Hot-rolled, cold-rolled, and corrosion resistant carbon steel flat products from Japan, 31503
Rayon staple fiber from Finland, 31504
Countervailing duties:
Ceramic tile from—
Mexico, 31505
Applications, hearings, determinations, etc.:
Centers for Disease Control et al., 31508
Wilford Hall Medical Center et al., 31508

International Trade Commission
NOTICES
Import investigations:
Anti-theft deactivatable resonant tags and components, 31538
Caribbean Basin Economic Recovery Act impact on U.S. industries and consumers; annual report, 31539
In-line roller skates with ventilated boots and with axle aperture plugs and component parts, 31539
Metallurgical coke; baseline analysis of U.S. industry and imports, 31540
Meetings; Sunshine Act, 31594

Interstate Commerce Commission
PROPOSED RULES
Tariffs and schedules:
Electronic tariff filing, 31490

Labor Department
See Employment and Training Administration

Land Management Bureau
RULES
Public land orders:
Alaska, 31475
Colorado, 31475
NOTICES
Alaska Native claims selection:
Golovin Native Corp., 31535
Realty actions; sales, leases, etc.:
Idaho, 31535, 31536
Wyoming, 31536
Withdrawal and reservation of lands:
Oregon, 31537
Wyoming, 31538

National Archives and Records Administration
NOTICES
Nixon Presidential historical materials; opening of materials, 31548

National Oceanic and Atmospheric Administration
PROPOSED RULES
Endangered and threatened species:
Harbor porpoise; Gulf of Maine population Hearing, 31490
NOTICES
Meetings:
North Pacific Fishery Management Council, 31509

National Science Foundation
NOTICES
Meetings:
Engineering Education and Centers Special Emphasis Panel, 31548
Equal Opportunities in Science and Engineering Committee, 31549
Industrial Innovation Interface Special Emphasis Panel, 31549
Materials Research Advisory Committee, 31549

Nuclear Regulatory Commission
RULES
Fitness-for-duty programs:
Strategic special nuclear material (Category I material) unirradiated formula quantities; licensees who possess, use, or transport, 31467
PROPOSED RULES
Spent nuclear fuel and high-level radioactive waste; independent storage licensing requirements:
Interim storage in independent installation; site-specific license to qualified applicant, 31478
NOTICES
Environmental statements; availability, etc.:
Illinois Power Co. et al., 31549
Applications, hearings, determinations, etc.:
Pike Community Hospital, 31551

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Clay County Livestock, Inc., AL, et al., 31495
Sand Mountain Feeder Pig Association, Inc., AL, et al., 31495

Personnel Management Office
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 31554

Postal Service
NOTICES
Privacy Act:
Systems of records, 31556

Presidential Documents
ADMINISTRATIVE ORDERS
Bosnia and Croatia refugees and conflict victims; assistance (Presidential Determination No. 93-22 of May 19, 1993), 31463
Morocco; certification of cooperation with U.N. in Western Sahara self-determination settlement plan (Presidential Determination No. 93-21 of May 12, 1993), 31461

Prospective Payment Assessment Commission
NOTICES
Meetings, 31557

Public Health Service
See Food and Drug Administration

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 31557

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 31558
Boston Stock Exchange, Inc., 31560
Midwest Stock Exchange, Inc., 31563
New York Stock Exchange, Inc., 31565, 31568
Pacific Stock Exchange, Inc., 31570
Philadelphia Stock Exchange, Inc., 31573, 31574

Small Business Administration
NOTICES
Organization, functions, and authority delegations:
Branch claims review committees, 31576
Applications, hearings, determinations, etc.:
Opportunity Capital Partners II, L.P., 31577

State Department
NOTICES
Meetings:
Private International Law Advisory Committee, 31577

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration

Treasury Department
See Customs Service
See Internal Revenue Service

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Baltic countries, newly independent states, and Central and Eastern Europe; student exchange programs, 31589

Separate Parts In This Issue

Part II
Department of Health and Human Services, Food and Drug Administration, 31596

Part III
Department of Education, 31616

Part IV
Department of the Interior, Bureau of Indian Affairs, 31618

Part V
Environmental Protection Agency, 31622

Part VI
Department of Transportation, Federal Aviation Administration, 31640

Part VII
Department of the Interior, Bureau of Indian Affairs, 31644

Part VIII
Environmental Protection Agency, 31646

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders

Presidential Determinations:

No. 93–21 of May 12, 1993.....31461

No. 93–22 of May 19, 1993.....31463

7 CFR

905.....31465

10 CFR

26.....31467

70.....31467

73.....31467

Proposed Rules:

2.....31478

72.....31478

14 CFR

91.....31640

Proposed Rules:

39.....31481

71 (4 documents).....31483, 31484, 31485, 31486

19 CFR

Proposed Rules:

151.....31487

152.....31487

20 CFR

626.....31471

627.....31471

628.....31471

629.....31471

630.....31471

631.....31471

637.....31471

33 CFR

117.....31473

165.....31474

Proposed Rules:

100.....31488

40 CFR

51.....31622

52.....31622

271.....31474

43 CFR

Public Land Orders:

6975.....31475

6976.....31475

47 CFR

90 (2 documents).....31476, 31477

49 CFR

Proposed Rules:

1312.....31490

1314.....31490

50 CFR

Proposed Rules:

227.....31490

Federal Register
Vol. 58, No. 105
Thursday, June 3, 1993

Presidential Documents

Title 3—

The President

Presidential Determination No. 93–21 of May 12, 1993

Certification of Moroccan Cooperation Pursuant to P.L. 102–391, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993

Memorandum for the Secretary of State

Pursuant to Section 599G of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391), I hereby certify that the Government of the Kingdom of Morocco is fully cooperating with the United Nations in the implementation of the Settlement Plan for self-determination of the people of the Western Sahara.

You are authorized and directed to publish this determination in the Federal Register and report it to Congress.

William J. Clinton

THE WHITE HOUSE,
Washington, May 12, 1993.

[FR Doc. 93–13241
Filed 6–1–93; 2:14 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 93–22 of May 19, 1993

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $30,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of refugees and conflict victims in Bosnia and Croatia. These funds may be contributed on a multilateral or bilateral basis, as appropriate, to international and nongovernmental organizations.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 19, 1993.

[FR Doc. 93–13244
Filed 6–1–93; 2:30 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 58, No. 105
Thursday, June 3, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV93-905-1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Temporary Relaxation of Grade Requirements for Florida Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This rule temporarily relaxes the minimum grade requirement for domestic shipments of red seedless grapefruit for the remainder of the 1992–93 season. This relaxation is based on this season's current and prospective crop and market conditions, and on the grade and quality of the remaining supplies of such grapefruit. This action should make available increased fresh supplies of such grapefruit to consumers from this season's remaining crop. This action was unanimously recommended by the Citrus Administrative Committee (committee), at its April 27, 1993, meeting.

DATES: This interim final rule becomes effective May 31, 1993. Comments which are received by July 6, 1993 will be considered prior to finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; or by facsimile at 202–720–5698. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or John R. Toth, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the marketing order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b).

This action revises paragraph (a) of § 905.306 by temporarily relaxing the minimum grade requirement for fresh

domestic shipments of red seedless grapefruit during the period May 31, 1993, through August 22, 1993. The revision relaxes the minimum grade for such grapefruit from "Improved No. 2 External, U.S. No. 1 Internal" to "Improved No. 2", which in effect reduces the internal grade requirement from "U.S. No. 1" to "U.S. No. 2". This action permits handlers to ship grapefruit with slightly more dryness, allowing fruit to be shipped with one-half inch of dryness on the stem end of the fruit, instead of the one-fourth inch currently permitted. This action recognizes that grapefruit tend to dry out during the latter part of the shipping season, which is expected to extend through June this year. This action will enable Florida citrus shippers to ship red seedless grapefruit grading at least "Improved No. 2" to the fresh market, rather than diverting such fruit to processing channels where returns may be lower than in the fresh market. This action should make increased supplies of fresh red seedless grapefruit available to consumers from this season's remaining crop.

The minimum grade requirements under the order are designed to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

Under this order, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the committee's and the Department's appraisal of the need to make the grade relaxation hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it will allow Florida citrus handlers to ship those grades of fruit available to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the relaxations set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes grade requirements currently in effect for Florida grapefruit; (2) Florida grapefruit handlers are aware of this action which was unanimously recommended by the committee at a public meeting, and they will need no additional time to comply with the relaxed grade requirement; (3) shipment of the 1992–93 season Florida grapefruit crop is currently in progress; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

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

2. Section 905.306 is amended by revising the entry for "seedless, red grapefruit" in paragraph (a), Table I, to read as follows.

Note: This section will appear in the annual Code of Federal Regulations.

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (Inches)
(1)	(2)	(3)	(4)
* *	* *	* *	*
Grapefruit:			
* *	* *	* *	*
Seedless, red	05/31/93–08/22/93	Improved No. 2	3 5/16
	08/23/93–11/07/93	Improved No. 2 External U.S. No. 1 Internal	3 5/16
	On and after 11/08/93	Improved No. 2 External U.S. No. 1 Internal	3 9/16
* *	* *	* *	*

Dated: May 27, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–12998 Filed 6–2–93; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 26, 70, and 73

RIN 3150–AD68

Fitness-for-Duty Requirements for Licensees Authorized To Possess, Use, or Transport Formula Quantities of Strategic Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) to institute fitness-for-duty programs. The amended regulation is limited to licensees who are authorized to possess, use, or transport unirradiated Category I Material. This action is necessary to provide greater assurance that individuals who have a drug or alcohol problem do not have access to or control over SSNM.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Stanley P. Turel, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3739.

SUPPLEMENTARY INFORMATION:

Background

The NRC recognizes drug and alcohol abuse to be a social, medical, and safety problem affecting every segment of our society. Given the pervasiveness of the problem, it must be recognized to exist to some extent in the nuclear industry. Accordingly, on June 7, 1989 (54 FR 24468), the Commission published a final rule that required licensees authorized to construct or operate nuclear power plants to implement a fitness-for-duty program. During the first year (calendar year 1990) of drug and alcohol testing of nuclear power plant workers, approximately one percent of all tests administered under the part 26 requirements were positive. The NRC has no reason to believe that the incidence of positive tests for workers affected by this rulemaking would be appreciably different. However, existing regulations contained in 10 CFR part 26 do not contain fitness-for-duty requirements for licensees authorized to possess, use, or transport formula quantities of SSNM.

Summary of Public Comment

On April 30, 1992 (57 FR 18415), the Commission published a proposed rule in the **Federal Register** which would require this category of licensee to implement fitness-for-duty requirements. The 90-day comment period expired on July 29, 1992. Three comment letters were received: One from an SSNM licensee, one from a trade association, and one from a private citizen. The private citizen was in favor of the rule. The licensee was against the promulgation of the rule, stating that it was unnecessary and burdensome. The trade association was neutral about the rule provided it did not cause duplicate random testing.

Changes have been made in the final rule in response to the public comments to better equate the requirements of random testing to the risk of diversion and to prevent the duplication of chemical testing of some drivers of transport vehicles. A summary of the comments received and the NRC's responses are presented below.

1. *Comment.* Diversion of special nuclear material is not more likely by persons with drug or alcohol problems.

Response. A substance abuser is more vulnerable to coercion and may be more easily suborned into cooperating, actively or passively, in a diversion of SSNM. Also, an individual under the influence of drugs or alcohol will not be as effective in conducting his or her safeguards responsibilities. For these reasons, the NRC believes it essential that these individuals are not permitted access to or control over SSNM or be responsible for any safeguards functions.

2. *Comment.* Public safety could not be seriously threatened by impaired workers.

Response. The NRC does not fully agree with this comment. The effects of most mistakes by impaired workers are expected to be largely contained within the boundaries of the facility with little or no consequence to the general public. However, the potential for more serious consequences exists. The impaired worker is a danger to himself and his coworkers and is of concern to the Commission. Further, the theft of SSNM could pose a serious threat to the national security.

3. *Comment.* Current NRC and DOE requirements already address trustworthiness of personnel by requiring security clearances for certain jobs.

Response. Current NRC regulations do require security clearances for certain jobs. However, the security clearance investigation alone might not detect a drug habit. Moreover, the current 5-year period between reinvestigations is too long for the timely detection of individuals who become substance abusers during that time.

4. *Comment.* Because of the "Drug-Free Workplace Act of 1988," adequate drug and alcohol programs are already in effect at the proposed licensee facilities.

Response. When issuing the part 26 fitness-for-duty rule in 1989, the Commission determined that, to be both effective and appropriate for assuring protection of the health and safety of the public, the fitness-for-duty program must include random, unannounced, urinalysis for drugs and breath testing for alcohol. The Drug-Free Workplace Act of 1988 does not require testing under any circumstances. Although a licensee's program may currently contain some testing provisions, in the Commission's view, it would not be adequate without the provision for random testing.

5. *Comment.* Implementation costs for the new rule would be very high but the results would be minimal.

Response. A facility that already has a limited fitness-for-duty program would have less implementation and continuing costs than one that does not. However, the costs may be as high as $500,000 the first year and $400,000 annually thereafter. On the other hand, random testing of persons in a position to divert or conceal a diversion of SSNM at the facility would strengthen the safeguarding of the SSNM. Moreover, experience with random testing programs implemented by NRC and other federal agencies indicates that random testing effectively detects and strongly deters substance abuse in the workplace.

6. *Comment.* Any category of worker that deals with the physical material or its primary "paper trail" should not be exempted from random testing. NRC should require licensees to ensure that workers do not come to work so impaired by distraction, fatigue, or infirmity that they cannot perform at a minimally acceptable level.

Response. The revisions to 10 CFR part 26 will require random testing for all employees who:

(1) Are granted unescorted access to SSNM that is directly useable in the manufacture of a nuclear explosive device and would be easily concealed

and removed by an individual (Category IA Material);

(2) Create or have access to procedures or records for safeguarding SSNM;

(3) Make measurements of Category IA Material;

(4) Transport or escort Category IA Material; or

(5) Guard Category IA Material.

Category IA Material is defined in § 26.3 Definitions. The other impairments listed by the commenter are addressed in §§ 26.10 and 26.20 of this rule.

7. *Comment.* The proposed drug and alcohol testing requirements should not be applied to railroads because they would duplicate the Federal Railroad Administration's testing program.

Response. Transporters of SSNM who are subject to DOT drug and alcohol fitness programs that have random testing for drugs and alcohol are exempt from the requirements of this rule.

Discussion

The final rule differs from the proposed rule in the following ways. Chemical testing is required only for those who have unescorted access to easily concealed SSNM. This was done by removing the term Category I Material from the definitions section (10 CFR 26.3) and replacing it with the term Category IA Material (this term is also defined in 10 CFR part 74). Category IA Material is defined as SSNM directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of 5 formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or

(3) The quantity of SSNM (less than 0.05 formula kilogram) in each container requires protracted diversions in order to accumulate 5 formula kilograms which may be easily concealed on an individual.

The term Category IA Material has been substituted throughout the body of the rule in place of Category I Material. All transporters of SSNM who are subject to DOT's drug and alcohol fitness programs that have random testing for drugs and alcohol are exempt from this rule.

The licensee personnel subject to this final rulemaking will be subject to a 100 percent annual random testing rate, the same as the rate that currently applies to power reactor employees. However, there is a proposed rulemaking being prepared that will reduce that random testing rate to 50 percent. If that proposal becomes final it will also have the effect of reducing the rate to 50 percent for those licensees that are affected by this final rulemaking.

Applicability of Criminal Penalties

In this final rule the amendments to the following sections of the codified regulations are issued under the authority of secs. 161b, 161i, or 161o of the Atomic Energy Act of 1954, as amended, and therefore violations may be subject to the Criminal Penalty provisions of sec. 223 of the Atomic Energy Act: 10 CFR 26.10, 26.24, 26.27, 26.73; 10 CFR part 26, appendix A; 10 CFR 70.20a.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The amendment will require subjecting certain licensee employees to a fitness-for-duty program of random tests for the use of drugs or alcohol. Specifically, all persons who are

(1) Granted unescorted access to Category IA Material;

(2) Given responsibilities to create or have access to procedures or records for safeguarding SSNM;

(3) Given responsibilities to measure Category IA Material;

(4) Given responsibilities to transport or escort Category IA Material; or

(5) Given responsibilities to guard Category IA Material will be subject to the program.

These requirements have no identifiable environmental impact.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact may be obtained from Stanley P. Turel, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3739.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) These requirements and amendments were approved by the Office of Management and Budget, approval number 3150–0146.

The public reporting burden for this collection of information is estimated to average 29 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0146), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Stanley P. Turel, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3739.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects licensees who are authorized to possess, use, or transport formula quantities of SSNM. These licensees do not fall within the scope of the definition of "small entities" set forth in the Small Business Size Standards adopted by the Commission in 1985 (December 9, 1985; 50 FR 50241; and November 6, 1991; 56 FR 56671).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because these amendments do not impose requirements on existing 10 CFR part 50 licensees. Therefore, a backfit analysis is not required for this rule.

List of Subjects

10 CFR Part 26

Alcohol abuse, Drug abuse, Drug testing, Hazardous materials transportation, Nuclear materials, Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material.

10 CFR Part 70

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

10 CFR Part 73

Criminal penalties, Experts, Hazardous materials transportation, Imports, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons stated in the preamble and under the 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 to 10 CFR parts 26, 70, and 73.

PART 26—FITNESS FOR DUTY PROGRAMS

1. The authority citation for part 26 continues to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. Section 26.1 is revised to read as follows:

§ 26.1 Purpose.

This part prescribes requirements and standards for the establishment and maintenance of certain aspects of fitness-for-duty programs and procedures by the licensed nuclear power industry, and by licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

3. Section 26.2 is revised to read as follows:

§ 26.2 Scope.

(a) The regulations in this part apply to licensees authorized to operate a nuclear power reactor, to possess or use formula quantities of SSNM, or to transport formula quantities of SSNM. Each licensee shall implement a fitness-for-duty program which complies with this part. The provisions of the fitness-for-duty program must apply to all persons granted unescorted access to nuclear power plant protected areas, to licensee, vendor, or contractor personnel required to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures, and to SSNM licensee and transporter personnel who:

(1) Are granted unescorted access to Category IA Material;

(2) Create or have access to procedures or records for safeguarding SSNM;

(3) Make measurements of Category IA Material;

(4) Transport or escort Category IA Material; or

(5) Guard Category IA Material.

(b) The regulations in this part do not apply to NRC employees, to law enforcement personnel, or offsite emergency fire and medical response personnel while responding onsite, or SSNM transporters who are subject to U.S. Department of Transportation drug or alcohol fitness programs that require random testing for drugs and alcohol. The regulations in this part also do not apply to spent fuel storage facility licensees or non-power reactor licensees who possess, use, or transport formula quantities of irradiated SSNM as these materials are exempt from the Category I physical protection requirements as set forth in 10 CFR 73.6.

(c) Certain regulations in this part apply to licensees holding permits to construct a nuclear power plant. Each construction permit holder, with a plant under active construction, shall comply with §§ 26.10, 26.20, 26.23, 26.70, and 26.73 of this part; shall implement a chemical testing program, including random tests; and shall make provisions for employee assistance programs, imposition of sanctions, appeals procedures, the protection of information, and recordkeeping.

4. In § 26.3, the terms *Category IA Material*, and *Transporter* are added in alphabetical order to read as follows:

§ 26.3 Definitions.

* * * * *

Category IA Material means strategic special nuclear material (SSNM) directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of 5 formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or

(3) The quantity of SSNM (less than 0.05 formula kilogram) in each container requires protracted diversions in order to accumulate 5 formula kilograms.

* * * * *

Transporter means a general licensee pursuant to 10 CFR 70.20a, who is authorized to possess formula quantities of SSNM in the regular course of carriage for another or storage incident thereto, and includes the driver or operator of any conveyance, and the accompanying guards or escorts.

* * * * *

5. In § 26.10, the introductory text and paragraph (a) are revised to read as follows:

§ 26.10 General performance objectives.

Fitness-for-duty programs must:

(a) Provide reasonable assurance that nuclear power plant personnel, transporter personnel, and personnel of licensees authorized to possess or use formula quantities of SSNM, will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties;

* * * * *

6. In § 26.24, the section heading and paragraphs (a)(2) and (b) are revised to read as follows:

§ 26.24 Chemical and alcohol testing.

(a) * * *

(2) Unannounced drug and alcohol tests imposed in a statistically random and unpredictable manner so that all persons in the population subject to testing have an equal probability of being selected and tested. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. As a minimum, tests must be administered on a nominal weekly frequency and at various times during the day. Random testing shall be conducted at an annual rate equal to at least 100 percent of the workforce.

* * * * *

(b) Testing for drugs and alcohol, at a minimum, must conform to the "Guidelines for Drug and Alcohol Testing Programs," issued by the Nuclear Regulatory Commission and

appearing in appendix A to this part, hereinafter referred to as the NRC Guidelines. Licensees, at their discretion, may implement programs with more stringent standards (e.g., lower cutoff levels, broader panel of drugs). All requirements in this part still apply to persons who fail a more stringent standard, but do not test positive under the NRC Guidelines. Management actions must be the same with the more stringent standards as if the individual had failed the NRC standards.

* * * * *

7. In § 26.27, paragraphs (a), (b)(2), and (b)(3) are revised to read as follows:

§ 26.27 Management actions and sanctions to be imposed.

(a)(1) The licensee shall obtain a written statement from the individual as to whether activities within the scope of this part were ever denied the individual before the initial—

(i) Granting of unescorted access to a nuclear power plant protected area;

(ii) Granting of unescorted access by a formula quantity SSNM licensee to Category IA Material;

(iii) Assignment to create or the initial granting of access to safeguards of procedures for SSNM;

(iv) Assignment to measure Category IA Material;

(v) Assignment to transport or escort Category IA Material;

(vi) Assignment to guard Category IA Material; or

(vii) Assignment to activities within the scope of this part to any person.

(2) The licensee, as applicable, shall complete a suitable inquiry on a best-efforts basis to determine if that person was, in the past—

(i) Tested positive for drugs or use of alcohol that resulted in on-duty impairment;

(ii) Subject to a plan for treating substance abuse (except for self-referral for treatment);

(iii) Removed from activities within the scope of this part;

(iv) Denied unescorted access at any other nuclear power plant;

(v) Denied unescorted access to SSNM;

(vi) Removed from responsibilities to create or have access to safeguards records or procedures for SSNM;

(vii) Removed from responsibilities to measure SSNM;

(viii) Removed from the responsibilities of transporting or escorting SSNM; or

(ix) Removed from the responsibilities of guarding SSNM at any other facility in accordance with a fitness-for-duty policy.

(3) If a record of the type described in paragraph (a)(2) of this section is established, the new assignment to activities within the scope of this part or granting of unescorted access must be based upon a management and medical determination of fitness for duty and the establishment of an appropriate follow-up testing program, provided the restrictions of paragraph (b) of this section are observed. To meet this requirement, the identity of persons denied unescorted access or removed under the provisions of this part and the circumstances for the denial or removal, including test results, will be made available in response to a licensee's, contractor's or vendor's inquiry supported by a signed release from the individual.

(4) Failure to list reasons for removal or revocation of unescorted access is sufficient cause for denial of unescorted access. Temporary access provisions are not affected by this part if the prospective worker passes a chemical test conducted according to the requirements of § 26.24(a)(1).

(b) * * *

(2) Lacking any other evidence to indicate the use, sale, or possession of illegal drugs onsite, a confirmed positive test result must be presumed to be an indication of offsite drug use. The first confirmed positive test must, as a minimum, result in immediate removal from activities within the scope of this part for at least 14 days and referral to the EAP for assessment and counseling during any suspension period. Plans for treatment, follow-up, and future employment must be developed, and any rehabilitation program deemed appropriate must be initiated during such suspension period. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this part must be obtained before permitting the individual to be returned to these activities. Any subsequent confirmed positive test must result in, as applicable—

(i) Removal from unescorted access to nuclear power plant protected areas;

(ii) Removal from unescorted access to Category IA Material;

(iii) Removal from responsibilities to create or have access to records or procedures for safeguarding SSNM;

(iv) Removal from responsibilities to measure Category IA Material;

(v) Removal from the responsibilities of transporting or escorting Category IA Material;

(vi) Removal from the responsibilities of guarding Category IA Material at any other licensee facility; and

(vii) Removal from activities within the scope of this part for a minimum of 3 years from the date of removal.

(3) Any individual determined to have been involved in the sale, use, or possession of illegal drugs, while, as applicable, within a protected area of any nuclear power plant, within a facility that is licensed to possess or use SSNM, or within a transporter's facility or vehicle, must be removed from activities within the scope of this part. The individual may not—

(i) Be granted unescorted access to nuclear power plant protected areas;

(ii) Be granted unescorted access to Category IA Material;

(iii) Be given responsibilities to create or have access to safeguards records or procedures for SSNM;

(iv) Be given responsibilities to measure Category IA Material;

(v) Be given responsibilities to transport or escort Category IA Material;

(vi) Be given responsibilities to guard Category IA Material; or

(vii) Be assigned to activities within the scope of this part for a minimum of 5 years from the date of removal.

* * * * *

8. In § 26.73, paragraph (d) is revised to read as follows:

§ 26.73 Reporting requirements.

* * * * *

(d) By November 30, 1993 each licensee who is authorized to possess, use, or transport formula quantities of SSNM shall certify to the NRC that it has implemented a fitness-for-duty program that meets the requirements of 10 CFR part 26. The certification shall describe any licensee cut-off levels more stringent than those imposed by this part.

9. In appendix A, the title and Subpart A-General 1.1 Applicability (1) is revised to read as follows:

Appendix A to Part 26—Guidelines for Drug and Alcohol Testing Programs

* * * * *

Subpart A—General

1.1 Applicability

(1) These guidelines apply to licensees authorized to operate nuclear power reactors and licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

10. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended,

sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

11. In § 70.20a, paragraph (d)(3) is revised to read as follows:

§ 70.20a General license to possess special nuclear material for transport.

* * * * *

(d) * * *

(3) Shall be subject to Part 26 and § 73.80 of this chapter.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

12. 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); sec. 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).

13. In § 73.6, the introductory paragraph is revised to read as follows:

§ 73.6 Exemptions for certain quantities and kinds of special nuclear material.

A licensee is exempt from the requirements of 10 CFR part 26 and §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.46, 73.70 and 73.72 with respect to the following special nuclear material:

* * * * *

Dated at Rockville, Maryland, this 27th day of May, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–13018 Filed 6–2–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, 630, 631, 637

RIN 1205–AA95

Job Training Partnership Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule; amendments.

SUMMARY: This document amends the interim final rule, which was published Tuesday, December 29, 1992, (57 FR 62004). The interim final rule amended the Job Training Partnership Act (JTPA) regulations to implement the Job Training Reform Amendments of 1992.

DATES: *Effective Date:* December 18, 1992.

Removal of Expiration Date: The expiration date of June 1, 1993, for the interim final rule published at 57 FR 62004 (December 29, 1992), is removed. The Department plans to issue a final rule on or before September 1, 1993, and after it has reviewed public comments already received. Notwithstanding the publication of the final rule, the 1992 amendments to JTPA, and the resulting program changes, are effective and operational July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Davies, Director, Office of Employment and Training Programs. Telephone: (202) 219–5580 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1992, the Department of Labor (DOL or Department) published an interim final rule amending the Job Training Partnership Act (JTPA) regulations to implement the Job Training Reform Amendments of 1992, Public Law 102–367 (Amendments). 57 FR 62004. The interim final rule indicated that the effective date for the rule was December 18, 1992, through June 1, 1993. The interim final rule invited written comments for consideration in developing the final rule, and the comment period closed on February 12, 1993. The interim final rule further indicated that the Department would issue a final rule on or before the June 1 expiration date of the interim final rule, after it had reviewed the public comments received. In addition, the interim final rule set forth guidance on transition and implementation of the Amendments.

Need for Amendments

The number of submissions in response to the Department's request for comments on the interim final rule was overwhelming. The Department received approximately 400 written sets of comprehensive comments from the JTPA system and other interested parties. Almost all of the submissions provided discrete comments on multiple sections and/or regulatory provisions of the interim final rule. In addition to the sheer volume of the comments received, many of them dealt with a number of complex and/or sensitive issues which the Department believes must be addressed before publishing a final rule. It has become clear that if the Department is to fully consider all of the comments received, additional time is required beyond the June 1, 1993, expiration date of the interim final rule. So as not to have an interruption in the regulations governing JTPA, the Department is amending the EFFECTIVE DATE section of the interim final rule to remove the June 1, 1993, expiration date and is indicating that it plans to publish a final rule on or before September 1, 1993, after it has reviewed the public comments received.

The Department also is taking the opportunity to revise the Transition Provisions set forth at 20 CFR part 627, subpart I, as a result of implementation issues raised after the publication of the December 29, 1992, interim final rule. Section 701(i) of the 1992 Amendments establishes broad discretion for the Secretary of Labor (Secretary) to develop rules and procedures "to provide for an orderly implementation of the amendments made by this Act." To a certain degree, this authority has been reflected in the provisions set forth in subpart I. By putting the Transition Provisions in the regulations, however, the Department has been unable to react in a timely manner to implementation problems as they have arisen. The Department believes that, consistent with the Secretary's authority at JTPA section 701(i), many implementation matters can appropriately be addressed through administrative issuances to the Governors/States. After publication of the interim final rule, supplemental transition guidance was transmitted via an administrative issuance, Training and Employment Guidance Letter (TEGL) No. 7–92, dated March 8, 1993, to all Governors. This issuance provided interpretations on the transition provisions of the interim final rule and addressed implementation problems not responded to in the interim final rule. This TEGL was published as a Notice in

the Federal Register on April 7, 1993. 58 FR 18114.

Accordingly, subpart I is being revised to remove conflicting transition provisions, to incorporate certain transition guidance provided to all Governors in TEGL No. 7–92 appropriate to the regulations on cost categories, program design requirements, and out-of-school ratio of services to youth, to provide for the charging of tuition by institutions accredited under section 481(c) of the Higher Education Act (20 U.S.C. 1088(c)), and to indicate that for matters identified as being appropriately handled by administrative issuance, the Department will transmit guidance directly to the JTPA system, via a TEGL to the Governors. Such TEGL's will be published as Notices in the Federal Register.

These amendments to the interim final rule provide the States and SDA's with some flexibility in implementing certain new major features of JTPA made by the 1992 amendments to JTPA, in particular those pertaining to objective assessment, individual service strategies, and the requirement that 50 percent of the participants under Title II–C must be out-of-school youth. The intent of such flexibility is to ensure that such program design changes are undertaken by the States and SDA's in a manner which focuses on the long-term quality and effectiveness of service delivery in JTPA. The Department, however, expects States and SDA's to effect the necessary changes as soon as possible after July 1, 1993.

List of Subjects in 20 CFR Parts 626 Through 631 and 637

Dislocated worker programs, Grant programs, Labor, Manpower training programs.

Accordingly, the publication on December 29, 1992, of the interim final rule, which was the subject of FR Doc. 92–31075, and 20 CFR part 627 are amended as follows:

Effective Date

1. In FR Doc 92–31075, the first paragraph of the EFFECTIVE DATES section, in the first column on 57 FR 62004 (December 29, 1992), is revised to read as follows:

EFFECTIVE DATE: December 18, 1992. The Department plans to issue a final rule on or before September 1, 1993, after it has reviewed public comments.

PART 627—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER THE ACT

2. Part 627 of title 20, CFR, is amended as follows:

a. The authority citation for part 627 continues to read as follows:

Authority: 29 U.S.C. 1579(a); Sec. 6305(f), Pub. L. 100–418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

b. Section 627.900 is revised to read as follows:

§ 627.900 Scope and purpose.

(a) The regulations set forth at parts 626, 627, 628, 629, 630, 631, and 637 of 20 CFR chapter V (1993) were published as an interim final rule to provide planning guidance for States and SDA's on the changes made to the JTPA program as a result of the 1992 JTPA amendments. See 57 FR 62004 (December 29, 1992). Those regulations and the statutory amendments are effective for the program year beginning July 1, 1993 (PY 1993), and succeeding program years. For PY 1992, JTPA programs and activities shall continue under the regulations set forth at 20 CFR parts 626, 627, 628, 629, 630, 631, and 637 (1992). Transition and implementation activities for the 1992 JTPA statutory amendments shall proceed under 20 CFR chapter V (1993), i.e., the interim final rule.

(b) In order to provide for the orderly transition to and implementation of the provisions of JTPA, as amended by the 1992 amendments, this subpart I applies to the use of JTPA title II and title III funds allotted by formula to the States. Additional guidance on transition matters may be provided in administrative issuances. The provisions in this subpart are operational during the transitional period for implementing the 1992 JTPA amendments.

§ 627.902 [Amended]

c. In § 627.902, paragraphs (i) and (j) are removed; and the semicolon at the close of paragraph (h) is removed and a period is added in lieu thereof.

d. In § 627.904, paragraph (g) is revised and new paragraphs (m), (n), and (o) are added to read as follows:

§ 627.904 Transition and implementation.

* * * * *

(g) *Cost Categories.* (1) Cost categories applicable to PY 1992 and earlier funds will be subject to existing regulations either until the funds have been exhausted or program activity has been completed. In order to assist the orderly transition to and implementation of the new requirements of the 1992 JTPA amendments, an increase is allowed in the administrative cost limitation for PY 1992 funds from 15 percent to 20 percent, with a corresponding adjustment to cost limitations for training and participant support. Specifically, not less than 80 percent of the title II–A funds shall be expended for training and participant support, and not less than 65 percent shall be expended for training.

(2) Any prior year carryover funds made available for use in PY 1993 will be subject to the reporting requirements and cost categories applicable to PY 1993 funds.

(3) In determining compliance with the JTPA cost limitations for PY 1992, Governors may either:

(i) Determine cost limitation compliance separately for funds expended in accordance with paragraphs (g)(1) and (g)(2) of this section; or

(ii) Determine compliance for each cost category against the total PY 1992 funds, whether expended in accordance with the Act and regulations in effect prior to the 1992 amendments to JTPA or in accordance with the amended Act and these regulations. Using this option, the total combined funds expended for training and direct training should be at least 65 percent of PY 1992 SDA allocations.

(4) In addition to the institutions specified at § 627.440(d)(1)(vi)(B) of these regulations, the costs of tuition and entrance fees of a postsecondary vocational institution specified at section 481(c) of the Higher Education Act, (20 U.S.C. 1088(c)), may be charged to Direct training services through June 30, 1995, when such tuition charges or entrance fees are not more than the educational institution's catalog price, necessary to receive specific training, charged to the general public to receive the same training, and are for the training of participants.

* * * * * *

(m) *Program implementation.* The implementation by the States and SDA's of certain new program design requirements, particularly objective assessment and development of individual service strategies (ISS), may require additional time to fully implement beyond July 1, 1993. Reasonable efforts to implement the provisions of §§ 628.515, 628.520, and 628.530, as soon as possible after July 1, 1993, are expected to be made. However, it is not expected that every new participant will initially receive

objective assessment, ISS, and referral to non-Title II services for a period of six months, or January 1, 1994.

(n) *Out-of-school youth ratio.* The 50-percent out-of-school participants requirement for title II–C will be phased in during PY 1993 and will not be the subject of compliance review until PY 1994, beginning July 1, 1994. During PY 1993, however, SDA's must show significant improvement in the proportion of out-of-school youth being served and performance in increasing the service ratio will be monitored by the States and DOL during this implementation period.

(o) *Administrative issuances.* Other implementation issues may be handled by administrative issuance. ETA will transmit such guidance directly to all Governors via a Training and Employment Guidance Letter (TEGL). Such TEGL's will be published as Notices in the **Federal Register**. (Sec. 701(i)).

§ 627.906 [Amended]

e. In § 627.906, in the first sentence of paragraph (a), the phrase ", especially those" is removed.

Signed at Washington, DC, this 28th day of May, 1993.

Carolyn M. Golding,

Acting Assistant Secretary of Labor.

[FR Doc. 93–13116 Filed 5–28–93; 4:13 pm]

BILLING CODE 4510–30–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–92–113]

Drawbridge Operation Regulations; Grand Canal, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Tortoise Island Homeowners Association and the Lansing Island Development Corporation, the Coast Guard is changing the regulations of the Tortoise Island drawbridge, mile 2.6 and the Lansing Island drawbridge, mile 0.7 at Satellite Beach, Brevard County, Florida, by increasing the advance notification time now required for an opening of the draws during certain periods. This change is being made because of infrequent requests to open the draws during nighttime hours. This action will relieve the bridgeowners of the burden of having a person constantly available to open the draw while still meeting the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Walter Paskowsky, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Walter Paskowsky, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Regulatory History

On February 2, 1993, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (58 FR 6767). The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The drawbridges presently open on signal, except that during the evening hours from 10 pm to 6 am from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draws shall open on signal if at least 15 minutes advance notice is given. The owners of the Tortoise Island bridge and the Lansing Island bridge requested relief from the requirement to maintain full time drawtender service due to lack of openings during evening hours. The Coast Guard proposed a change to two hour advance notice which is similar to the nearby Mathers Bridge on the same waterway system. The rule also corrects the name of the waterway from Great Canal to Grand Canal which is the name designated by the Department of the Interior, U.S. Geological Survey.

Discussion of Comments and Changes

One letter was received from the Committee to Preserve the Grand Canal recommending that the telephone number to contact for an opening during the curfew period be posted on signs on the bridge. This requirement of 33 CFR 117.55 will be implemented by directing he bridgeowners to install such signs when the Coast Guard sends them the signed Final rule.

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 rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because there is no commercial traffic on the waterway.

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). Since the rule will effect no commercial users, the economic impact is expected to be minimal.

Therefore, 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 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 under 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 USC 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.285 is revised to read as follows:

§ 117.285 Grand Canal.

(a) The draw of the Lansing Island bridge, mile 0.7, shall open on signal, except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceeding a Federal holiday, the draw shall open on signal if at least 2 hours notice is given.

(b) The draw of the Tortoise Island bridge, mile 2.6, shall open on signal; except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a Federal holiday, the draw shall open on signal if at least 2 hours notice is given.

Dated: May 17, 1993.

William P. Leahy,

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

[FR Doc. 93–13007 Filed 6–2–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP SAN FRANCISCO 93–04]

Safety Zone Regulations: San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Safety Zone on the waters of San Francisco Bay, CA in the area between Alcatraz Island and Aquatic Park. This Safety Zone is necessary to ensure the safety of swimmers participating in a race between Alcatraz and Aquatic Park. All vessels shall be excluded from this Safety Zone. This regulation establishes a rectangular area 500 yards wide between Alcataz Island and Aquatic Park. Entry into this Safety Zone is prohibited without the permission of the Captain of the Port, San Francisco Bay, California.

EFFECTIVE DATE: This regulation becomes effective at 7:30 a.m. PST, June 12, 1993 and terminates 8:45 a.m. PST, June 12, 1993, unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lieutenant Naccara, Coast Guard Marine Safety Office, San Francisco Bay, CA (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of **Federal Register** publication. Following normal rulemaking procedures by publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard the swimmers.

Drafting Information

The drafters of this regulation are Lieutenant Naccara, Project Officer for the Captain of the Port, and Captain Weuele, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is a triathalon involving 400 swimmers leaving Alcatraz Island for Aquatic Park. The swimmers will be unable to get out of the way of any vessels which may be transiting the area.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of 33 CFR PART 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Subpart C of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

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

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

2. A temporary section 165.T1164 is added to read as follows:

§ 165.T1164 Safety Zone: San Francisco Bay, CA.

(a) *Location.* A Safety Zone is established on the waters of San Francisco Bay, CA in the area between Alcatraz Island and Aquatic Park. The Safety Zone is a rectangular area 500 yards wide between 37–49.39 N, 122–25.35 W, 37–49.29 N, 122–25.15 W, 37–48.30 N, 122–25.38 W, and 37–48.30 N, 122–25.18 W.

(b) *Effective date.* This regulation is effective at 7:30 a.m. PST, June 12, 1993 and terminates 8:45 a.m. PST, June 12, 1993, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 18, 1993.

J.M. MacDonald,

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

[FR Doc. 93–13008 Filed 6–2–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4661–2]

North Carolina; Interim Authorization of Revisions to State Hazardous Waste Management Program; Correction

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule; correction.

SUMMARY: This action corrects the list of authorities previously published in the **Federal Register** dated April 27, 1992, at 57 FR 15255. The immediate final rule of April 27th authorized North Carolina for the statutory provisions addressing Hazardous Solid Waste Amendment (HSWA) sections 3005(j) and 3004(d), Surface Impoundment Requirements, and HSWA 3004(q)(2)(A) and 3004(r) (2) and (3), Exceptions to the Burning and Blending of Hazardous Waste. This action is necessary to de-authorize North Carolina for sections 3005(j), 3004(d), 3004(q)(2)(A), and 3004(r) (2) and (3) which were included in that authorization document.

EFFECTIVE DATE: June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Leonard W. Nowak, Acting Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347–2234.

SUPPLEMENTARY INFORMATION: North Carolina applied for interim authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). North Carolina's revisions consisted of the provisions of HSWA Cluster I promulgated November 8, 1984, through June 30, 1987. On April 27, 1992, EPA issued a final decision to grant North Carolina interim authorization for HSWA Cluster I which became effective June 26, 1992. A detailed discussion of authorities for which North Carolina was granted interim authorization was included in the April 27, 1992, notice (57 FR 15254). North Carolina did not apply for HSWA sections 3005(d), 3005(j), 3004(q)(2)(A), or 3004(r) (2) and (3). However, EPA inadvertently included these requirements in the authorization approval notice.

In the immediate final rule published April 27, 1992, at 57 FR 15254 is corrected by removing the first two complete entries in the table, "Surface Impoundment Requirements" and "Exceptions to the Burning and

Blending of Hazardous Waste" on page 15255.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–12838 Filed 6–2–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6975

[CO–932–4210–06; C–28505]

Partial Revocation of Executive Order No. 6277, Dated September 8, 1933; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order insofar as it affects 14.49 acres of public land withdrawn for Public Water Reserve No. 152. The revocation will permit consumation of a pending Bureau of Land Management land exchange. This action will open the land to surface entry and nonmetalliferous mining unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to mineral leasing and metalliferous mining.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Bob Barbour, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303–239–3708.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 6277, dated September 8, 1933, which withdrew public land for Public Water Reserve No. 152, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 9 N., R. 96 W.,
sec. 31, lot 5.
The area described contains 14.49 acres in Moffat County.

2. At 9 a.m. on July 6, 1993, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregation of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 6, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on July 6, 1993, the land will be opened to location and entry for nonmetalliferous mining under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregation of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempts adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 21, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–12977 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–JB–M

43 CFR Public Land Order 6976

[AK–932–4210–06; AA–6679]

Withdrawal of Public Lands for Manokotak Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 1,380 acres of public lands located within the Togiak National Wildlife Refuge from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to section 22 of the Alaska Native Claims Settlement Act. This action also reserves the lands for selection by Manokotak Natives Limited, the village corporation for Manokotak. This withdrawal is for a period of 120 days; however, any lands selected shall remain withdrawn by the order until conveyed. Any lands described herein that are not selected by the corporation will remain withdrawn as part of the Togiak National Wildlife Refuge pursuant to the Alaska National Interest Lands Conservation Act and will be subject to the terms and conditions of any withdrawal of record.

EFFECTIVE DATE: June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands located within the Togiak National Wildlife Refuge are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and are hereby reserved for selection under section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1988), by Manokotak Natives Limited, the village corporation for Manokotak:

Seward Meridian

T. 14 S., R. 58 W., (Unsurveyed)
secs. 12 and 13, those portions lying west of the Weary River.
T. 14 S., R. 61 W., (Unsurveyed)
sec. 5, N½.
The areas described aggregate approximately 1,380 acres.

2. Prior to conveyance of any of the lands withdrawn by this order, the lands shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), to make lands available for selection by Manokotak Natives Limited to fulfill the entitlement of the village for Manokotak under section 12 and section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (1988).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any lands selected shall remain withdrawn pursuant to this order until conveyed. Any lands described in this order not selected by the corporation shall remain withdrawn as part of the Togiak National Wildlife Refuge, pursuant to sections 303(6) and 304(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 668(dd) (1988); and will be subject to the terms and conditions of any other withdrawal of record.

5. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to section 810(c) of the Alaska National Interest Lands

Conservation Act, 16 U.S.C. 3120(c) (1988) and this action is exempted from the National Environmental Policy Act of 1969, 83 Stat. 852, by section 910 of ANILCA, 43 U.S.C. 1638 (1988).

Dated: May 21, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–12978 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 91–62; FCC 93–213]

Eligibility in the Motion Picture Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Federal Communications Commission has adopted a Memorandum Opinion and Order dealing with petitions for reconsideration of the Report and Order in this proceeding. The petitions addressed various aspects relating to licensing eligibility in the Motion Picture Radio Service. On reconsideration, the Commission renamed the service the "Film and Video Production Radio Service" and extended eligibility for a license in this service to entities engaged in technical supporting services.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632–7125.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in PR Docket No. 91–92, FCC 93–213, adopted May 3, 1993, and released May 19, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The full text of this decision also may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M St., NW., Washington, DC 20037, (202) 857–3800.

Summary of the Memorandum Opinion and Order

1. In the Report and Order in PR Docket No. 91–62, 57 FR 19811 (May 8, 1992), the Motion Picture Radio Service was renamed the Video Production Radio Service (VPRS). Eligibility for this service was expanded to include program distribution technologies developed since its inception. Eligibility for the VPRS, which still serves entities engaged in on-location motion picture film production, was expanded to include (1) individuals involved in the videotaping or filming of programs produced for final distribution to television, cable, or other mass distribution outlets, (2) entities producing educational or training films not produced for movie theater or television or cable distribution; and (3) individuals providing supporting services that facilitate program production by VPRS eligibles.

2. Petitions for reconsideration of the Report and Order were filed by Capital Cities/ABC, Inc. ("Cap Cities") and the Alliance of Motion Picture and Television Producers ("AMPTP").

3. AMPTP, in its petition for reconsideration, contends that the Motion Picture Radio Service should be renamed the "Motion Picture and Television Radio Service."

4. The Commission has concluded that the name of the service should not indicate a bias toward any technology in particular, but should instead reflect all eligibles. The Commission, therefore, has renamed the service the "Film and Video Production Radio Service" ("FVPRS").

5. AMPTP also argues that clarifying language should be added limiting eligibility in the FVPRS to entities providing technical supporting services to FVPRS eligibles so that entities providing *de minimis* or short-term services, such as catering for a production company, could not obtain a permanent FVPRS license. On reconsideration, the Commission agrees that eligibility for the FVPRS should be limited to entities providing technical supporting services.

6. AMPTP again argues that producers of music videos and commercials be specifically enumerated in the rule as FVPRS eligibles. In the Report and Order the Commission declined to amend the rule specifically to include producers of music videos and commercials, stating that the listed entities were examples of eligible programs or events and that eligibility was not limited to those entities specifically enumerated in the rule. The Commission has concluded that AMPTP has presented no new arguments on reconsideration to warrant changing this determination.

7. Cap Cities requests that the restriction adopted in the Report and Order barring cable or television entities from using the FVPRS where the event to be taped is transmitted to the public within 48 hours should be lifted on reconsideration. The Commission has denied this request, concluding that 48-hour restriction was appropriate and justified.

8. The Commission has also rejected Cap Cities' request that use of the FVPRS be permitted for the advance coordination of an event, regardless of whether the event is to be transmitted live or taped for delayed transmission. The Commission has concluded that the use of the FVPRS for the coordination of an event, regardless of whether the production coordination takes place in advance or simultaneously with the event, when the production is transmitted to the public less than 48 hours after the event has occurred, is prohibited.

9. *Final Regulatory Flexibility Analysis.* The Commission prepared a Final Regulatory Flexibility Analysis for the Report and Order. None of the rules adopted in this Memorandum Opinion and Order modify the effect of the instant proceeding on small businesses.

List of Subjects in 47 CFR Part 90

Amendatory Text

Part 90 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. In part 90, remove the words "Motion Picture Radio Service" or "Motion Picture" and add in their place the words "Film and Video Production Radio Service" or "Film and Video Production" in the following places: Sections 90.59, 90.69(b) introductory text, 90.71(c)(2), 90.73(d)(10), 90.273(b), 90.617(b) and 90.619(a)(3) and (b)(7)(iii).

§ 90.555 [Amended]

3. Section 90.555(a) is amended in the table under "Industrial Services" by removing the words "IM-Motion picture" and adding in their place "IM-Film and Video Production".

4. In § 90.69, remove the words "Video Production Radio Service" and add in their place the words "Film and Video Production Radio Service" in the following places: Heading of § 90.69, paragraph (a) introductory text and paragraph (a)(1) introductory text.

5. Section 90.69 is further amended by revising paragraph (a)(2) to read as follows:

§ 90.69 Film and Video Production Radio Service.

(a) * * *

(2) Persons providing direct technical support to eligibles identified in paragraph (a)(1) of this section.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–12514 Filed 6–2–93; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 90

[PR Docket No. 92–209; FCC 93–247]

Coordination of 800 MHz General Category Channels in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the Report and Order in this proceeding, the FCC provides Specialized Mobile Radio (SMR) applicants for conventional systems on General Category frequencies the option of seeking frequency coordination from any of the three frequency coordinators certified to recommend 800 MHz frequencies. These new rules will benefit SMR applicants for conventional SMR systems on General Category channels because it will permit them to select the frequency coordinator that best serves their needs.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Rules Branch, Private Radio Bureau, (202) 632–7125.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 92–209, FCC 93–247, adopted May 11, 1993, and released May 24, 1993. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Report and Order

1. SMR applicants for conventional systems in the General Category have been required to obtain coordination from the National Association of Business and Educational Radio, Inc. (NABER). SMR applicants requesting General Category channels for expansion or consolidation of trunked operations, in contrast, may seek frequency coordination from any of the three certified frequency coordinators. These coordinators are NABER, the Associated Public-Safety Communications Officers (APCO), and the Industrial Telecommunications Association, Inc. (ITA).

2. On September 9, 1992, we adopted a Notice of Proposed Rule Making, 57 FR 47601 (October 19, 1992), proposing to make consistent coordination procedures between conventional and trunked SMR systems licensed on General Category channels. The record in this proceeding supports permitting SMR applicants for conventional systems using General Category frequencies the option of seeking frequency coordination from any of the three recognized coordinators. The Commission's action in this proceeding will be beneficial because it will remove the competitive disadvantage currently imposed on SMR applicants for conventional facilities, and enable all SMR applicants for systems, trunked and conventional, on General Category channels to choose a frequency coordinator on the basis of criteria such as cost and speed of service.

Final Regulatory Flexibility Analysis

Need and Purpose of the Action

3. By permitting applicants for conventional SMR systems in the General Category to choose from any of the three certified coordinators for this group of channels, the Commission will conform our regulatory treatment of conventional SMR applicants seeking a recommendation for an 800 MHz General Category frequency to that currently afforded trunked applicants also seeking a recommendation of General Category frequencies.

Issues Raised in Response to the Initial Regulatory Flexibility Analysis

4. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

Significant Alternatives Considered and Rejected

5. All significant alternatives have been addressed in this Report and Order.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Radio.

Amendatory Text

Part 90 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.615 is amended by adding a new last sentence to paragraph (a) to read as follows:

§ 90.615 Frequencies available in the General Category.

(a) * * * Applications submitted by eligibles under § 90.603(c) must be coordinated (see § 90.175) by any one of the frequency coordinators certified to coordinate applications above 800 MHz.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–12967 Filed 6–2–93; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 58, No. 105
Thursday, June 3, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 72

RIN 3150–AE64

Interim Storage of Spent Fuel in an Independent Spent Fuel Storage Installation; Site-Specific License to a Qualified Applicant

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its procedures under which the Director of Nuclear Materials Safety and Safeguards can issue a site-specific license to a qualified applicant for the interim storage of spent fuel in an independent spent fuel storage installation (ISFSI) following satisfactory completion of NRC safety and environmental reviews and after any public hearing on the application. The proposed amendment is administrative in nature and would eliminate the need for express Commission authorization for each ISFSI license, but would not affect the scope of NRC review of an ISFSI license application or change the present opportunity for public hearing provided for in the NRC's rules of practice.

DATES: The comment period expires August 17, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of comments may be examined at the NRC Public Document Room 2120 L Street NW. (Lower Level), Washington, DC, in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: C. William Reamer, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 504–1640.

SUPPLEMENTARY INFORMATION:

Background

Under 10 CFR part 72, the NRC will issue a specific license for the interim storage of nuclear power plant spent fuel in an independent spent fuel storage installation (ISFSI) if NRC determines the application meets the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Commission's regulations. An ISFSI is a facility that is specifically designed and constructed for interim spent fuel storage, after use of the nuclear fuel as a source of energy in a nuclear power reactor, until its shipment to the U.S. Department of Energy's planned geological repository for disposal of radioactive waste. Part 72 is limited to scope to the temporary storage (up to 20 years with renewal at the option of the NRC) of spent fuel in an ISFSI. This rulemaking proposes a change to the Commission's procedures for the issuance of a specific ISFSI license to a qualified applicant.

Discussion

The Commission is proposing to amend the procedures that authorize the NRC Director of Nuclear Material Safety and Safeguards (or the Director's designee) to issue a specific license for the interim storage of spent fuel in an ISFSI under 10 CFR part 72, after the NRC completes a comprehensive, documented, public health and safety review; prepares an environmental assessment and determines that issuing the license would conform to all statutory and regulatory requirements; and after opportunity for a public hearing has been offered and any requested hearing is complete. The amendment would end the current internal practice under which the Director obtained the Commission's express authorization for each ISFSI license, after the NRC review and determination that a license should be issued under 10 CFR part 72, but before the Director actually issued the license. The proposed rule would not affect, in any way, existing procedures for the NRC review or the opportunity for public hearing.

The existing rule, which reflects the internal practice the Commission is proposing to change, provides that the NRC "Director of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an * * * ISFSI under 10 CFR Part 72 until expressly authorized to do so by the Commission." (See 10 CFR 2.764(c), 72.46(d)). This rule states a special exception to the Commission's general practice to delegate to the Director full authority to issue licenses upon favorable completion of NRC reviews, as well as the completion of any public hearing on the license application. Under the Energy Reorganization Act of 1974 (42 U.S.C. 5801, 5845), the Director's functions are delegated by the Commission and include "principal licensing and regulation" for facilities other than nuclear reactors. The Commission is proposing to end the special exception, and give the Director comparable authority to issue a license for the interim storage of spent fuel in an ISFSI.

The special exception was added to the Commission's rules in 1980. See "Licensing Requirements for the Storage of Spent Fuel in an Independent Fuel Spent Storage Installation," 45 FR 74693; November 12, 1980. At that time, it was understood that an option under consideration by the Department of Energy (DOE) was the interim storage of spent fuel in a number of large, regional spent fuel storage facilities. Anticipating that the one-step licensing process in part 72 would be used for licensing this type of DOE facility, the Commission directed that any license should not be effective until Commission review was complete. However, following enactment of the Nuclear Waste Policy Act of 1982, which made utilities primarily responsible for providing their own interim spent fuel storage, DOE elected not to pursue the option of large-scale, regional storage facilities. Thus, in proposing to revise the internal procedure incorporating the special exception, the Commission would be eliminating a procedure it previously adopted to address circumstances that subsequently never materialized. However, the Commission would have the right to revisit the issue if DOE's plans concerning such an interim spent fuel storage option subsequently change.

Since the exception was adopted in 1980, the Director has issued five specific licenses for storage of spent fuel in ISFSIs at reactor sites after obtaining express Commission authorization to do so. In particular, licenses were issued for interim spent fuel storage in an ISFSI at Surry Power Station (Virginia Electric and Power Co.), H.B. Robinson Unit 2 (Carolina Power and Light Co.), Oconee Nuclear Station (Duke Power CO.), Fort St. Vrain Nuclear Generating Station (Public Service Co. of Colorado), and Calvert Cliffs Nuclear Power Plant (Baltimore Gas and Electric Co.). On the basis of this experience, the Commission believes the special exception, requiring express Commission authorization in every case, is no longer needed. Because the current practice creates an additional, unnecessary layer of agency review, the Commission believes it can simplify the ISFSI licensing process by eliminating the requirement for express Commission authorization. In addition, given that an applicant for a specific ISFSI license is required under Commission regulations (10 CFR part 170) and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a) to pay application and license fees that cover the full cost of NRC review, the proposed amendment could save money that would otherwise be expended for unnecessary agency reviews.

As with comparable licensing actions, the Director, NMSS will continue to carry out licensing of the interim storage of spent fuel in an ISFSI under Commission supervision and direction. Specifically, under existing NRC procedures that would be unchanged by this rulemaking, the NRC staff is required to keep the Commission fully and currently informed about proposed significant licensing actions (which would include issuance by the Director, NMSS of a specific ISFSI license), and is also required to bring any significant question of policy to the Commission for resolution. These internal mechanisms, which the Commission is not proposing to change, ensure that every specific license for interim spent fuel storage in an ISFSI is issued under the supervision and direction of the Commission. In addition, as discussed below, if the application for a specific ISFSI license is the subject of a public hearing, parties to the licensing proceeding will continue to have the opportunity to request Commission review of their concerns before any license is issued by the Director.

The proposed revision concerns only internal agency procedures. The Commission's existing opportunity for public hearing, as described below, would continue for specific ISFSI licenses. Under the Commission's rules of practice, after receipt of an application for a specific license for interim spent fuel storage in an ISFSI, the NRC publishes a notice of proposed action and opportunity for hearing in the Federal Register to potentially interested entities and persons (10 CFR 2.105, 72.46(a)). Among other things, the notice indicates that any person whose interest may be affected may file a request for a hearing or a petition for leave to intervene. Potentially affected persons and entities have a right to obtain all relevant NRC staff safety documents, as well as all technical submissions of the license applicant. They may request a hearing or provide written comments before any final NRC action on a ISFSI license application (10 CFR 2.105). If a hearing on the application is held before an Atomic Safety and Licensing Board, issuance of a specific license for an ISFSI by NRC must await completion of the hearing and the initial decision by the Board, and must be appropriately conditioned in light of the Board's findings and conclusions on the matters determined in the hearing (10 CFR 2.760). Under NRC rules of practice, hearing participants have the right to request Commission review of the Board's decision, including the right to request that the effectiveness of the Board's decision be stayed, and that the Commission undertake review before license issuance if they believe the facts warrant such a review (10 CFR 2.786, 2.788). Of course, absent a stay request, under the general rule which the Commission is now proposing to restore, the Board's decision would be immediately effective, and the Director would issue the ISFSI license within 10 days after the decision, without being required to obtain additional, express Commission authorization to do so (See 10 CFR 2.764 (a) and (b)).

This opportunity for public hearing, including the opportunity to request Commission review before issuance of a specific license for interim storage of spent fuel in an ISFSI, would therefore continue even if the internal changes proposed in this document were adopted. Furthermore, as discussed below, these proposed amendments would not change, in any manner, the scope of the agency's reviews of an application for a specific license for an ISFSI.

Because these proposed amendments are administrative in nature, they are intended not to affect the scope of the NRC's environmental assessment or its comprehensive public health and safety review of an application for a specific license for an ISFSI. Upon receipt of an ISFSI license application, after publishing a notice of docketing in the **Federal Register**, the NRC staff reviews the license application and applicant's supporting safety analysis report (SAR) describing the proposed ISFSI. This comprehensive, technical review by the NRC staff addresses all relevant public health and safety matters including site characteristics affecting construction and operating requirements for the proposed ISFSI, criteria for and design of the proposed installation, operation systems of the facility, site-generated waste confinement and management systems, measures to ensure the protection of the pubic and occupational workers from radiation and radioactive materials, analyses of potential accidents that might occur at the facility and the applicant's plans for the conduct of ISFSI operations. In its review, the NRC staff may require further submittals from the applicant as necessary to complete the ISFSI application, will thoroughly review all of the applicant's supporting technical information, and will independently verify the applicant's safety analyses and design calculations if necessary. To document its review and conclusions, the NRC staff will prepare a comprehensive safety evaluation report (SER) detailing its safety findings and conclusions, as well as an environmental assessment (EA) for the proposed specific license for interim storage of spent fuel in an ISFSI. As noted, interested members of the public may obtain copies of these documents from NRC. None of these NRC staff technical activities would, in any way, be modified by this proposed amendment.

Under the proposed amendments, the Commission's express authorization would continue to be required before issuance by the Director, NMSS, of any initial license for the acquisition, receipt or possession of spent fuel, high-level waste and associated radioactive material, for the purpose of storage at a monitored retrievable storage installation (MRS).

Section-by-Section Analysis

This portion of the notice of proposed rulemaking contains a section-by-section analysis of proposed amendments.

A. Rules of Practice (10 CFR 2.764)

The Commission is proposing to amend 10 CFR 2.764(c) to eliminate the references in the section to "an independent spent fuel storage installation (ISFSI)." As amended, the provision would continue to apply in

the future to licensing of a monitored retrievable storage installation (MRS) under 10 CFR part 72. The amendment would therefore eliminate the requirement of express Commission authorization before issuance by the Director of NMSS (or the Director's designee) of each initial license for interim storage of spent fuel in an ISFSI. The general rule would thus apply under which the Director, NMSS, would have delegated authority, when no public hearing on the application has been requested, to issue a license for an ISFSI under 10 CFR part 72 following satisfactory completion of NRC's environmental assessment and public health and safety review, without obtaining additional, express authorization from the Commission to do so. Further, under the proposed amendment to 10 CFR 2.764, if the application is the subject of a public hearing, then the Director would issue the license for an ISFSI only after an initial decision of the Atomic Safety and Licensing Board directing issuance of the license, but without the Director being required to obtain the additional, express authorization of the Commission to do so. In this connection, 10 CFR 2.764 (a) and (b) would be clarified to explicitly incorporate "a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI)" to thereby cover any application for a specific ISFSI license that is the subject of a public hearing.

Under other provisions of the Commission's rules pertaining to the opportunity for public hearing that would not be changed, a party to the hearing could request Commission review and ask the Commission to stay the effectiveness of the Board's decision (including any direction for issuance of any ISFSI license) pending that review (10 CFR 2.786, 2.788). If the Commission granted a stay, then the Director would not issue the license until the terms of the stay, if any, were met or until further order of the Commission.

B. Licensing Requirements for ISFSIs (10 CFR 72.46)

The proposed amendment of 10 CFR 72.46(d) would delete the reference to "an ISFSI" in the last sentence of paragraph (d). As amended, the sentence would continue to apply to licensing of the MRS. Thus, under the amendment, the Director, NMSS, would have delegated authority to issue a specific license for interim storage of spent fuel in an ISFSI. He/she would not be required to seek the express authorization of the Commission to do so. However, the Director's authority would continue to be subject to the limitation that the Commission will be fully and currently informed and will address any significant questions of policy relating to a specific license for interim storage of spent fuel in an ISFSI.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c) (1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement 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 3150–0136 and 0132.

Regulatory Analysis

The Nuclear Regulatory Commission is proposing to make changes to internal procedures that are administrative in nature. The changes will not have any significant impact on the public health and safety or the U.S. economy. The proposed changes would create no new regulatory burdens, or result in the use of resources by NRC licensees or by the staff of the NRC or an Agreement State. The Commission's current procedures require the Director, NMSS, to obtain express authorization of the Commission before issuing a license to construct and operate an ISFSI. The amendments, if adopted, would authorize the Director to issue a license for interim storage of spent fuel in an ISFSI without seeking express authorization from the Commission to do so. Under either alternative, the economic costs are not expected to be significant in terms of time and resources expended by the Commission and other persons. However, the costs of the proposed amendments, in this regard, are likely to be less than the costs of the current procedure since the amendments would reduce the layers of agency review. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Act Certification

The proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule sets forth internal procedures of an administrative nature for issuance of licenses for ISFSIs. Owners of nuclear power reactors do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act (15 U.S.C. 632) or the Small Business Size Standards set out in regulation issued by the Small Business Administration at 13 CFR part 121. Thus, in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC hereby certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 72.62, does not apply to this proposed rule and that a backfit analysis is not required because these amendments, if adopted, would not involve any provisions which would impose backfits as defined in 10 CFR 72.62(a) (see also 10 CFR 50.109).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Nuclear Regulatory Commission is proposing to adopt amendments to 10 CFR parts 2 and 72.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Sec. 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135);

sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073, (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (43 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.764, paragraphs (a), (b) and (c) are revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

(a) Except as provided in paragraphs (c) through (f) of this section, or as otherwise ordered by the Commission in special circumstances, an initial decision directing the issuance or amendment of a construction permit, a construction authorization, an operating license, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI) shall be effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to review thereof and further decision by the Commission upon petition for review filed by any party pursuant to § 2.786 or upon its own motion.

(b) Except as provided in paragraphs (c) through (f) of this section, or as otherwise ordered by the Commission in special circumstances, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing or granting of a petition for review, shall issue a construction permit, a construction authorization, an operating license, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI), or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

(c) An initial decision directing the issuance of an initial license for the construction and operation of a monitored retrievable storage installation (MRS) under 10 CFR part 72 shall become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of a monitored retrievable storage installation (MRS) under 10 CFR part 72 until expressly authorized to do so by the Commission.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

3. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (43 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); section 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

4. In § 72.46, paragraph (d) is revised to read as follows:

§ 72.46 Public hearings.

* * * * *

(d) If no request for a hearing or petition for leave to intervene is filed within the time prescribed in the notice of proposed action and opportunity for hearing, the Director, Office of Nuclear Material Safety and Safeguards or the Director's designee may take the proposed action, and thereafter shall promptly inform the appropriate State and local officials and publish a notice in the **Federal Register** of the action taken. In accordance with § 2.764(c) of this chapter, the Director, Office of Nuclear Material Safety and Safeguards shall not issue an initial license for the construction and operation of an MRS until expressly authorized to do so by the Commission.

Dated at Rockville, Maryland, this 27th day of May, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–13019 Filed 6–2–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–09–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes, Excluding Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive visual inspections of wire bundles to detect damage due to chafing, and repair of damaged wires. That AD was prompted by a report of an electrical wiring short circuit, smoke in the cockpit, and loss of flight instruments, which resulted in a rejected take-off. This action would revise the inspection and repair procedures, and would provide a terminating action, which if accomplished, would eliminate the need for the currently required inspections. The actions specified by the proposed AD are intended to prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane.

DATES: Comments must be received by July 28, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–09–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Matthew S. Wade, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2751; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–09–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–09–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 17, 1992, the FAA issued AD 92–27–12, Amendment 39–8447 (57 FR 61255, December 24, 1992), applicable to certain Boeing Model 747 series airplanes, to require repetitive visual inspections of wire bundles that extend between the P6 and P7 panels to detect damage due to chafing, and repair of damaged wires. That action was prompted by a report of an electrical wiring short circuit, smoke in the cockpit, and loss of flight instruments, which resulted in a rejected take-off. The requirements of that AD are intended to prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane.

Since the issuance of that AD, the manufacturer has presented data that substantiates the need for new inspection and repair procedures.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–24A2186, dated January 14, 1993, that describes procedures for visual inspections of wire bundles above the P6 panel around station 400, waterline 385, and right butt line 15 to detect damage due to chafing, and repair or replacement of damaged wires. In this vicinity, wire bundles W418, W1100, and W1362 cross over wire bundles W998 and W718. Additionally, the service bulletin describes procedures to modify the area to ensure that at least 0.25 inch of clearance exists between the wire bundles. The modification entails wrapping Scotch 70 silicon tape, or the equivalent, around wire bundles W418, W1100, and W1362; tying wire bundle W718 to wire bundles W418, W1100, and W1362 at the crossover point; and tying wire bundle W998 to wire bundles W418, W1100, and W1362 at the crossover point. This modification, when accomplished, eliminates the need for visual inspections of the subject area.

These new inspection, repair, and modification procedures will improve the protection against abrasion of the wires in the affected area. Damage to these wires due to chafing or abrasion, if not detected and corrected, could lead to smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane.

Also since issuance of that AD, the FAA has reviewed and approved Boeing Service Bulletin 747–24A2186, Revision 1, dated May 20, 1993. Revision 1 is essentially identical to the original issue, but clarifies the location of the inspection area above the P6 panel and the type of material used for wire protection. Revision 1 also describes the butt line location as right butt line 25, whereas the original issue of the service bulletin describes the butt line location as right butt line 15. (Both butt lines are approximate locations.)

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92–27–12 to require revised repetitive visual inspections of wire bundles to detect damage due to chafing, and repair or replacement of damaged wires. Also, this action would clarify the location of the affected wire bundles above the P6 panel. The FAA considers that the revised inspection and repair procedures are warranted in order to detect and repair chafing in a timely manner, since an electrical wiring short circuit, smoke in the cockpit, and loss of flight instruments have been reported in this area. These actions would be required to be accomplished in accordance with the service bulletins described previously.

The proposed AD would also provide an optional terminating action, described previously, which consists of wrapping tape around certain wire bundles. If accomplished, this modification would eliminate the need for the currently required repetitive visual inspections.

There are approximately 700 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 184 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,180, or $83 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, the number of work hours required to accomplish it would be approximately 1 per airplane, and the

cost of required parts would be approximately $32 per airplane.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8447 (57 FR 61255, December 24, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 93–NM–09–AD. Supersedes AD 92–27–12, Amendment 39–8447.

Applicability: Model 747 series airplanes, excluding Model 747–400 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraph (a) of this AD restates the requirement for repetitive inspections contained in paragraphs (a) and (b) of AD 92–27–12. The first inspection required by this AD must be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraphs (a) and (b) of AD 92–27–12.

To prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane, accomplish the following:

(a) Within 15 days after January 8, 1993 (the effective date of AD 92–27–12, amendment 39–8447): Perform a visual inspection to detect damage due to chafing of the wire bundles that extend between the P6 and P7 panels at station 400, water line 385, right butt line 15, at Stringer 2 on the right-hand side, 6 inches aft of the P6 panel. Pay particular attention to wire bundles W418, W718, W998, and other bundles that cross over these bundles. Repeat the inspection thereafter at intervals not to exceed 120 days until the inspection required by paragraph (b) of this AD is accomplished. If any damaged wire is found, prior to further flight, repair the wire in accordance with Boeing Standard Wiring Practices Document, D6–54446.

(b) Within the next 4,000 flight hours after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with Boeing Alert Service Bulletin 747–24A2186, dated January 14, 1993; or Revision 1, dated May 20, 1993.

(1) Perform a visual inspection to detect damage due to chafing of the wire bundles above the P6 panel around station 400, water line 385, right butt line 25 in accordance with the service bulletin. Pay particular attention to wire bundles W418, W718, W998, W1100, and W1362, and other bundles that cross over these bundles. Accomplishment of this inspection terminates the repetitive inspection requirements of paragraph (a) of this AD. If any damaged wire is found, prior to further flight, repair or replace the wire in accordance with Boeing Standard Wiring Practices Document, D6–54446.

(2) Measure the clearance between the wire bundles in accordance with the service bulletin.

(i) If the measured clearance between the wire bundles is 0.25 inch or greater: No further action is required by this AD.

(ii) If the measured clearance between the wire bundles is less than 0.25 inch: Repeat the inspection required by paragraph (b)(1) of this AD thereafter at intervals not to exceed 120 days.

(c) Installation of the wire modification in accordance with Boeing Alert Service Bulletin 747–24A2186, dated January 14, 1993, or Revision 1, dated May 20, 1993, terminates the repetitive inspections required by paragraphs (a) and (b) of this AD.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

Issued in Renton, Washington, on May 27, 1993.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–13010 Filed 6–2–93; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 71

[Airspace Docket No. 93–ANM–1]

Proposed Amendment to Jefferson County Airport Control Zone; Broomfield, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Jefferson County Airport, Broomfield, Colorado, Control Zone. Construction of the new Denver International Airport requires amendment of the Denver Terminal Control Area (TCA), and concurrent amendment of other controlled airspace in the vicinity. The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before July 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–1, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–1, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing a list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the control zone at Jefferson County Airport, Broomfield, Colorado. Construction of the new Denver International Airport requires relocation of the Denver TCA, and concurrent amendment of the Jefferson County Airport Control Zone description. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in § 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (AIR).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones.

* * * * *

ANM CO CZ Broomfield, CO [Revised]

Jefferson County Airport, Co
(Lat. 39°54'30"N, Long. 105°06'59"W)

That airspace extending upward from the surface to but not including 8,000 feet MSL within a 4.8-mile radius of the Jefferson County Airport. This control zone is effective during the specific dates and times established in advance by Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on May 21, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–13042 Filed 6–2–93; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 93–ANM–5]

Proposed Amendment of Transition Area; Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Denver, Colorado, transition area. Construction of the new Denver International Airport, requires amendment of the Denver Terminal Control Area (TCA), and concurrent amendment of the 700 foot and 1,200 foot transition areas. The airspace would be depicted on aeronautical charts for pilot reference. This action would overlie and thus nullify the need for two other transition areas which would be removed when the final rule becomes effective.

DATES: Comments must be received on or before July 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–5, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–5, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy—related aspects of the proposal.

Communications should identify the airspace docket number and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–5," The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the 700 foot and 1,200 foot transition areas at Denver, Colorado. Construction of the new Denver International Airport, and closure of Stapleton Airport, requires amendment of the Denver TCA, and a simultaneous requirement to amend the transition areas to assure adequate controlled airspace adjacent to the TCA airspace. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition areas listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (AIR).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas.

* * * * *

ANM CO TA Denver Centennial Airport, CO [Removed] ANM CO TA Denver, CO [Revised]

Denver International Airport, CO
(lat. 39°51'38"N, long. 104°40'24" W)
Denver VOR/DME (lat. 39°48'44" N, long. 104°39'36" W.)
Centennial Airport, CO (lat. 39°34'13" N., long. 104°50'58" W.)

That airspace extending upward from 700 feet above the surface within a 28-mile radius of the Denver VOR/DME, and within 3.5 miles west and 8.8 miles east of the 178° bearing from the Centennial Airport extending from the 28-mile radius to 17.8 miles south of the Centennial Airport; and that airspace extending upward from 1,200 feet above the surface on the north beginning at lat. 40°30'00" N., long 106°00'02" W., thence east along lat. 40°30'00" N., hence northeast along V–361, thence east along lat. 41°00'00" N., thence south along the Colorado-Nebraska State boundary, thence southwest along V–8, thence south along V–169, thence west along lat. 39°00'00"N., thence north along long. 106°00'02" W., to the point of beginning, excluding airspace within Federal Airways.

* * * * *

ANM CO TA Erie, CO [Removed]

* * * * *

Issued in Seattle, Washington, on May 21, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–13037 Filed 6–2–93; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 93–ANM–3]

Proposed Amendment to Centennial Airport Control Zone; Englewood, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Centennial Airport, Englewood, Colorado, Control Zone. Construction of the new Denver International Airport requires amendment of the Denver Terminal Control Area (TCA), and concurrent amendment of other controlled airspace in the vicinity. The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before July 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–3, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–3, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions

presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing a list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the control zone at Centennial Airport, Englewood, Colorado. Construction of the new Denver International Airport requires relocation of the Denver TCA, and concurrent amendment of the Centennial Airport Control Zone description. The area would be depicted an aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in section 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones.

* * * * *

ANM CO CZ, Denver Centennial Airport, CO [Revised]

Centennial Airport, CO
(Lat. 39°34'13" N. Long. 104°50'58" W)

That airspace extending upward from the surface to, but not including, 8,000 feet MSL within a 4.4-mile radius of the Centennial Airport, and within 2.5 miles each side of the 178° bearing from the Centennial Airport extending from the 4.4-mile radius to 14 miles south of the airport, and within 2 miles each side to the 111° bearing from the Centennial Airport extending from the 4.4-mile radius to 4.8 miles southeast of the airport. This control zone is effective during the specific dates and times established in advance by Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on May 21, 1993.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division.

[FR Doc. 93–13040 Filed 6–2–93; 8:45 am]
BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 93–ANM–2]

Proposed Amendment of Buckley Air National Guard Base Control Zone; Aurora, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Buckley Air National Guard Base (ANG), Aurora, Colorado control zone. The intended effect of this action is to revise the Buckley ANG Control Zone description when the Denver Terminal Control Area (TCA) is relocated to the new Denver International Airport site. The airspace would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before July 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–2, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–2, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the control zone at the Buckley ANG at Aurora, Colorado. Construction of the new Denver International Airport, and closure of Stapleton Airport, necessitates relocation of the Denver TCA and concurrent amendment to the Buckley ANG Control Zone description. The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in § 71.171 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects In 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones.

* * * * *

ANM CO CZ Aurora, CO [Revised]

Buckley ANG Base, CO
(lat. 39°42'06" N, long. 104°45'07" W)

That airspace extending upward from the surface to but not including 7,500 feet MSL within a 4.4-mile radius of the Buckley ANG Base, and within 2 miles each side of the Buckley Runway 32 ILS localizer southeast course extending from the 4.4-mile radius to 7.5 miles southeast of the airport, excluding that airspace within the Denver International Airport TCA Area A and that airspace extending upward from the surface to and including the Denver International Airport TCA Area C.

* * * * *

Issued in Seattle, Washington, on March 9, 1993.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division.

[FR Doc. 93–13041 Filed 6–2–93; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 151 and 152

Electronic Transmission of Customs Forms 28 and 29

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposal to amend the Customs Regulations to provide that entry filers who have access to the Automated Broker Interface (ABI) may elect to receive Customs Form 28, Request for Information, and Customs Form 29, Notice of Action, electronically through ABI. Most of the commenters were in favor of the proposal only if participation is voluntary at the importer's option. Customs has concluded that making importer participation voluntary would result in the proposal not being cost beneficial to the government. Accordingly, Customs has determined to withdraw the proposal.

DATE: Withdrawal effective on June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Richard Bonner, Office of Automated Commercial Systems, (202) 927–1081.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 1992, Customs published a notice in the **Federal Register** (57 FR 44143), proposing to amend §§ 151.11 and 152.2, Customs Regulations (19 CFR 151.11, 152.2), to provide that entry filers who have access to the Automated Broker Interface (ABI) may elect to receive Customs Form 28, Request for Information, and Customs Form 29, Notice of Action, electronically through ABI.

The notice proposed that in lieu of preparing Customs Forms 28 and 29 manually, the Customs officer would prepare the forms on Automated Commercial System (ACS) computer system terminal. If the referenced entry were filed electronically via ABI, and the entry filer elected to receive Customs Forms 28 and 29 electronically, the form information

would be transmitted to the entry filer electronically via ABI and no documents would be mailed by Customs. The proposal provided that if the ABI entry filer were a customs broker, it would be the responsibility of the broker to provide this form information to the importer. The proposal further provided that if the entry filer did not elect to receive Customs Forms 28 and 29 electronically, the ACS system would automatically generate the printed forms and Customs would mail the forms to importer and/or customs broker according to current procedures.

Most of the comments favored the concept of the proposal. However, there was much concern indicated about creating a system whereby all notices are sent to the brokers. It was suggested by several commenters that importers should be able to choose whether they want their brokers to receive the notices electronically.

Taking this into consideration, Customs has determined that it should not proceed with the proposal at this time. Customs believes that administering a system that would allow a customs broker to receive Customs Forms 28 and 29 electronically through ABI for some of its importer clients, but not for other importer clients who choose to receive the form directly from Customs, appears not to be cost beneficial for the government at this time, particularly when one takes into account the cost of the system's development. Further, Customs believes that if the proposal is so modified, it will not result in a meaningful reduction in paper.

Accordingly, Customs has concluded that the proposal be withdrawn at this time. It is likely, however, that Customs will reexamine such a proposal when the Customs Modernization Act is passed.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: May 21, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93–13081 Filed 6–2–93; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–93–09]

Special Local Regulations: Quake on the Lake, Lake St. Clair, St. Clair Shores, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations for the Marine Event, Quake on the Lake. This event will be held on Lake St. Clair, St. Clair Shores, MI, on August 8, 1993, from 11 a.m. (EDST) until 3:30 p.m. (EDST). This event will have an estimated 80 high performance power boats racing a closed course race on Lake St. Clair which could pose hazards to navigation in the area. Special local regulations which would restrict vessel traffic in the area are necessary to ensure the safety of life, limb and property on portions of Lake St. Clair during this event.

DATES: Comments must be received on or before July 19, 1993.

ADDRESSES: Comments should be mailed to Commander (oan), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060. The comments will be available for inspection and copying at the Aids to Navigation and Waterways Management Branch, room 2083, 1240 East 9th Street, Cleveland, Ohio. Normal office hours are between 7:30 a.m. and 4:30 p.m. (EDT), Monday through Friday, except holidays. Comments may also be hand delivered to this address.

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

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 09–93–09) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

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

Discussion of Proposed Regulations

The Quake on the Lake will be conducted on Lake St. Clair, St. Clair Shores, MI, between Masonic Boulevard and Point Huron, on August 8, 1993. This event will have an estimated 80 high performance power boats racing in a closed race course, oval in shape, 3.1 nautical miles long, 0.7 nautical mile wide, running northeast/southwest 0.5 nautical miles off the Metro Beach, St. Clair Haven, MI, which could pose hazards to navigation in the area. In order to provide for the safety of life, limb and property, the Coast Guard is considering a proposal to regulate vessel traffic within this section of Lake St. Clair and L'anse Creuse Bay. A No Entry Zone on the outside of the race course area would be established from Point Huron southwest to a west-northwest line between latitude 42°32.9′N., longitude 082°47.8′ W., and latitude 42°33.9 ′N., longitude 082°50.3′ W., in which no vessel would be allowed to enter without prior approval of the Coast Guard Patrol Commander. The area of "No Entry" would include all of the L'anse Creuse Bay area. A Caution Area on the outside of the race course area would be established from a west-northwest line between latitude 42°32.9′ N., longitude 082°47.8′ W., and latitude 42°33.9′ N., longitude 082°50.3′ W., southwest to a west-northwest line between latitude 42°30.5′ N., longitude 082°49.6′ W., and latitude 42°31.5′ N., longitude 082°52.3′ W. (Masonic Boulevard) in which all vessels transiting the area would be required to operate at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution. Additionally, two Vessel Spectator Areas would be established by the Coast Guard Patrol Commander, on the east and west side of the race course, where vessels would be permitted to anchor to watch the race. The Spectator Area to the west of the race course would be

rectangular in shape, 2.0 nautical miles long and 0.4 nautical miles wide, located in the "Caution Area", with its northern boundary along the border between the No Entry and Caution Areas, and its eastern boundary marked by a picket line of Coast Guard Auxiliary and Patrol Boats. The Spectator Area to the east of the race course would be rectangular in shape, with the same dimensions of the western Spectator Area, located outside the "Caution Area", with its northern boundary extending 0.4 nautical miles southeast from latitude 42°32.9' N., longitude 082°47.8' W., and its western boundary marked by a picket line of Coast Guard Auxiliary and Patrol Boats. All vessels transiting these "Vessel Spectator Areas" would be operated at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution. Commercial vessels desiring to transit the regulated areas would be required to provide prior notification to the Coast Guard Patrol Commander to ensure a safe transit can be made. Recreational vessel traffic desiring to transit the regulated areas could do so only with prior approval of the Coast Guard Patrol Commander (Commanding Officer, U.S. Coast Guard Station St. Clair Shores, MI).

These proposed regulations are issued pursuant to 33 U.S.C. 1233 as set out in the authority citation for all of part 100.

Federalism Implications

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

Environment

The Coast Guard has considered the environmental impact of these proposed regulations and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The impact of these proposed regulations is expected to be minimal, and the Coast Guard therefore certifies that, if adopted, they will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Collection of Information

These proposed regulations will impose no collection information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

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

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

2. A temporary section 100.35–T0966 is added to read as follows:

§ 100.35–T0966 Quake On The Lake, Lake St. Clair, St. Clair Shores, MI.

(a) *No entry zone. (1) Location.* That portion of Lake St. Clair, on the outside of the race course area from Point Huron southwest to:

Latitude	*Longitude*
42°32.9' N.	082°47.8' W., thence to
42°33.9' N.	082°50.3' W., thence

northeast along the shoreline to Point Huron.

(2) *Regulation.* No vessel may enter the "No Entry Zone" without prior approval of the Coast Guard Patrol Commander. The "No Entry Zone" will include all of the L'anse Creuse Bay area.

(b) *Caution area.* (1) *Location.* That portion of Lake St. Clair, on the outside of the race course area from a west-northwest line between:

Latitude	*Longitude*
42°32.9' N.	082°47.8' W., and
42°33.9' N.	082°50.3' W., southwest

along the shoreline to:

42°31.5' N.,	082°52.3' W. thence to
42°30.5' N.,	082°49.6' W., thence to
42°32.9' N.,	082°47.8' W.

(2) *Regulation.* All vessels transiting the "caution area" will be operated at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution.

(c) *Race course location.* That portion of Lake St. Clair enclosed by:

Latitude	*Longitude*
42°34.2' N	082°48.3' W. to
42°33.8' N	082°47.5' W. to
42°31.2' N	082°49.7' W. to
42°31.5' N	082°50.5' W. thence to
42°34.2' N	082°48.3' W.

(d) *Vessel spectator areas.* Two vessel spectator areas will be established by the Coast Guard Patrol Commander, on the east and west side of the race course.

(1) *Location.* That portion of Lake St. Clair, rectangular in shape, enclosed by:

Western Spectator Area:

Latitude	*Longitude*
42°33.6' N	082°49.5' W. to
42°33.4' N	082°49.1' W. to
42°31.8' N	082°50.8' W. to
42°32.0' N	082°51.2' W. thence to
42°33.6' N	082°49.5' W.

Eastern Spectator Area:

Latitude	*Longitude*
42°32.9' N	082°47.6' W. to
42°32.7' N	082°47.2' W. to
42°30.9' N	082°48.4' W. to
42°31.2' N	082°48.8' W. thence to
42°32.9' N	082°47.6' W.

(2) *Regulation.* Vessels will be permitted to anchor to watch the race. All vessels transiting the "vessel spectator area" will be operated at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution.

(d) *Patrol Commander.* (1) The Coast Guard will patrol the regulated areas under the direction of a designated Coast Guard Patrol Commander (Commanding Officer, U.S. Coast Guard Station St. Clair Shores, MI). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander".

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

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

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

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

(e) *General regulations applicable to all areas.* Commercial vessels desiring to transit the regulated areas shall provide prior notification to the Coast Guard Patrol Commander. Any vessel traffic desiring to transit the regulated areas may do so only with prior approval of the Coast Guard Patrol Commander. Vessels in the regulated areas shall comply with the directions of the Coast Guard Patrol Commander.

(f) *Effective date:* These regulations will become effective from 11 a.m. (EDST) until 3:30 p.m. (EDST), on August 8, 1993, unless otherwise terminated by the Coast Guard Patrol Commander (Commanding Officer, U.S. Coast Guard Station St. Clair Shores, MI).

Dated: May 7, 1993.

G.A. Penington,

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

[FR Doc. 93–13006 Filed 6–2–93; 8:45 am]

BILLING CODE 4910–14–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1312 and 1314

[Ex Parte No. 444]

Electronic Filing of Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking; extension of comment due date.

SUMMARY: The Commission is extending the due date for filing comments in this proceeding, from June 15, 1993, to September 13, 1993. In a decision served and Federal Register notice published on April 16, 1993, 58 FR 19795, the Commission reopened this proceeding and requested comments on whether it should implement a data base-oriented electronic tariff filing system. Comments are currently due on June 15, 1993. By petition filed May 17, 1993, and motion filed May 19, 1993, respectively, the Association of American Railroads and American Short Line Railroad Association (Railroads), and the American Trucking Association, Regular Common Carriers Conference, and Interstate Truckload Carriers Conference (Petitioners) have requested a 90-day extension to September 13, 1993 to file comments. Railroads and Petitioners state the extension is necessary due to allow more time to prepare their respective comments and confer with each other and specialists in the industry regarding electronic tariff technology. Railroads state the National Industrial Traffic League, the National Small Shipments Traffic Conference, and the Health and Personal Care Distribution Conference support the Railroads' request. These requests are reasonable and will be granted.

DATES: Comments are due on September 13, 1993.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. 444, to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: James Greene, (202) 927–5160, Charles E. Langyher, III [TDD for hearing impaired: (202) 927–5721].

Decided: May 28, 1993.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–13066 Filed 6–2–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

Threatened Fish and Wildlife; Listing of the Gulf of Maine Population of Harbor Porpoise as Threatened Under the Endangered Species Act

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

ACTION: Notice of public hearings.

SUMMARY: NMFS has proposed to list the Gulf of Maine (GME) population of harbor porpoise as threatened under the Endangered Species Act (ESA) due, primarily, to the level of incidental bycatch of harbor porpoise in the GME sink-gill net fishery. NMFS has scheduled public hearings on the proposed rule.

DATES: For dates and times of the public hearings, see **SUPPLEMENTARY INFORMATION.** Written comments on the proposed rule must be received by August 7, 1993.

ADDRESSES: For locations of the public hearings, see **SUPPLEMENTARY INFORMATION.** Written comments should be addressed to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Doug Beach, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA, (508) 281–9254; or Michael Payne, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD (301/713–2322).

SUPPLEMENTARY INFORMATION: On September 18, 1991, NMFS received a petition to list the GME population of harbor porpoise as threatened under the ESA (56 FR 65044, Dec. 13, 1991). Requests for public hearings on the proposed rule were to be received by February 22, 1993 (58 FR 3108, Jan. 7, 1993). NMFS received requests for public hearings in response to the proposed rule from the following organizations: International Wildlife Coalition, North Falmouth, MA; Maine Gillnetters Association, Stonington, ME; and the New England Fishery Management Council (NEFMC), Saugus, MA. The NEFMC encouraged that NMFS hold public hearings in a number of locations throughout New England. In response to these requests, public hearings to address the proposed rule have been scheduled as follows:

June 21, 1993—7 p.m.
National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA

June 22, 1993—7 p.m.
Holiday Inn, U.S. Route 1 and Route 3, Ellsworth, ME

June 23, 1993—7 p.m.
Holiday Inn Portland West, 81 Riverside Street, Portland, ME (Exit 8 off Maine Turnpike)

June 24, 1993—7 p.m.
Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH

June 29, 1993—7 p.m.
Old Town Hall, Duxbury, MA

July 7, 1993—1 p.m.
National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD

Dated: May 27, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–13002 Filed 6–2–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 105
Thursday, June 3, 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

Agricultural Marketing Service

Meeting for National Organic Standards Board (NOSB)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463), as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of NOSB.

DATES AND TIME: July 8–11, 1993, 8 a.m. to 7 p.m.

ADDRESSES: Best Western Village Green Resort Hotel, 725 Row River Road, Cottage Grove, Oregon. All meetings of NOSB for the week will be held at that address.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, NOSB, room 4006 South Building, USDA, AMS, Transportation and Marketing Division, P.O. Box 96456, Washington, DC 20090–6456. Phone 202/702–2704.

SUPPLEMENTARY INFORMATION: Section 2119, (7 U.S.C. 6518), of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), as amended (7 U.S.C. 6501 *et seq.*), requires establishment of a NOSB. The purpose of the Board is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of Title XXI of the FACT Act. The NOSB met for the first time in Washington, DC, in March 1992 and formed six committees to work on various aspects of the program. The committees are: Crops Standards; Processing, Labeling and Packaging; Livestock Standards; Accreditation; National Materials List; and International Issues.

PURPOSE AND AGENDA: The main focus of this meeting is to provide opportunities for working committee meetings. The Processing, Labeling and Packaging Committee and the Accreditation Committee have specifically requested time to work on their draft position documents.

Topics to be covered include processing standards and processing materials needed for the National List of approved and prohibited substances; continued work on the development of the accreditation requirements and criteria for certifying agents; irrigation water, material inputs for organic crop production developed by the Crops Committee; livestock production practices including health care standards, by the Livestock Committee; import requirements for organic products; and discussion of materials being developed by the various committees for consideration for the National List.

A final agenda will be available on June 1, 1993. Persons requesting copies should contact Ms. Faith Ashton at the above address or phone number.

TYPE OF MEETING: All meetings will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to express public comment on any organic issues should forward the request to Dr. Harold S. Ricker at the above address or FAXED to 202/690–0338 by June 20, 1993, in order to be scheduled. The NOSB has scheduled time for public input on Thursday, July 8, 1993, beginning at 1 p.m. and continuing until 5 p.m. While people may sign up to speak at the door, advance scheduling assures an opportunity in the time allowed and helps the NOSB plan its activities.

Each individual or organization will be allocated 10 minutes for presenting orally the key issues of concern, and should provide copies of written material elaborating on those issues for the Committees.

Dated: May 27, 1993.

Paul M. Fuller,

Acting Administrator.

[FR Doc. 93–12999 Filed 6–2–93; 8:45 am]

BILLING CODE 3410–02–M

Federal Grain Inspection Service

Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Mid-Iowa (IA) and Southern Illinois (IL) Agencies, and the State of Oregon

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Mid-Iowa Grain Inspection, Inc. (Mid-Iowa), Southern Illinois Grain Inspection Service, Inc. (Southern Illinois), and the Oregon Department of Agriculture (Oregon).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by July 1, 1993.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 31, 1993, **Federal Register** (58 FR 16810), FGIS asked persons interested in providing official services in the geographic areas assigned to Mid-Iowa, Southern Illinois, and Oregon to submit an application for designation. Applications were due by April 30, 1993. Mid-Iowa and Oregon

each applied for the areas currently assigned to them. There were four applicants for the area currently assigned to Southern Illinois: Champaign-Danville Grain Inspection Departments, Inc. (Champaign), James L. Goodge, Jr. (Goodge), Southern Illinois, and the Missouri Department of Agriculture (Missouri). Southern Illinois applied for the entire area currently assigned to it. James L. Goodge, Jr., a licensed grain inspector, applied for designation in the entire Southern Illinois area, but would accept a portion of this area. Champaign applied for designation to serve the portion of the Southern Illinois area in eastern Illinois, and the entire portion of the Southern Illinois area in the State of Indiana, in addition to the area they are already designated to serve. Missouri applied for designation in the entire Southern Illinois area, but would accept a portion of the area, in addition to the area they are already designated to serve. Champaign and Missouri are designated agencies adjacent to Southern Illinois.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 21, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–12995 Filed 6–2–93; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Barton (KY) and North Dakota (ND) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of J. W. Barton Grain Inspection Service, Inc. (Barton), to provide official inspection and Class X or Class Y weighing services under the United States Grain Standards Act, as amended (Act), and North Dakota Grain Inspection Service, Inc. (North Dakota), to provide official inspection services under the (Act).

EFFECTIVE DATE: July 1, 1993.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 30, 1992, **Federal Register** (57 FR 62294), FGIS announced that the designations of Barton and North Dakota end on June 30, 1993, and asked persons interested in providing official services within the specified geographic areas to submit an application for designation. Applications were due by February 1, 1993.

Barton and North Dakota, the only applicants, each applied for the entire area currently assigned to them. FGIS named and requested comments on the applicants for designation in the March 2, 1993, **Federal Register** (58 FR 12023). Comments were due by March 31, 1993. FGIS received one comment from a grain firm supporting designation of Barton, and three comments from grain firms supporting designation of North Dakota.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Barton and North Dakota are able to provide official services in the geographic areas for which they applied.

Effective July 1, 1993, and ending June 30, 1996, Barton is designated to provide official inspection and Class X or Class Y weighing services, and North Dakota is designated to provide official inspection services in the geographic areas specified in the December 30, 1992, **Federal Register**. Interested persons may obtain official services by contacting Barton at 502–683–0616 and North Dakota at 701–293–7420.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 21, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–12997 Filed 6–2–93; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Aberdeen (ND) Agency and the State of Missouri (MO)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Aberdeen Grain Inspection, Inc. (Aberdeen), and the Missouri State Department of Agriculture (Missouri) will end November 30, 1993, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before July 1, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Aberdeen, main office located in Aberdeen, South Dakota, and Missouri, main office located in Jefferson City, Missouri, to provide official grain inspection services under the Act on December 1, 1990.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Aberdeen and Missouri end on November 30, 1993.

The geographic area presently assigned to Aberdeen, in the States of North and South Dakota, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by U.S. Route 12 east to State Route 22; State Route 22 north to the Burlington-Northern (BN) line; the Burlington-Northern (BN) line east to State Route 21; State Route 21 east to State Route 49; State Route 49 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east to U.S. Route 83; U.S. Route 83 north to State Route 13; State Route 13 east and north to McIntosh County; the northern McIntosh County line east to Dickey County; the northern Dickey County line east to U.S. Route 281; U.S. Route 281 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east;

Bounded on the East by the eastern South Dakota State line (the Big Sioux River) to A54B;

Bounded on the South by A54B west to State Route 11; State Route 11 north to State Route 44 (U.S. 18); State Route 44 west to the Missouri River; the Missouri River south-southeast to the South Dakota State line; the southern South Dakota State line west; and

Bounded on the West by the western South Dakota State line north; the western North Dakota State line north to U.S. Route 12.

The following locations, all in North Dakota, outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Elevator, Guelph, Dickey County; Farmers Equity Exchange, and Sun Grain, both in New England, Hettinger County; and Regent Grain Company, and Regent Equity, both in Regent, Hettinger County (located inside Grain Inspection, Inc.'s, area).

The geographic area presently assigned to Missouri, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Missouri.

Interested persons, including Aberdeen and Missouri, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning December 1, 1993, and ending November 30, 1996. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 21, 1992.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–12996 Filed 6–2–93; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Environmental Impact Statement for the Floating Lake Timber Sale, Grand Mesa, Uncompahgre and Gunnison National Forests, Gunnison County, CO

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On May 13, 1992, a notice of intent to prepare an environmental impact statement (EIS) for the proposed Floating Lake timber sale was published in the **Federal Register** (57 FR 20457). The proposed action is to harvest 885 acres of aspen and build 18 miles of new road in a roadless area identified during the 1979 Roadless Area Review and Evaluation (RARE II) process. The proposal is located in the Floating Lake/Pilot Knob area at the Gunnison National Forest.

The Grand Mesa, Uncompahgre, & Gunnison National Forests are cancelling the notice of intent presented in the May 13, 1992 **Federal Register** Notice. The notice of intent is being cancelled because current year funding to complete the EIS is unavailable and funding in future years is uncertain.

DATES: The Draft EIS was scheduled for publication in December of 1992, and the Final EIS in March of 1993. This cancellation notice is effective immediately upon publication in the **Federal Register.**

ADDRESSES: Send written comments to Steven L. Posey, District Ranger, Paonia Ranger District, P.O. Box 1030, Paonia, Colorado 81428.

FOR FURTHER INFORMATION CONTACT: Deirdre Haneman, Forester, (303) 527–4131.

SUPPLEMENTARY INFORMATION: The responsible official for the Floating Lake Timber Sale EIS is Robert L. Storch, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416.

Dated: May 3, 1993.

Robert L. Storch,

Forest Supervisor.

[FR Doc. 93–13047 Filed 6–2–93; 8:45 am]

BILLING CODE 3410–11–M

Packsaddle Timber Sale, Idaho Panhandle National Forests, Bonner County, ID; Intent to Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that J.W. Associates, Inc., under contract to the Forest Service, is gathering information in order to prepare an environmental Impact Statement (EIS) for a proposal to harvest timber and build roads in the Packsaddle area. This area is located approximately 14 air miles southeast of Sandpoint, Idaho, on the Sandpoint Ranger District. Part of the proposed timber harvest and road construction are proposed within the Packsaddle Roadless Area (#1–155).

DATES: A public meeting/open house will be held following the development of alternatives to the proposed action. This meeting will be advertised in the local newspaper and by written notification to those on the project mailing list. Any individual who submits written comments will be added to the mailing list and will receive notification of the public meeting. Written comments concerning the scope of the analysis must be received within 45 days from the date of publication of this notice in the **Federal Register.**

ADDRESSES: Send written comments to Jessica Wald, J.W. Associates Inc., 2006 Broadway, Suite 305, Boulder, CO 80302.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed either to the Forest Service contact, Joni Urbanski, Sandpoint Ranger District, 1500 Hwy 2, Sandpoint, Idaho, 83864, Phone: (208) 265–6600, or to Jessica Wald, J.W. Associates, Inc., Phone: (303) 447–1308.

SUPPLEMENTARY INFORMATION:

These management activities would be administered by the Sandpoint Ranger District of the Idaho Panhandle National Forests in Bonner County, Idaho. The EIS is being prepared by J.W. Associates Inc. with input from the Forest Service. Representatives from both J.W. Associates Inc. and the Forest Service will be available for comment during scoping and preparation of the EIS. The Forest Service will issue the Record of Decision. The Sandpoint District Ranger, Claire Lavendel, is the responsible official.

This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) for achieving the desired future condition for this area. The purpose and need for the proposed action is to (1) foster forest regulation; (2) improve growth and yield of the desired species and size in the study area; and (3) provide for the area's share of the Allowable Sale Quantity. The process used in preparing the Draft EIS will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies.

J.W. Associates Inc., together with the Forest Service, invites written comments and suggestions on the issues and management opportunities in the area being analyzed. Comments should be sent to J.W. Associates Inc. within 45 days from the date of this publication in the **Federal Register.**

Preliminary issues have been identified and include the following:

Wildlife

a. The impact of the proposed action and developed alternatives to big game habitat.

b. The potential impact to biodiversity especially concerning mature and old growth tree stands dependent wildlife species, and interior forested habitat.

Water Quality/Fisheries

a. The potential for an increase in total sediment yield in streams and the associated impacts to fish and other beneficial uses.

b. The potential decrease in stream channel stability due to changes in the runoff peak and volume and the associated impacts to fish habitat.

c. The potential impact to Lake Pend d'Oreille.

Timber/Silviculture

a. The potential for maintaining or improving the area's growth and yield of timber.

b. The potential for a loss of valuable timber due to root rot. Areas of root rot are prevalent in the area.

Roadless

a. The impact to the Packsaddle Roadless Area in the project area.

Recreation

a. The impact to additional dispersed recreation opportunities, including hiking and hunting. Particular trails of concern include the trail up Packsaddle Mountain and along Minerva Ridge.

b. The potential for any adverse effects on the recreational use of Lake Pend d'Oreille.

Visual quality

a. The potential for reductions in the visual quality of adjacent landowners, at sensitive viewpoints and along major roads.

b. The potential for reductions in the visual quality for boaters and recreationists on Lake Pend d'Oreille.

The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

Management Area 1

Consists of lands designated for timber production. The management goal is to provide for long-term growth and production of commercially valuable wood products on those lands that are suitable for timber production.

Management Area 4

Consists of lands designated for timber production within identified big game winter range. The goal is to provide winter forage to support existing and projected big game populations through scheduled timber harvest and permanent forage areas.

Management Area 6

Consists of lands designated for timber production within identified elk summer range. The management goals are to provide high quality elk summer habitat and production of wood products, through road management and scheduling of harvest activities.

Management Area 9

Consists of areas of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials and meet visual quality objectives.

Management Area 16

Consists of primary riparian areas. The goal is to manage riparian areas to feature riparian dependent resources (fish, water quality, maintenance of natural channels, and certain vegetation and wildlife communities) while producing other resource outputs.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which the existing roadless character of the Packsaddle roadless areas would be maintained and timber harvest and associated road building would be deferred. Other alternatives will examine timber harvest and road construction in different locations and varied cutting methods and timber management intensities to achieve the purpose of the proposed action.

J.W. Associates Inc. will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. This will include an analysis of the effects of alternatives on the roadless character of the area affected. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation will be important during the analysis. People may visit with J.W. Associates Inc., or Forest Service officials, at any time during the analysis. Forest Service officials will remain available for consultation following publication of the Final EIS and prior to the decision. Two periods of time, however, are specifically identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process and during the review of the Draft EIS (January–February, 1994).

During the scoping process, J.W. Associates Inc., along with the Forest Service, is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

The Draft EIS (DEIS) is expected to be available for public review in January, 1994. The public comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** All of the

comments received will be analyzed and considered by J.W. Associates Inc. in preparing the final EIS (FEIS). The FEIS is scheduled to be completed by May, 1994. The FEIS will include responses to received comments. The Sandpoint District Ranger who is the Forest Service's responsible official for this EIS will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented by the Forest Service in a Record of Decision.

The Forest Service believes it is important to give reviewers notice, at this early stage, 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, 553 (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, *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 J.W. Associates Inc. at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist J.W. Associates Inc. and the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS 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 DEIS 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 24, 1993.

Claire Lavendel,

District Ranger, Sandpoint Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–12979 Filed 6–2–93; 8:45 am]

BILLING CODE 3410–11–M

Advisory Council Meeting; Allegheny Wild and Scenic River, Allegheny National Forest, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Northern Advisory Council for the Allegheny National Wild and Scenic River will meet at 6:45 p.m., Tuesday, June 22, 1993 in the Warren Public Library (Slater Room B), Warren, PA. The Southern Advisory Council will meet at 7 p.m., Wednesday, June 23, 1993, in the meeting room of the Franklin Public Library, Franklin, PA.

Primary topics to be discussed include issues resulting from information meetings with municipal officials, and an update on Interim Guidelines development.

The meeting is open to the public. A sign language interpreter will be provided if requested by June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Lionel Lemery, Wild and Scenic River Coordinator, Allegheny National Forest, 222 Liberty Street, Warren, Pennsylvania 16365, 814/723–5150 or 814/726–2710 (TTY).

Dated: May 26, 1993.

Lional A. Lemery,

Wild and Scenic River Coordinator.

[FR Doc. 93–13011 Filed 6–2–93; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility no., name, and location of stockyard	Date of posting
AL–187, Clay County Livestock, Inc., Ashland, Alabama.	August 1, 1992.
CA–184, Industry Hills Equestrian Center, Industry, California.	August 26, 1992.
GA–213, Lanier Farmers Livestock Corporation, Gainesville, Georgia.	October 20, 1992.
SC–150, M.L. Dopson Auction Co., Walterboro, South Carolina.	April 6, 1992

Done at Washington, DC this 26th day of May, 1993.

Harold W. Davis,

Director, Livestock Marketing Division, Packers and Stockyards Administration.

[FR Doc. 93–13000 Filed 6–2–93; 8:45 am]

BILLING CODE 3410–01–P

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility no., name, and location of stockyard	Date of posting
AL–173, Sand Mountain Feeder Pig Assoc., Albertville, Alabama.	June 8, 1987.
AL–168, Limestone County Feeder Pig Assoc., Inc., Athens, Alabama.	May 22, 1987.
AL–110, Capital Stockyard, Inc., Brundidge, Alabama.	May 25, 1959.
AL–112, Chatom Livestock Auction, Chatom, Alabama.	March 24, 1969.
AL–115, Dadeville Stockyard, Dadeville, Alabama.	May 18 1959.
AL–184, Enterprise Livestock, Enterprise, Alabama.	April 18, 1991.
AL–171, Cullman Feeder Pig Association, Hanceville, Alabama.	June 22, 1987.
AL–183, Hazel Green Horse Auction, Hazel Green, Alabama.	January 25, 1991.
AL–140, Capital Stockyards, Inc., Montgomery, Alabama.	September 30, 1946.
AL–177, Taylor's Stockyard, Nauvoo, Alabama.	September 5, 1987.
FL–105, Jay Livestock Market, Jay, Florida.	May 6, 1960.

Facility no., name, and location of stockyard	Date of posting
FL–109, Cow Palace of Lakeland, Inc., Lakeland, Florida.	July 31, 1968.
FL–132, Barbee's County Auction, Masaryktown, Florida.	April 4, 1991.
FL–113, Monticello Stockyard, Inc., Monticello, Florida.	March 15, 1960.
GA–201, Foister Auction & Sales Co., Baconton, Georgia.	November 7, 1988.
GA–109, Miles Stockyard, Baxley, Georgia.	June 13, 1959.
IL–128, Maple Park Livestock Sales, Maple Park, Illinois.	November 18, 1959.
IL–158, Vienna Livestock Auction, Vienna, Illinois.	October 26, 1960.
MI–136, Scottville Livestock Sales, Scottville, Michigan.	May 14, 1959.
SC–145, Southeastern Livestock Center, Campobello, South Carolina.	October 31, 1989.
SC–134, Circle "C" Auction, Campobello, South Carolina.	July 18, 1982.
SC–142, Hendrix Horse Auction, Hartsville, South Carolina.	September 11, 1987.
SC–129, Jims Livestock, Inc., Kingstree, South Carolina.	July 24, 1980.
SC–113, Lugoff Livestock Market, Lugoff, South Carolina.	February 24, 1969.
SC–147, H & H Livestock, Seneca, South Carolina.	November 14, 1989.
SC–149, Southwind Horse Auction, Westminister, South Carolina.	August 13, 1980.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register.**

Done at Washington, DC this 26th day of May, 1993.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 93–13001 Filed 6–2–93; 8:45 am]

BILLING CODE 3210–KD–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Minnesota Advisory Committee to the Commission will be held from 9 a.m. until 5 p.m. on Thursday, June 24, 1993, at the Crown Sterling Suites, 425 S. 7th St., Minneapolis, Minnesota. The purpose of the meeting is to discuss current issues, plan future activities, and hold a press conference to release the Advisory Committee's report, *Stereotyping of Minorities by the News Media in Minnesota.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Mary E. Ryland, 218–727–3673, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 26, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–12975 Filed 6–2–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–813]

Final Determinations of Sales at Less Than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semifinished Products of Special Bar Quality Engineered Steel From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Cherie L. Rusnak, Will Sjoberg or Linda L. Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

FINAL DETERMINATION: We determined that certain alloy and carbon hot-rolled bars, rods, and certain semifinished products of special quality engineered steel (SBQ) from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the affirmative preliminary determination of sales at less than fair value on January 11, 1993, (58 FR 3533, January 11, 1993), the following events have occurred: The postponement of Final Antidumping Duty Determination was published on February 12, 1993 (58 FR 8254, February 12, 1993).

Verification of Villares' Section A, B, and C questionnaire response was conducted from March 8 through 12, 1993 and verification of Section D was conducted from March 17 through 24, 1993.

Verification of ACOMINAS' Section A, B, and C questionnaire response was conducted from March 15 through 21, 1993 and verification of Section D was conducted from March 17 through 22, 1993.

The Sales Verification Report for both respondents was issued on April 14, 1993. The Cost Verification Report was issued on April 14 for Villares and April 16 for ACOMINAS. An addendum to the ACOMINAS sales verification report was issued on April 16 and a clarification of the Villares sales verification report was issued on April 19.

Comments concerning the verification reports and the preliminary determination were addressed in the case briefs from all interested parties on April 19 and 20. Rebuttal briefs were received on April 26 and the hearing was held on April 28, 1993.

Scope of Investigations

The products covered in these investigations are:

- Certain hot-finished alloy and carbon steel bars and rods of special bar quality engineered steel; and
- Certain semifinished steel products of special bar quality engineered steel.

The term "hot-finished alloy and carbon bars and rods of special bar quality engineered steel" covers certain hot-finished carbon and alloy (other than stainless steel, high-speed steel, silico-manganese steel, and tool steel) steel bars and rods, other than forged, which have a uniform solid cross-section along their whole length and are

in the shape of circles, segments of circles, ovals, rectangles, triangles, or other convex polygons, and do not conform to the definitions for semifinished steel, flat-rolled products, hot-rolled bars and rods in irregularly wound coils, reinforcing bars and rods, and wire. The subject bars and rods are of special bar quality engineered steel that are described in Society of Automotive Engineers (SAE) specifications J403, J404, J411, J1081, J1249, J1268, and modifications thereof, whether they be domestic or foreign specifications, of other than merchant quality grades M 1000 through M 1044, not containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, as classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTS): 7214.30.0000, 7214.40.0010, 7214.40.0030, 7214.40.0050, 7214.50.0010, 7214.50.0030, 7214.50.0050, 7214.60.0010, 7214.60.0030, 7214.60.0050, 7228.30.8005, and 7228.30.8050.

A clarification has been made for semifinished products of special bar quality engineered steel. The term "semifinished products of special bar quality engineered steel" covers certain alloy ingots (other than stainless steel, high-speed steel, silico-manganese steel, tool steel, and high-nickel alloy steel), and semifinished products of carbon and alloy (other than stainless steel, high-speed steel, silico-manganese steel, tool steel, and high-nickel alloy steel) steel, of circular or rectangular (including square) cross-section with a width measuring less than four times the thickness, which are continuous cast or have been subjected to no more than primary hot rolling, which possess a rough surface and do not meet the dimensional tolerances for bar products, of special bar quality engineered steel that are described in Society of Automotive Engineers (SAE) specifications J403, J404, J411, J1081, J1249, J1268, and modifications thereof, whether they be domestic or foreign specifications, not containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, as classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTS): 7207.11.0000, 7207.12.0010, 7207.19.0030, 7207.20.0025, 7207.20.0075, 7224.10.0075, 7224.90.0045, and 7224.90.0065.

Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these proceedings is dispositive.

We determined in a decision memorandum of August 12, 1992, that the subject merchandise of these investigations constitutes two distinct classes or kinds: alloy and carbon hot-rolled bars and rods of special bar quality engineered steel, and semifinished products of special bar quality engineered steel.

In our August 12 decision memorandum, we noted that there are distinct differences in physical characteristics between semifinished products and hot-rolled bars and rods of special bar quality engineered steel. We explained that semifinished products possess a rougher surface and less exact dimensional tolerances than are specified for bar products, and are generally produced and sold for further hot-working, while hot-rolled bars and rods have smaller grains and a much smoother surface condition with few or no surface imperfections and have tolerances that are significantly more exacting than those for semifinished products. We also noted that semifinished products and hot-rolled bars and rods of special bar quality engineered steel have different ultimate uses, in that semifinished products are usually further hot-rolled by steel companies (although they are forged in a minority of instances), while hot-rolled bars and rods have numerous ultimate uses, including machining, forging, and hot- and cold-forming. We explained that the expectations of the ultimate purchasers of semifinished products and hot-rolled bars and rods of special bar quality engineered steel are different. Specifically, consumers of hot-rolled bars and rods expect a product which meets relatively exacting tolerances, while consumers of semifinished products do not require such exacting specifications. We pointed out that semifinished products and hot-rolled bars and rods of special bar quality engineered steel have different channels of trade, as most semifinished products are consumed internally by steelmakers and generally cannot be used by outside customers, while hot-rolled bars and rods are normally sold to outside customers who perform various operations on the product. Finally, we explained that semifinished products and hot-rolled bars and rods of special bar quality engineered steel are advertised differently, as semifinished products are not generally sold to outside customers and therefore are not generally advertised, while hot-rolled bars and rods generally are sold and advertised to producers of end-user products.

Period of Investigation

The period of investigation (POI) is January 1, 1992 through June 30, 1992.

Use of Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of certain alloy and carbon hot-rolled bars, rods and certain semifinished products from Brazil in these investigations. In deciding whether to use BIA, section 776(c) provides that the Department take into account whether the respondent was unable to produce information requested in a timely manner and in the form required, or otherwise significantly impeded an investigation. In this case, neither respondent provided sufficient information upon which the Department could base its final determinations.

Specifically, the Department found at verification that neither respondent Aco Minas Gerais S.A. (ACOMINAS) nor respondent Industrias Villares, S.A. (Villares) followed the Department's model match instructions (see Comments 5 and 9, respectively). The Department also found at verification that both respondents used an incorrect date of sale methodology for reporting U.S. transactions, and that ACOMINAS also used an incorrect date of sale methodology for reporting home market (HM) transactions (see Comment 8 regarding Villares and Comment 6 regarding ACOMINAS). Thus, the Department was unable to verify whether either company had reported the correct universe of sales for the period of investigation. Without the correct universe of sales, the Department is unable to revise the product concordance for ACOMINAS or for Villares.

Consequently, we have based our final determination in these investigations on BIA for both respondents. As BIA for ACOMINAS, we have used the preliminary determination rate, 19.67 percent, which was the average margin alleged in the petition for semifinished products. As noted in the preliminary determination, for Villares, we used an average of several margins alleged in the petition. However, for the final determination for Villares, we used an average of several margins from sales occurring in the same month, 27.00 percent (see Comment 10).

Verification

As provided in section 776(b) of the Act, we conducted verification of ACOMINAS and Villares.

Interested Party Comments

Petitioners' General Comments

Comment 1: Petitioners claim that the scope definition in the final determination should be amended to reflect the distinctions made by the Department in its September 24, 1992 Decision Memorandum, which distinguished finished bars and rods from semifinished products. This will assure that Customs officials are clear as to the delineation between the two products and that no misclassification occurs.

Department's Position: Petitioners are correct in their assertion that the scope section of the final determination must clearly delineate between finished bars and rods and semifinished products. We have clarified the product definition for semifinished products to read that these are products: "which are continuous cast or have been subjected to no more than primary hot rolling, which possess a rough surface and do not meet the dimensional tolerances for bar products." This modification of the language in our Decision Memorandum dated September 24, 1992, sharpens that definition by limiting "semifinished" steel to that which has been continuous cast or subjected to no more than primary hot rolling (since further hot rolling can bring semifinished product into bar tolerance range). The Department also clarifies that products which do not meet bar tolerances will be classified as semifinished products. Finally, the Department rejects petitioner's suggestion that the scope definition include the phrase "which are produced and sold for rerolling." The Department has decided not to consider end-use as a scope criterion because past experience with end-use certification programs has proven them to be an administrative burden both to the Department and to U.S. Customs. These programs do not ensure that misclassification and/or circumvention will not occur. Furthermore, the limitations on production contained in this clarification to the scope definition adequately demarcate the outer perameters of what constitutes a semifinished product.

Comment 2: Petitioners claim that the Department's verification report addendum establishes that the products exported by ACOMINAS and classified as semifinished products were actually finished bars. This finding, according to petitioners, shows that the distinction between finished bars and rods and semifinished products is outmoded and not a viable basis for distinguishing a separate class or kind of merchandise. Thus, petitioners argue that the Department should determine that there is but one class or kind, encompassing all SBQ bars and rods and semifinished products.

Department's Position: Petitioners are incorrect in stating that the Department's verification report indicated that ACOMINAS's exports to the U.S. were actually finished bars and not semifinished products. The report did state that the Department analyzed ACOMINAS' ability to meet certain bar tolerances and that some of ACOMINAS' exports met certain bar specifications. While some of ACOMINAS' exports met certain bar specifications, based on information gathered at verification, it is unknown whether the exports met all bar specifications. Meeting certain bar specifications (i.e., bar tolerances) does not mean that the respondents' products or any of its exports to the U.S. should be classified as finished bars and rods. Hence, ACOMINAS does have the ability to supply material to bar tolerances and is supplying such products (i.e., exports meeting certain bar specifications) to the market (see Comment 5). There are two separate classes or kinds of merchandise subject to investigation which are delineated by the criteria stated in our August 12, 1992 Decision Memorandum and set forth in the scope section of this notice.

ACOMINAS

Comment 3: ACOMINAS claims that while the petition was aimed at finished SBQ products, including those "that should be considered finished (i.e., with identical physical characteristics and the same end uses as finished products) but labeled semifinished," the Department incorrectly investigated both finished and semifinished products. ACOMINAS objects to the inclusion of semifinished products, claiming that semifinished products appear to be "an accidental by-product" of the petitioners' real concerns since the petition cited neither ACOMINAS nor its major U.S. customer. In addition, ACOMINAS claims that the petitioners have created an overbroad product scope definition and that petitioners do not have standing to include semifinished products. Thus, ACOMINAS requests that the Department exclude semifinished products from the scope and dismiss the entire investigation with respect to semifinished products.

Department's Position: ACOMINAS is incorrect in its claim that "truly semifinished" products were not intended to be within the scope of the petition but, rather were an "accidental by-product". "Semifinished" steel products, as defined by the Department in its August 12, 1992 Decision Memorandum regarding class or kind, were included in the petition. The fact that numerous sales of merchandise to the U.S. classified under the HTS item numbers for semifinished products (which match the Department's definition of semifinished products) were included in the petition and listed under separate groupings indicates that petitioners did intend to include "truly semifinished" products in the scope of these investigations. In addition, a petition does not have to cite every foreign producer or every U.S. purchaser of products within a class or kind to be considered sufficient regarding the entire class or kind.

Furthermore, it is "undisputed that petitioners produce semifinished special quality carbon and alloy steel products" (see Memorandum to Joseph A. Spetrini, dated October 26, 1992) as defined by the Department, which is a like product to the semifinished billet exported to the U.S. by ACOMINAS. Thus, as producers of a like product, petitioners are interested parties within the meaning of section 771(9)(C) of the Act, and do have standing, under section 732(b)(1) of the Act, to include semifinished products in the petition. Therefore, we have included the semifinished billets exported by ACOMINAS in these investigations.

Comment 4: ACOMINAS objects to the Department's revised model match methodology with respect to difference in merchandise (DIFMER) adjustments. Specifically, ACOMINAS complains that the Department's "production in the month" requirement is substantively unnecessary, and that by allowing comparison of similar models only when there is production of a given model in the same month as both the U.S. sale and the home market sale of that model, the Department elevates DIFMERs above other adjustments and causes constructed value to be elevated over price-to-price comparisons. As an alternative, ACOMINAS suggests that the Department use the date of shipment as the date of sale (DOS) for both the U.S. and home market products. According to ACOMINAS, this would alleviate concerns about hyperinflation while preserving the statutory preference for the use of home market sale prices over constructed values.

ACOMINAS also states that the introduction of this new methodology in the middle of the case was unfair procedurally and caused complications, delays and confusion. Respondent claims that the Department should remedy this by using the prior, established methodology. Finally,

ACOMINAS claims that the Department violated its own regulations and acted in a manner contrary to law when it refused to allow ACOMINAS to submit third country sales.

Department's Position: The Department issued specific model match criteria to be used in these investigations in October 1992. In response to the comments received and the objections raised by the interested parties, the Department revised these instructions. These final instructions were issued on November 13, 1992. On November 20, 1992, the Department responded to two submissions from ACOMINAS, one containing clarifications requested on the revised methodology and the other granting an extension for the submission of the revised product concordance. ACOMINAS did not request any further clarifications or indicate to the Department that they would not be able to adhere to the extended response deadlines. Thus, ACOMINAS is incorrect in its claim of procedural unfairness.

Because ACOMINAS failed to follow the Department's instructions for matching U.S. products to home market products, contrary to statements provided in their questionnaire response (see Comment 5), the Department based its final determination on BIA, as required by section 776(c) of the Act. It is, therefore, not necessary to address the DIFMER calculation methodology the Department would have used had it been able to make appropriate price-to-price comparisons, including the Department's "production in the month" requirement, or the use of third country sales. Third country sales would have only been used in the event that the home market was not viable.

Comment 5: Petitioners claim that instead of following the Department's criteria to select its product matches, ACOMINAS used its own 28 digit internal product code. In addition, petitioners claim that ACOMINAS is "also (or primarily) a bar producer" and that all or most of ACOMINAS' reported sales are of bars, not semifinished products, based on the Department's findings at verification. Thus, petitioners claim that the Department should reject the company's response and use BIA in making its final determination.

ACOMINAS claims that its product concordance was done in accordance with the Department's instructions and objects to the fact that it was not until verification that the Department indicated to ACOMINAS that it did not agree with its model match methodology. ACOMINAS also claims that the Department's instructions were not clear regarding the "chemistry" criterion, stating that it was not until verification that they realized the Department "intended a narrower definition" of chemistry than that which it reported. If anything, ACOMINAS claims that it "overreported" by providing more information than requested. Hence, the Department should either use the concordance as submitted or disregard the additional information ACOMINAS submitted and redo the concordance itself.

ACOMINAS also disputes the claim that the concordance was "too general" with respect to characteristics other than chemistry. ACOMINAS explained that it was providing the Department with a broader range of choices than those which ACOMINAS deemed most similar and claims that the Department should merely disregard any matches with which it does not agree.

Finally, ACOMINAS states that petitioners' claims that ACOMINAS "is also (or primarily) a bar producer" and that the verification report addendum supports their claim that there should be one class or kind are "preposterous." The correct conclusions, according to ACOMINAS, are that it primarily produces semifinished products which are properly included in the Department's semifinished class or kind, as defined in its August 12 and September 24, 1992 decision memoranda. Furthermore, ACOMINAS states that petitioners are wrong in claiming that all but 4.52 percent of ACOMINAS' product met bar specifications. Rather, these products met one bar specification, which does not make them a bar.

Department's Position: The Department agrees with petitioners that ACOMINAS used its own internal product code system, rather than the Department's hierarchy, in selecting its product matches. The Department instructed ACOMINAS to base its comparisons on the criteria specified in its questionnaire instructions. ACOMINAS initially stated that it matched U.S. and home market products based on the model match criteria provided by the Department, which it extracted from its own 28 digit code system. However, an analysis of the difference in merchandise (DIFMER) data indicated that matches were not based on model match criteria but rather on the entire internal code system. This code system was more explicit regarding certain characteristics and provided insufficient or no input regarding some of the Department's model match criteria. Thus, on one hand, differences were found between products based on characteristics the Department did not intend to consider in its comparisons. On the other hand, ACOMINAS' product concordance methodology did not find DIFMERs based on all criteria that the Department determined most important in differentiating products.

Because ACOMINAS did not use our hierarchy of characteristics, the product comparisons and resulting DIFMERs they provided were not the same as those which the Department would have derived had we done the matching. Furthermore, the Department is not able to simply reconstruct the concordance using the proper criteria because the "chemistry" of each product was not provided as instructed (e.g., SAE, AISI, or equivalent).

It should also be noted that the Department was not aware that ACOMINAS had not followed its instructions regarding the model match until verification. The description provided by ACOMINAS in its questionnaire response regarding its DIFMER adjustments stated that "ACOMINAS followed the Department's product hierarchy in choosing the most similar merchandise." Thus, there was no way for the Department to know from ACOMINAS' response that its own internal code, rather than the Department's hierarchy, would be used for matching purposes. Therefore, we are rejecting ACOMINAS' product concordance for the final determination.

The Department agrees with ACOMINAS in its claim that it primarily produces semifinished products. We analyzed ACOMINAS' ability to produce products conforming to certain bar specifications at verification. While some of the products were found to meet specific bar specifications, the Department was unable to examine ACOMINAS' ability to meet all of the criteria. The Department did note in its verification report that ACOMINAS did have the ability to produce semifinished steel products to specific bar tolerances and is supplying them to the market. However, we did not state that ACOMINAS is "primarily" a bar producer or that the semifinished billets exported to the U.S. and under investigation should be included in the finished bars and rods category. Therefore, no changes will be made regarding the categorization of the ACOMINAS billets exported to the U.S. and included in these investigations.

Comment 6: Petitioners claim that the Department should disregard all HM transactions with dates of sale (DOS) post-dating their shipment dates because shipment before sale date is

contrary to the Department's questionnaire instructions. Also, it results in improper price-to-price comparisons since the HM and U.S. sales must be made in the same month in hyperinflationary economies.

Petitioners further claim that ACOMINAS reported the wrong DOS for U.S. sales in those instances when the DOS was reported as the date on which the base price and quantity were agreed to, rather than the date the final terms were agreed to. They further state that the U.S. DOS methodology is inconsistent with the HM reporting system. For HM sales, later modification dates are reported as the DOS, while for U.S. sales, the initial negotiation dates are reported as DOS. Hence, petitioners claim the "entire system is irreconcilable and will not produce consistent or comparable values" and should, therefore, be rejected in favor of BIA.

ACOMINAS claims that the unusual situation with home market Customer A, with whom ACOMINAS was operating under a long-term requirements contract, meant that ACOMINAS would receive and enter into its computer system the customer's forecasted monthly requirements, and then modify the system to conform with what it was able to produce and deliver. Thus, sale dates were generated which were after shipment since the computer system was updated after production and shipment. Further, ACOMINAS claims that there were only a "few isolated transactions," other than those to customer A, in which the reported sale date was after shipment. Therefore, except for sales to Customer A, the methodology used for selecting the HM dates of sale was effective.

Furthermore, ACOMINAS stated that it does not have a long-term contract with U.S. customer 100198, but rather that this is a longstanding customer of ACOMINAS. This long-term relationship meant that the prices of extras, terms, etc. were assumed and that only the quantity and price were negotiated. Therefore, ACOMINAS reported the date on which the base price and total quantity were agreed upon, rather than the date on which the specific product mix for a specific shipment was determined.

Department's Position: We agree with petitioners that all HM sales with dates of shipment predating date of sale were reported incorrectly. For Customer A, ACOMINAS should have reported the date of shipment if the final terms were not known until this point. The transactions other than those to Customer A with shipment date before sale date were also reported incorrectly. A fundamental flaw in ACOMINAS' reporting system caused the date of sale to change any time a modification was made to its computer database, including minor corrections or dispute settlements, to the date the modification was made. Therefore, the reported dates of sale changed after the essential terms were set. This was contrary to ACOMINAS' questionnaire response, and was only discovered at verification.

We also agree that for U.S. sales, ACOMINAS incorrectly reported the date of the initial contract, rather than the date the final terms were agreed to. Thus, ACOMINAS' reporting methodology is both flawed and internally inconsistent.

Because of the date of sale problems, there is no way for the Department to know if the proper HM or U.S. sales universes have been reported and whether the reported sales have been compared to sales with a proper date of sale in the same month. As a result, the Department is unable to conduct a cost of production test on ACOMINAS' home market sales since we do not know what merchandise was sold during which months of the POI. We also do not have the corresponding cost of production data for any products which would have been reported had the correct dating procedures been used. Hence, we are unable to determine whether or not there were sufficient sales at or above the cost of production in the home market to conduct a price-to-price comparison.

Because ACOMINAS did not follow the Department's instructions for matching U.S. products to home market products (see Comment 5) and because of these date of sale problems, the Department is using BIA. Therefore, we are rejecting ACOMINAS' reported questionnaire response because it is unreliable and we are using the best information available.

Raritan

Comment 7: As an interested party and importer of semifinished billets from Brazil, Raritan supports the Department's determination that there are two separate classes or kinds of merchandise subject to investigation. However, Raritan claims that since Raritan was granted a short-supply exception for its imports during the period of Steel Voluntary Restraint Agreements (VRAs), the Department could "reasonably conclude" that the semifinished billet that they import is a unique class or kind and different from the semifinished products imported for bar applications.

Raritan also believes that the Department improperly initiated these investigations regarding its imports. Raritan claims that: the petition lacked any allegation of sales at less-than-fair-value of the billet imported by Raritan or of any semifinished products, as now defined by the Department; semifinished products imported as an input for coiled wire rod production, an application which has been excluded from the petition, should also be excluded; and, petitioners do not have standing to include the semifinished billet imported by Raritan. Therefore, Raritan claims that the Department must rescind the investigation with respect to semifinished billets used in the production of coiled wire rod.

As an alternative, Raritan argues that the Department should implement an end-use certification process to limit any dumping order to those products imported for bar applications only. This would, according to Raritan, address any concerns of the petitioners or the Department regarding misclassification or circumvention and would place no undue burden on the Department or Customs.

Petitioners state that it is irrelevant whether or not Raritan's imports are destined for use in products which are outside the scope, as long as the imports themselves are within the petition's scope. Petitioners also refute Raritan's claim that the petitioners lack standing to include the ACOMINAS billets imported by Raritan because these billets constitute a separate class or kind of merchandise. According to petitioners, short supply determinations made during the VRAs (such as that allowing imports of semifinished products by Raritan) have nothing to do with constituting a class or kind of product. Rather, petitioners state that there are five criteria examined in determining class or kind and claim that the product imported by Raritan is not unique in any of these aspects.

Petitioners claim that they are producers of both classes of products, do have standing to file a petition regarding both classes, and have presented adequate LTFV allegations as to both classes or kinds of merchandise.

Finally, petitioners state that both bars and semifinished products were included in the original petition and that the Department determined that there were sufficient allegations concerning both, as noted in its June 29, 1992 Memorandum. In addition, petitioners claim that the inclusion of semifinished products in an investigation covering finished bars, regardless of whether there are sufficient allegations of LTFV margins on semifinished products, is reasonable if done to prevent circumvention of an

antidumping duty order. Thus, petitioners claim that the Department should reject Raritan's claims.

The Department's Position: The Department agrees with petitioners that Raritan has provided no evidence to support its claim that the semifinished billet it imports should be a separate class or kind from the other imports of such products and is, thus, incorrect in claiming that the Department could "reasonably conclude" that this product is unique.

Raritan is also incorrect in claiming that petitioners do not have a right to bring a petition including semifinished products. A petition does not have to cite every importer or every imported product within a class or kind to be considered sufficient regarding that entire class or kind. Further, the petition did in fact contain numerous allegations concerning sales of semifinished products, as now defined by the Department. These allegations were based on products classified under HTS item numbers specifically covering semifinished steel, and Customs' classification of semifinished steel under these item numbers is consistent with the Department's definition.

In addition, the Department determined in a Decision Memorandum dated August 12, 1992, that "it is irrelevant that certain imports of the subject merchandise can be used in the manufacture of a product, wire rod, which is outside of the scope" of an investigation. Thus, Raritan's suggested alternative of end-use certifications for semifinished products imported only for bar applications is not a consideration. And finally, as producers of a like product within the class or kind, petitioners do have standing to include the semifinished billets imported by Raritan (see Comment 3). Therefore, all imports of the subject merchandise, including those imported by Raritan, remain within the scope of these investigations.

Villares

Comment 8: The petitioners argue that Villares incorrectly matched its home market sales, citing the following reasons: (1) "because of lack of supporting documentation, Commerce was not able to verify that each universe of potential matches consisted of products produced in the same month;" (2) Villares admitted that they did not utilize the Department's production-in-the-month (PIM) requirement; (3) Villares' methodology in selecting home market products for which DIFMERs were less than 20 percent of the variable cost of manufacturing was unverifiable; (4) certain sales Villares claimed were out of the ordinary course of trade were unilaterally excluded from the model match with no supporting documentation provided to bolster the claim; and, (5) the actual model match was conducted informally, rather than "on an explicit methodology, dependent on objective factors."

Villares responds to the lack of supporting documentation leading to the inability to verify the potential universe of matches by stating that at verification the Department never asked about, nor discussed, the production-in-the-month requirement.

Villares admits not taking this requirement into consideration because: "(1) the Department did not mandate the production in the month requirement until November 13, 1992, very late in the investigation and well after Villares had completed its model match methodology and decided the products sold in the home market were the most similar to the U.S. product, and (2) Villares does not believe that this requirement is valid under the law. Accordingly, to avoid having to redo completely its determination as to the most similar matches, and to preserve the record should the Department abandon this requirement, Villares simply indicated which products already included in the model match table satisfied the Department's production in the month requirement."

Villares' states that the petitioners "mischaracterize" the Department's verification report in terms of Villares' methodology in selecting products for which the DIFMERs were less than 20 percent. They refer to the statement in the verification that, "Villares employed its collective expertise in deciding whether the cost differences between two products was greater than 20 percent. No supporting *documentation* was offered because it would have been impossible to do so" (emphasis in the original).

Although Villares does not directly respond to the petitioners' claim that certain sales were unilaterally excluded from the model match, they do cite the Department's clarification to the verification report to the effect that documentation was provided to support the claim that certain sales were out of the ordinary course of trade.

Finally, Villares argues that its model match methodology was based "explicitly" both on the Department's criteria and on the Department's requirement that only home market sales within the same month as the U.S. sale be selected.

Department's Position: The Department determined that Villares model matches were subjective because of the lack of supporting documentation. Based on the subjective nature of Villares' model matching methodology, the lack of supporting documentation relating to DIFMER adjustments and the fact that the Department is unsure as to whether Villares reported the correct universe of U.S. sales, we have determined that the matches provided by Villares cannot be relied upon. Since, as discussed below, this data cannot be corrected, the Department must use the BIA for our analysis.

Each of the petitioners' comments and respondent's rebuttals will be addressed in greater detail below. Because of the close relationship between petitioners' third and fifth issues, they will be addressed as one.

Model Match

Villares is correct when they state the Department never asked about the production-in-the-month requirement at verification.

Because the Department has determined to use the BIA based on factors not related to the "production in the month" requirement, it is not necessary to address the issue of PIM.

It is clear from the verification report that the Department could not verify Villares' standards used in their selection of home market products to match with their U.S. sales. As noted in the verification report, Villares used a computer to narrow the products into separate families of chemistry grades and then used the "collective expertise" of its staff to choose matches. Villares should have also used a verifiable methodology to differentiate the products based on DIFMERs. Further, Villares was notified in advance of verification that the Department would verify the basis of their model match methodology. In the absence of an objective standard under which to verify its home market selections, the Department must choose (1) between allowing Villares to devise their own product concordance with no oversight or verification by the Department or (2) rejecting Villares model matches and resort to BIA.

In *Timken Co.* v. *United States*, 630 F.Supp. 1327, 1337 (CIT 1986) (*Timken*), the Court of International Trade (the Court) did not question whether the subject merchandise the respondent claimed as "similar" might in fact have been similar under the statutory definition, instead questioning whether the selection was the *most* similar under the Department's model matching criteria (emphasis added). "By failing to collect home market sales data on [subject merchandise] other than

those characterized by [respondent] as similar or identical, the [Department] abdicated to [respondent] its statutory responsibility for determining what [subject merchandise] produced by respondent was the *most* similar to models sold in the United States" (*Timken* at 1338). Furthermore, the Court stated that, "[a]dditionally, it is hard to imagine that a foreign manufacturer, given the option of selecting what constitutes similar merchandise, and assuming that there exists more than one product from which a choice can be made, would not make the choice of merchandise most advantageous to itself" (*Timken* at 1338). In a footnote, the Court states that they do not mean to imply (nor does the Department in this instance) that the respondent acted in bad faith but instead that the ITA erred in not requesting complete data where that data was necessary. The Court went on to say that * * * "by accepting a foreign manufacturer's assertion as to what constitutes most similar merchandise without obtaining the complete data needed to determine the appropriateness of those assertions, the [Department] in this action violated the spirit of the statutory requirement that it verify the data relied upon in proceedings involving revocation of antidumping orders" (*Timken* at 1338). While the current situation is an antidumping duty investigation and not a revocation proceeding, the two situations are analogous.

In the current investigations, the Department has fulfilled the requirement of requesting the necessary data. In the Department's questionnaire in Appendix V, Villares is given the option of providing DIFMER data (*i.e.*, variable cost data) for all products in the product concordance in case the Department does not agree that the selected model match is the "most similar" to the U.S. product. Additionally, since Villares itself had stated in its rebuttal brief that it would have been "impossible" to provide documentation supporting its home market selections in terms of DIFMER calculations, the Department cannot be expected to verify data which Villares admits is "impossible" to produce.

While the Department does not argue with the fact that documentation related to Villares' sales not in the ordinary course of trade was provided at verification, it is not necessary to address this issue since the Department has determined to use BIA for reasons explained above.

Date of Sale

In addition to the model match issues noted by the petitioner in their case brief, the Department cannot be sure that it has the correct universe of U.S. sales for comparison purposes. Appendix II of the Department's questionnaire states: "date of sale is typically the purchase order date, the contract date, or where written confirmation is given, the order confirmation date (*i.e.*, the point in the transaction where the basic terms of the contract, particularly price and quantity, are agreed to by the parties involved.)" Despite the fact that the Department specifically lists the purchase order (P.O.) date as a potential DOS for investigatory purposes, the Department's questionnaire further states that such a date is considered the DOS when both price and quantity are agreed to by the parties involved. Villares stated on page 10 of its April 19, 1993, case brief that, "the date of sale methodology *required* by the Department dictated that Villares utilize purchase order dates to determine the universe of U.S. sales" (emphasis added).

The Department does not agree with Villares' characterization that Commerce "dictated" that Villares utilize P.O. date for DOS purposes. The P.O. is the correct DOS when—and only when—it is the date at which the essential terms were definitely agreed upon. At verification, the Department found that essential terms change subsequent to the P.O. date. Given that Villares admitted to having a two-to-three month production cycle, the Department was unable to verify that the P.O. dates submitted by Villares did in fact correspond to the actual sale dates under the Department's methodology. Accordingly, the U.S. dates of sale were misreported.

Comment 9: Villares argues that the Department issued a scope clarification memo on August 8, 1992, three weeks before the Department's Section A questionnaire response was due, failed to provide adequate notice to Villares on how to develop adjustments for similar merchandise and how to define its "replacement cost" methodology, claiming that these actions made it "extraordinarily difficult" to prepare an "adequate and timely response."

Department's Position: The Department's goal in antidumping and countervailing duty cases is to use the most accurate information on the record in arriving at a determination. In pursuit of this goal, the Department must often request additional, or even different information than that originally requested from the parties to the investigation. Section 353.31(b)(3) of the Department's regulations permits a recipient of such a request for information to, in turn, request a deadline extension. Villares availed themselves of this option when, on August 25, 1992, they requested a deadline extension related to their response to Section A of the Department's questionnaire. On September 3, 1992, Villares submitted this response without requesting a further deadline extension as they did in the case of their Sections B and C questionnaire response. Villares was notified on November 13, 1992, in regard to the Department's PIM requirement. This notification was over three weeks before Villares submitted its next product concordance and no deadline extension was requested related to the submission. Moreover, if Villares believed that either DIFMER instructions or the Department's replacement cost methodology instructions were unclear, it is Villares who must notify the Department and request further clarification.

Comment 10: Villares alleges that the SBQ petition should be rescinded because the dumping allegations for hot-rolled SBQ bar as set forth did not adhere to the Commerce Department's methodology for hyper-inflationary economies. Villares states that at the time the petition was filed, "it was common knowledge that Brazil's economy was experiencing hyper-inflation, as defined by the Department." Villares argues that despite the Department's general practice of combining home market sales within a ninety-day period, "in antidumping investigations involving hyper-inflationary economies the Department only compare home market sales and U.S. sales within the same month."

The petitioners note that the petition contains "*numerous* allegations of contemporaneous comparisons showing LTFV sales" and that Villares fails to provide support for the proposition that a few allegations are insufficient for initiating an antidumping duty investigation.

The Department's Position: The petition satisfies the Department's initiation standards relating to a hyper-inflationary economy.

Section 353.13 of the Department's regulations states that a sufficient petition must be based on "information reasonably available to petitioner supporting the allegations." In addition to the sales on which the initiation was based, the petition also alleged other less recent, but more clearly

simultaneous sales (*see, e.g.*, Petitioners' June 19, 1992 amendment to the petition, letter, Attachment 1, page 19, the first allegation, Finished, round, under 0.25% carbon (HTS 7214400030) and first 2 allegations for Finished, round, 0.25% to 0.6% carbon (HTS 7214500030)). Here, July 1991 home market sales are compared to other July 1991 U.S. sales, and August 1991 home market sales are compared to August 1991 U.S. sales. The final margin for finished bars and rods is based on sales occurring in the same month.

Continuation of Suspension of Liquidation

In accordance with section 733 of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of certain alloy and carbon hot-rolled bars, rods, and semifinished products of special quality engineered steel from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated final dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Semifinished Products:	
Aco Minas Gerais S.A	19.67
All Others	19.67
Finished Bars and Rods:	
Industrias Villares S.A. and its related companies	27.00
All Others	27.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to the U.S. industry within 45 days.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: May 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–13083 Filed 6–2–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–331–602]

Fresh Cut Flowers From Ecuador; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on fresh cut flowers from Ecuador.

Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from June 3, 1993.

EFFECTIVE DATE: June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1987, the Department of Commerce (the Department) published an antidumping duty order on fresh cut flowers from Ecuador (52 FR 8494). The Department of Commerce has not received a request to conduct an administrative review of this order for the most recent five consecutive annual anniversary months.

In accordance with 19 CFR 353.25(d)(4), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. On March 12, 1993, the Department published an "Opportunity to Request Administrative Review" for the period March 1, 1992 through February 28, 1993 (58 FR 13583). We received no request for review by the last day of the fifth anniversary month. Accordingly, as required by 19 CFR 353.25(d)(4)(i), we are notifying the public of our intent to revoke this order.

Opportunity To Object

No later than thirty days from June 3, 1993, domestic interested parties, as defined in § 353.2(k) (3); (4); (5); and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

Since no interested party requested an administrative review by March 31, 1993, in accordance with the Department's notice of opportunity to request administrative review, if no domestic interested party objects to this intent to revoke within thirty days from June 3, 1993, we shall conclude that the duty order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 18, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–13087 Filed 6–2–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–824, A–588–825, A–588–826]

Preliminary Determinations of Critical Circumstances: Certain Hot Rolled, Cold Rolled, and Corrosion Resistant Carbon Steel Flat Products From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or James Rice, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230; telephone (202 482–3793).

PRELIMINARY CRITICAL CIRCUMSTANCES DETERMINATION: On April 26, 1993, petitioners in this investigation alleged that critical circumstances exist with respect to imports of certain hot rolled, cold rolled, and corrosion resistant carbon steel flat products from Japan. The Department of Commerce (the Department) published in preliminary determinations of sales at less than fair value in this investigation on February 4, 1993 (58 FR 7103), an amended preliminary determination on April 21, 1993 (58 FR 21444) and published a corrected amended preliminary

determination on May 20, 1993 (58 FR 29385).

In accordance with 19 CFR 353.16(b)(2)(ii), since this allegation was filed later than 20 days before the scheduled date of the preliminary determination, we must issue our preliminary critical circumstances determination not later than 30 days after the allegation was filed.

Section 733(e)(1) of the Tariff Act of 1930, as amended, provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the classes of kinds of merchandise which are the subjects of these investigations, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of these investigations at less than its fair value, and

(B) There have been massive imports of the classes of kinds of merchandise which are the subjects of these investigations over a relatively short period.

Imputed Knowledge of Dumping

To determine whether the persons by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the merchandise which is the subject of this investigation at less than their fair value, the Department's practice is to impute knowledge of dumping when the estimated margins are of such magnitude that the importer should have reasonably known that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater on sales to unrelated parties and margins of 15 percent or greater on sales through related parties to be sufficient to input such knowledge. (See, e.g., Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy (52 FR 24196, June 29, 1987) and Final Determination of Sales at Less Than Fair Value: Certain Internal-Combustion, Industrial Forklift Trucks from Japan (53 FR 12522, April 15, 1988).) In these investigations we calculated the following preliminary weighted average margins: Hot rolled: 30.98 percent; cold rolled: 26.35 percent; corrosion resistant 37.8 percent. These margins are above the Department's threshold margin for imputing knowledge of dumping. Accordingly, we find that importers either knew, or should have known, that the imports of hot rolled, cold rolled, and corrosion resistant carbon steel flat products were being sold at less than fair value.

Because we determine that importers of this merchandise knew, or should have known, that the merchandise was being sold at less than fair value, we do not need to address the question of whether there is a history of dumping of the subject merchandise.

Massive Imports

Under 19 CFR 353.16(f), we normally consider the following to determine whether imports have been massive: (1) Volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data to determine whether imports have been massive over a relatively short period of time under 19 CFR 353.16(g), the Department normally compares the export volume for equal periods immediately preceding and following the filing of the petition (the "pre-filing period" and the "post-filing period"). Under 19 CFR 353.16(f)(2), unless the imports in the post-filing period have increased by at least 15 percent over the imports during the pre-filing period, we will not consider the imports to have been "massive."

The Department examines either (1) shipment information submitted by the respondent or (2) import statistics, typically when respondent-specific shipment information is not available. In this case, because sales to the United States are often made through trading companies and not by the producers directly, we used imports statistics to determine the nature of the shipments.

With respect to 19 CFR 353.16(f)(1)(ii), our analysis revealed no indication that seasonal trends were the explanation for this change. The Department compared import statistics from the January-June period of 1990, 1991, and 1992, (the POI and the corresponding six-month period in the two previous years) and compared them to the import statistics from the July-December 1990, 1991, and 1992 periods (the timeframe of the alleged "massive" importation and the corresponding six-month periods in the previous two years). On this basis, imports are massive.

In conclusion, given that (1) knowledge of dumping exists, and (2) imports have been massive, we preliminarily find that critical circumstances exist in this case.

FINAL CRITICAL CIRCUMSTANCES DETERMINATION: We will make a final determination and address any comments concerning critical circumstances when we make our final determination in this investigation, *i.e.*, by June 21, 1993.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain hot rolled, cold rolled, and corrosion resistant carbon steel flat products from Japan that are entered, or withdrawn from warehouse, for consumption on or after November 6, 1992 (i.e., 90 days prior to the date of publication of our preliminary determination in the **Federal Register**).

Producer/manufacturer/exporter	Cold-rolled	Hot-rolled	Corr. res.
Kawasaki Steel Corp	NA	NA	37.80
NKK Steel Corp	22.86	24.98	NA
Nippon Steel Corp.	27.67	32.95	37.80
Sumitomo Metal Industries	27.67	32.95	NA
All others	26.35	30.99	37.80

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

Public Comment

Since this preliminary critical circumstances determination is being made after the due date for public comment on our preliminary determination of sales at less than fair value in this case, we will accept written comments on this preliminary determination of critical circumstances until five business days after the publication of this notice in the **Federal Register.**

This determination is published pursuant to section 733(f) of the Act.

Dated: May 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–13049 Filed 6–2–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–405–071]

Rayon Staple Fiber From Finland; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on rayon staple fiber from Finland.

Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from July 6, 1993.

EFFECTIVE DATE: June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–0090.

SUPPLEMENTARY INFORMATION:

Background

On March 21, 1979, the Treasury Department published an antidumping finding on rayon staple fiber from Finland (44 FR 17156). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent five consecutive annual anniversary months.

In accordance with 19 CFR 353.25(d)(4), the Secretary of Commerce will conclude that a finding is no longer of interest to interested parties and will revoke the finding if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. On March 12, 1993, the Department published an "Opportunity to Request Administrative Review" for the period March 1, 1992 through February 28, 1993 (58 FR 13583). We received no request for review by the last day of the fifth anniversary month. Accordingly, as required by 19 CFR 353.25(d)(4)(i), we are notifying the public of our intent to revoke this finding.

Opportunity To Object

No later than thirty days from June 3, 1993, domestic interested parties, as defined in § 353.2(k) (3); (4); (5); and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding. Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

Since no interested party requested an administrative review by March 31, 1993, in accordance with the Department's notice of opportunity to request administrative review, if no domestic interested party objects to this intent to revoke within thirty days from June 3, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 18, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–13086 Filed 6–2–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–003]

Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Administrative Review and Intent To Revoke in Part Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review and intent to revoke in part the countervailing duty order.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on ceramic tile from Mexico. We preliminarily determine the total bounty or grant to be 0.44 percent *ad valorem* for all companies for the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis.*

In addition, we preliminarily determine that the following list of companies have met the requirements for partial revocation from the order, including undergoing administrative reviews for five consecutive years during which the Department has determined that these companies have not applied for or received any net subsidy on ceramic tile: Azulejos Orion, S.A., Eduardo Garcia de la Pena, Jesus Garza Arocha, Ladrillera Monterrey, S.A., Pisos Coloniales de Mexico, S.A., Reynol Martinez Chapa, and Teofilo Covarrubias.

Provided that this conclusion remains unchanged in the final results of this review, and that we are satisfied that it is not likely that these companies will in the future apply for or receive any net subsidy on the subject merchandise, the Department intends to revoke the countervailing duty order with respect to these seven companies upon publication of the final results of the review. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1992, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (57 FR 19412) of the countervailing duty order on ceramic tile from Mexico. We received requests for review from the Government of Mexico, and Ceramica Regiomontana, S.A., a Mexican exporter of the subject merchandise. The Government of Mexico also filed requests for revocation from the order for forty-six Mexican companies with its request for the administrative review. We initiated the review, on June 18, 1992 (57 FR 27212). This review covers the period January 1, 1991 through December 31, 1991. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The final results of the last administrative review of this order were published in the **Federal Register** on June 8, 1992 (57 FR 24247).

Partial Revocation

After carefully examining the request for revocation, including certifications, for each of the forty-six companies requesting revocation, the Department determined that only the following eight companies met the minimum threshold requirements to be considered for revocation under 19 CFR 355.25(a)(3)(i): Azulejos Orion, S.A., Ceramica Santa Julia, Eduardo S. Garcia de la Pena, Jesus Garza Arocha, Ladrillera Monterrey, S.A., Pisos Coloniales de Mexico, S.A., Reynol Martinez Chapa, and Teofilo Covarrubias. (See Eligibility of Companies for Revocation in Ceramic Tile from Mexico—1991 Administrative Review, Letter to Miguel Leaman from Barbara E. Tillman, January 15, 1993 which is in the public file of the case (C–201–003)).

According to 19 CFR 355.25(a)(3) and 355.25(b)(3), a company meets the minimum threshold requirement for revocation if, in the anniversary month of the fifth consecutive year of the order, the company submits both government and company certifications that the company neither applied for nor received any net subsidy during the review period and will not apply for or receive any net subsidy in the future. A company requesting revocation must also have been found by the Department

to have received no net subsidy in the four consecutive administrative reviews prior to the year in which the company is requesting revocation, and in the fifth consecutive administrative review, the Department must also determine that the company has received no net subsidies.

With the request for revocation, a company must also submit a written agreement to an immediate suspension of liquidation and reinstatement of the order if the Department determines that the company, subsequent to revocation, has received any net subsidy on the subject merchandise. If the foregoing threshold requirements are met, and the Department determines in the review during which revocation has been requested that the company under consideration has gone a fifth consecutive year with no net subsidy, then the Department will revoke the order as to that company.

Each of the eight companies under consideration met the threshold requirements for consideration for revocation. The Department verified these eight companies under consideration for revocation. Seven of the verified companies, Azulejos Orion, S.A., Eduardo Garcia de la Pena, Jesus Garza Arocha, Ladrillera Monterrey, Pisos Coloniales de Mexico, S.A., Reynol Martinez Chapa, and Teofilo Covarrubias Chapa have been reviewed by the Department in five consecutive administrative reviews of this order (including this review). In each of the past four reviews, the Department determined that these companies had not applied for or received any net subsidy on ceramic tile. In this review, we preliminarily determine that they have not applied for or received any net subsidy during the review period. In addition, as provided in 19 CFR 355.25(a)(3)(iii), these companies have agreed in writing to immediate suspension of liquidation and reinstatement of the order if the Department determines that they received any net subsidy on the subject merchandise.

Therefore, the Department intends to revoke this order as applied to these companies pursuant to 19 CFR 355.25(a)(3). If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise produced by Azulejos Orion, Eduardo Garcia de la Pena, Jesus Garza Arocha, Ladrillera Monterrey, Pisos Coloniales de Mexico, S.A., and Reynol Martinez Chapa and exported to the United States entered, or withdrawn from warehouse, for consumption, on or after December 31, 1991.

The other verified company, Ceramica Santa Julia, did not have any shipments of the subject merchandise to the United States during the review period. When there are export subsidy programs and there are no measurable program-wide changes in accordance with the Department's practice set forth in section 355.50 of the Department's proposed regulations (54 FR 23385; May 31, 1989), the Department is not able to ensure non-use of an export subsidy if there were no exports of the subject merchandise. Although Ceramica Santa Julia had a sale of the subject merchandise to a third country during the review period, the Department cannot rely upon a single sale of limited value to verify non-use of the export subsidy programs because one sale may not justify the company's application for benefits under these programs. Accordingly, we do not intend to revoke Ceramica Santa Julia from the order.

Scope of Review

Imports covered by this review are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the review period, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 6907.10.0000, 6907.90.0000, 6908.10.0000, and 6908.90.0000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991, ten programs, and sixty-one companies, including the seven being considered for revocation.

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d)(53 FR 52306, and 52325; December 27, 1988). We calculated a country-wide rate, weight-averaging the benefits received by the sixty-one companies subject to review to determine the overall subsidy from all countervailing programs benefitting exports of the subject merchandise to the United States. Because the overall weighted-average country-wide rate was *de minimis*, as defined by 19 CFR 355.7, we did not proceed any further in the calculation methodology.

Analysis of Programs

(1) BANCOMEXT Financing for Exporters

Effective January 1, 1990, the Mexican Treasury Department eliminated the FOMEX loan program and transferred the FOMEX trust to the Banco Nacional de Comercio Exterior, S.N.C. (BANCOMEXT). BANCOMEXT offers short-term financing to producers or trading companies engaged in export activities; any company generating foreign currency through exports is eligible for financing under this program. The BANCOMEXT program operates much like its predecessor, FOMEX. BANCOMEXT provides two types of financing, both in U.S. dollars, to exporters: Working capital loans (pre-export loans), and loans for export sales (export loans). In addition, BANCOMEXT may provide financing to foreign buyers of Mexican goods and services. Since the availability of this loan program is restricted to exporters, we consider it countervailable to the extent that the interest rates are preferential.

We found that the annual interest rates that BANCOMEXT charged to borrowers for loans on which interest payments were due during the review period were lower than commercial rates. The BANCOMEXT dollar-denominated loans under review were granted at annual interest rates ranging from 8.0 percent to 10.5 percent. To determine the benchmark for BANCOMEXT pre-export and export dollar-denominated loans granted in 1991, we used the average of the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which resulted in an annual average benchmark of 9.04 percent in 1991.

For BANCOMEXT pre-export dollar-denominated loans granted in 1990 on which principle and interest were paid in 1991, we used as the benchmark the average of the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which resulted in an annual average benchmark of 10.88 percent in 1990.

The Department has previously found this program to confer an export subsidy to the extent that the loans are provided at preferential terms (See Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Review (57 FR 5997, February 19, 1992 and Ceramic Tile From Mexico; Final Results of Countervailing Duty Review (57 FR 24247, June 8, 1992)). Because the interest rates on the loans to ceramic tile are below the benchmark, we find that these loans are countervailable.

We consider the benefits from short-term loans to occur at the time the interest is paid. Because interest on BANCOMEXT pre-export loans is paid at maturity, we calculated benefits based on loans that matured during the review period; these were obtained between November 1990 and October 1991. Interest on BANCOMEXT export loans is paid in advance; we therefore calculated benefits based on BANCOMEXT loans received during the review period.

Three exporters of ceramic tile products used BANCOMEXT pre-export and export financing. Because we found that the exporters were able to tie their BANCOMEXT loans to specific sales, we measured the benefit only from the BANCOMEXT loans tied to sales of the subject merchandise to the United States. To determine the benefit for each exporter, we calculated the difference between the interest rate charged to exporters for these loans and the benchmark interest rate, and multiplied this interest differential by the outstanding principal. We then divided each company's BANCOMEXT benefit by the value of the company's total exports of subject merchandise to the United States during the review period and then weight-averaged the resulting benefits by the company's proportion of total exports to the United States. On this basis, we preliminarily determine the benefit from this program to be less than 0.005 percent *ad valorem* for all companies.

(2) PITEX

The Program for Temporary Importation of Products used in the Production of Exports (PITEX) was established by a decree published in the *Diario Oficial* on May 9, 1985, and amended in the *Diario Oficial* on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development (SECOFI) and the Customs Administration. Under PITEX, exporters with a proven export record may receive authorization to temporarily import products to be used in the production of exports for up to five years without having to pay the import duties normally imposed on those imports. PITEX allows for the exemption of import duties for the following categories of merchandise used in export production: raw materials, packing materials, fuels and lubricants, machinery used to manufacture products for export, and spare parts and other machinery. The importer must post a bond or other security to guarantee the reexportation of the temporary imports. Because it is only available to exporters, the Department previously found in Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Administrative Review (56 FR 50859; October 9, 1991) and Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review (57 FR 24247; June 8, 1992) that PITEX provides countervailable benefits to the extent that it provides duty exemptions on imports of merchandise not physically incorporated into exported products. The Government of Mexico provided no new information or evidence of changed circumstances that would lead the Department to alter that determination.

During the review period, one company used the PITEX program for imports of machinery and spare parts which are not physically incorporated into exported products. To calculate the benefit from this program, we first calculated the duties that should have been paid on the non-physically incorporated items that were imported under the PITEX program during the review period. We then divided that amount by the company's total exports. We then weight-averaged the resulting benefit by the company's proportion of total exports of subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.44 percent *ad valorem* for all companies.

(3) NAFINSA Long-term Loans

None of the companies reported NAFINSA long-term loans in the questionnaire response, however, during verification we found that Reynol Martinez Chapa and Ladrillera Monterrey had outstanding Nafinsa long-term loans during the review period.

Until December 31, 1988, Nafinsa operated as a first-tier bank, which is defined as a commercial bank that provides financing directly to the public. Since December 31, 1988, Nafinsa has operated as "second-tier" bank granting financing to companies indirectly through the commercial banks, (i.e., "first tier") banks. Nafinsa long-term loans have been found to be specific in past proceedings because availability was limited to specific geographical regions of Mexico. See Bars and Shapes from Mexico; Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders 49 FR 161 (August 17, 1984). The Government of Mexico has provided no new information or evidence of changed circumstances to lead us to conclude that this program is not limited to companies in specific regions. Therefore, we preliminarily determine that Nafinsa long-term loans are specific.

According to company officials for Reynol Martinez Chapa, the company did not apply for a Nafinsa loan. Reynol Martinez Chapa had applied for a loan at a commercial bank which discounted the loan to Nafinsa. In addition, the Nafinsa-discounted loan was used to finance Reynol Martinez Chapa's other business, a trucking company. Upon further examination of Reynol Martinez Chapa's records and the records of the trucking company, we found that the loan was recorded entirely in the company books of the trucking company. There was no record of the loan in Reynol Martinez Chapa's company records. We also confirmed through the trucking company's records that the customer in the United States paid for the shipping and insurance on the subject merchandise. Therefore, we preliminarily determine that Reynol Martinez Chapa did not receive any benefits on the subject merchandise from this loan.

With respect to Ladrillera Monterrey's loan, a portion of the loan funds came from Nafinsa. Since neither Ladrillera Monterrey nor the Government of Mexico provided any information on long-term commercial interest rates, we are using a short-term CPP-based rate as our benchmark rate in accordance with our practices as set forth in section 355.49(b)(2)(iii) of the Department's proposed regulations. See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366, 23384 (May 31, 1989). In past Mexican cases, we have used the CPP, a short-term interest rate, as the basis for our benchmark. We have converted the CPP rate into a benchmark rate using a standard formula that has been used consistently in past Mexican cases (See Porcelain-on-Steel Cookingware from Mexico; Final Results of Countervailing Duty Administrative Review, 57 FR 562, January 7, 1992). Using this methodology, we calculated an annual average benchmark of 34.96 percent for the Nafinsa peso-denominated loan. A comparison between the benchmark rate and the Nafinsa loan rates indicates that this loan is inconsistent with commercial considerations.

To calculate the benefit, we multiplied the difference between the benchmark rate and the interest rate in effect for the Nafinsa loan by the principal outstanding during the review period. We divided the benefit by the firm's total sales during the review period and then weight averaged the

resulting benefit by the company's proportion of total exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be less than 0.005 percent *ad valorem* for all companies.

(4) Other Programs

We also examined the following programs and preliminarily determine that exporters of the subject merchandise did not use them during the review period:

(A) Other BANCOMEXT preferential financing;

(B) Guarantee and Development Fund for Medium and Small Industries (FOGAIN);

(C) Fiscal Promotion Certificates (CEPROFI);

(D) Import duty reductions and exemptions;

(E) State tax incentives;

(F) NAFINSA FONEI-type financing; and

(G) NAFINSA FOGAIN-type financing.

Verification

As required under 19 CFR 355.36(a)(ii) of the Department's regulations, we verified the companies which we found had met the threshold requirements for revocation. We also selected several other companies for verification of both used and not used programs.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.44 percent *ad valorem* for all companies during the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

Upon completion of this review, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Mexico exported by all companies on or after January 1, 1991 and on or before December 31, 1991.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Pursuant to 19 CFR 355.38(c), interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–13050 Filed 6–2–93; 8:45 am]

BILLING CODE 3510–DS–P

Centers for Disease Control, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92–172. *Applicant:* Centers for Disease Control, Atlanta, GA 30341–3724. *Instrument:* Mass Spectrometer System, Model API III. *Manufacturer:* PE Sciex, Canada. *Intended Use:* See notice at 58 FR 4979, January 19, 1993. *Reasons:* The foreign instrument provides: (1) atmospheric pressure ionization of high performance liquid chromatographic sample introduction, (2) flow rate to 1.0 ml/minute and (3) MS/MS capability.

Docket Number: 92–175. *Applicant:* U.S. Department of Commerce, NOAA, Galveston, TX 77551–5997. *Instrument:* (2) Electronic Digital Fish Measuring Boards, Model FMB IV Version F. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* See notice at 58 FR 4977, January 19, 1993. *Reasons:* The foreign instrument provides in situ digitized logging of fish dimensions with simultaneous entry of ancillary data which can be downloaded to a PC on return from the field.

Docket Number: 92–178. *Applicant:* University of Nebraska-Lincoln, Lincoln, NE 68583–0718. *Instrument:* Electron Paramagnetic Resonance Spectrometer, Model ESP 300 E. *Manufacturer:* Bruker Instruments Inc., Germany. *Intended Use:* See notice at 58 FR 4978, January 19, 1993. *Reasons:* The foreign instrument provides capability for electron paramagnetic spectra and controlled sample temperature from 4°K to above room.

Docket Number: 92–171. *Applicant:* Baylor University, Waco, TX 76798. *Instrument:* High Resolution Mass Spectrometer, Model VG ProSpec-3000. *Manufacturer:* VG Analytical Instruments, United Kingdom. *Intended Use:* See notice at 58 FR 4978, January 19, 1993. *Reasons:* The foreign instrument provides: (1) resolution to 25 000, (2) 5 scans per second, (3) 2 ppm accuracy and (4) E-B-E geometry.

The National Institutes of Health advises in its memoranda dated March 4, 1993, that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–13051 Filed 6–2–93; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs

Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93–042. *Applicant:* Wilford Hall Medical Center, Lackland Air Force Base, 2200 Bergquist Drive, Suite 1/HSLS, San Antonio, TX 78236–5300. *Instrument:* Electron Microscope, Model EM 900. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* The instrument will be used for imagery and photography of a wide range of both biomedical research and routine/immediate clinical diagnostic specimens by providing the necessary high resolution capability in support of these areas. The instrument will also be used as a teaching aid for residents, interns and other researchers. *Application Received by Commissioner of Customs:* April 30, 1993.

Docket Number: 93–043. *Applicant:* University of California, Irvine, Department of Geosciences, c/o Business & Contract Services, 200 Public Services Building, Irvine, CA 92717–3100. *Instrument:* Isotope Ratio Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan Corporation, Germany. *Intended Use:* The instrument will be used for isotope measurements of $^{13}C/^{12}C$ ratios in CH_4, CO, and CO_2 and H/D ratios in CH_4 to determine trace gas budgets and process studies for the gases in question. *Application Received by Commissioner of Customs:* April 30, 1993.

Docket Number: 93–044. *Applicant:* University of California at Los Angeles, Department of Physics, Knudsen Hall, 405 Hilgard Avenue, Los Angeles, CA 90024–1547. *Instrument:* Samarium Cobalt Magnet. *Manufacturer:* International Center for Scientific Culture World Laboratory, CIS. *Intended Use:* The instrument will be used in conjunction with a backward wave oscillator spectrometer which will be used to characterize different materials for their microwave/millimeter wave properties. In addition, the instrument will be used for training of scientists in the course Physics 599, Research for Ph.D. Thesis. *Application Received by Commissioner of Customs:* April 30, 1993.

Docket Number: 93–045. *Applicant:* University of Rhode Island, Kingston, RI 02881. *Instrument:* Gas Source Isotope Ratio Mass Spectrometer, Model 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to study dissolved gases in seawater, dissolved gases in undersea hotsprings, air samples from the troposphere and stratosphere and air samples trapped in ice taken from the Greenland and Antarctica ice sheets. In addition, the instrument will be used in Oceanography 599 and 699 (Masters and Ph.D. Thesis Research) to train students in independent research at the state of the art. *Application Received by Commissioner of Customs:* May 3, 1993.

Docket Number: 93–046. *Applicant:* Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, NY 10461. *Instrument:* Mass Spectrometer System, Model API III. *Manufacturer:* Sciex, Canada. *Intended Use:* The instrument will be used to obtain molecular weight and structural information of native or mutant proteins and peptides. *Application Received by Commissioner of Customs:* May 4, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–13052 Filed 6–2–93; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

The North Pacific Fishery Management Council (Council) and its advisory committees will meet during the week of June 20, 1993. The Council's Advisory Panel, Scientific and Statistical Committee and Comprehensive Planning Committee will begin their meetings at 1 p.m. on June 20. The Council will begin its plenary session at 8 a.m. on June 21 and continue through the week until the agenda is completed.

The Advisory Panel will meet at the Fishing Industrial Technology Center, 900 Trident Way, Kodiak, AK. All other meetings will be held at the Kodiak Westmark Hotel, 236 Rezanof Drive, Kodiak, AK; telephone: (907) 486–5712.

The Council will consider and may take action on the following agenda items:

(1) Reports by the National Marine Fisheries Service, the Alaska Department of Fish and Game, and the United States Coast Guard; (2) implementation schedule update for the Sablefish and Halibut Individual Fishing Quota (IFQ) Plan; (3) initial review of block and 1,000 lb. minimum proposals for possible inclusion in the Sablefish and Halibut IFQ Plan; (4) initial review of a draft fishery management plan for scallops; (5) progress report and further direction to staff on the Comprehensive Rationalization Program; (6) review Alaska Board of Fisheries activities, crab management, and discussion of crab discards in crab fisheries; (7) final review and approval of the following proposed amendments to the groundfish fishery management plans:

(a) Pacific cod allocation in the Bering Sea/Aleutian Islands;

(b) Salmon bycatch/and salmon vessel incentive program;

(c) Separation of Atka mackerel from the "other species" category in the Gulf of Alaska; and

(d) Additional marine mammal fall closures;

(8) Final review of the following proposed regulatory amendments:

(a) Total weight measurement in the community development quota fisheries;

(b) Proposals to framework opening of the Bering Sea/Aleutian Islands pollock "A" season; and

(c) Set the total allowable catch for Atka mackerel in the Aleutians;

(9) Review current tasking and give staff direction.

Other committees and workgroups may also meet during the week. All meetings are open to the public with the exception of a Council Executive session scheduled for the noon hour one day during the week. During executive sessions the Council will receive reports on litigation, international affairs, and personnel matters.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (907) 271–2809.

Dated: May 27, 1993.

David S. Crestin,

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

[FR Doc. 93–13064 Filed 6–2–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

May 28, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to section 204 of the Agricultural Act of 1956, as amended, the Government of the United States is establishing a limit on exports from the Former Yugoslav Republic of Macedonia on men's and boys' wool suits in Category 443 at a level of 80,000 numbers for the twelve-month period beginning on June 7, 1993 and extending through June 6, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 28, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 7, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 443, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on June 7, 1993 and extending through June 6, 1994, in excess of 80,000 numbers.

Textile products in Category 443 which have been exported to the United States prior to June 7, 1993 shall not be subject to the limit established in this directive.

Textile products in Category 443 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–13088 Filed 6–2–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

May 28, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and adjusting limits.

EFFECTIVE DATE: June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 482–6711. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated May 20, 1993, the Governments of the United States and the United Mexican States agreed to increase certain 1993 designated consultation levels (DCLs) and adjust certain other limits, variously, for swing, special shift and carryover. In addition, certain categories are being adjusted for carryforward used and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 88, published on January 4, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and MOU dated May 20, 1993, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 28, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on June 7, 1993, you are directed to amend the directive dated December 28, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement and the Memorandum of Understanding dated May 20, 1993, between the Governments of the United States and the United Mexican States:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
313	27,775,400 square meters.
317	17,929,839 square meters.
611	2,640,668 square meters.
Individual limits not in a group	
335 (Special Regime).	270,000 dozen.
338/339/638/639 (Special Regime).	2,000,000 dozen.
347/348/647/648 (Special Regime).	5,400,000 dozen.
351/651 (Special Regime).	600,000 dozen.
352/652 (Special Regime).	3,500,000 dozen.
443	122,040 numbers.
604–A [2]	2,209,977 kilograms.
604–O/607–O [3]	1,042,448 kilograms.
669–B [4]	1,000,000 kilograms.
670	3,750,000 kilograms.
Normal Regime Category (Not subject to the Special Regime)	
340/640 (sublimit)	137,300 dozen.
341/641	798,000 dozen.
347/348/647/648	1,000,000 dozen.

Category	Adjusted twelve-month limit [1]
351/651	100,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 604–A: only HTS number 5509.32.0000.

[3] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A); Category 607–O: all HTS numbers except 5509.53.0030 and 5509.53.0060 (Category 607–Y).

[4] Category 669–B: only HTS numbers 6305.31.0020 and 6305.39.0000.

The Special Regime limits for Categories 340/640 and 341/641 and the Normal Regime limits for Categories 335, 338/339/638/639 and 352/652 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–13089 Filed 6–2–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 6, 1993; Tuesday, July 13, 1993; Tuesday, July 20, 1993; and Tuesday, July 27, 1993, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: May 27, 1993.

L. M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–13053 Filed 6–2–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Record of Decision for the Development of the Fort Belvoir Engineer Proving Ground, Fairfax County, VA

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: This Notice of Availability is for the Record of Decision to the Environmental Impact Statement (EIS) for the Engineer Proving Ground (EPG) in Fairfax County, Virginia. Accordingly, the Department of the Army, pursuant to Public Law 101–189, section 2821, is proceeding with the proposal to develop the 820-acre parcel of government-owned land at the EPG in cooperation with the private development community.

The following alternatives were considered in the EIS:

a. The Build Alternative is based on development of the site through a public-private partnership. In exchange for development rights at the EPG, the private sector will construct on- and off-site infrastructure improvements and office space for the Army. It consists of a program for development on the site that includes Army office space and a mix of privately developed commercial and residential uses.

b. The Military Construction Program Alternative is based on construction of Army office space using federal funding, i.e. military construction appropriations.

c. The No-Build Alternative, a "No Action" alternative, was also included in the EIS to establish a benchmark to evaluate the other alternatives.

The EIS was conducted in accordance with the National Environmental Policy Act (NEPA), the implementing Army Regulation 200–2, and the provisions of the Council on Environmental Quality, 40 CFR part 1500.

The Final Environmental Impact Statement was available for public review from March 18, 1993 to April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposal to develop the Engineer Proving Ground may be directed to Mr. Robert R. Hardiman, Program Manager OASA (IL&E), Building 257, Stop 388, Fort Belvoir, VA 22060–5388, at (703) 805–5616.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 93–13005 Filed 6–2–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 6, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. 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 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: May 27, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Reinstatement
Title: State Annual Report
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 16,052
Burden Hours: 49,040
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This collection of data is required under the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary Education Improvement Amendments of 1988, Public Law 100–297. Title I of the Act amends the Elementary and Secondary Education Act of 1965 to include a number of new and reauthorized Federal education programs. This data will be collected from State Education Agencies and included in an annual report to Congress.

[FR Doc. 93–12964 Filed 6–2–93; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No.: 84.029M]

Training Personnel for the Education of Individuals with Disabilities—Parent Training and Information Centers; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: This program provides training and information to parents of children (infants, toddlers, children, and youth) with disabilities, and to persons who work with parents to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children with disabilities.

This Training Personnel for the Education of Individuals with Disabilities program supports the National Education Goals by improving services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement called for in the National Education Goals. National Education Goal 1 calls for all children to start school ready to learn, and National Education Goal 3 calls for American students to demonstrate competency in challenging subject matter and to learn to use their minds well.

Eligible Applicants: Only parent organizations are eligible applicants under this priority.

Deadline For Transmittal of Applications: August 27, 1993.

Deadline For Intergovernmental Review: October 27, 1993.

Applications Available: June 15, 1993.

Available Funds: The Administration has requested $12,400,000 for this program for FY 1994. However, the actual level of funding is contingent on final congressional action. We anticipate that approximately $3,000,000 will be available for new applications.

Note: The Department is not bound by any of the estimates in this notice.

Estimated Range of Awards: $80,000 to $250,000.

Estimated Average Size of Awards: $130,000.

Estimated Number of Awards: 23.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, and 85; and (b) The regulations for this program in 34 CFR Part 316, as amended on December 29, 1992 (57 FR 62094–62109).

Priorities

Under 34 CFR 75.105(c)(3) and section 631(e)(1) of the Individuals with Disabilities Education Act the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority under the Parent Training and Information Centers program.

Absolute Priority: Parent training and information centers (34 CFR 316.10(a)).

FOR APPLICATIONS OR INFORMATION CONTACT: Max Mueller, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2651. Telephone: (202) 205–9554. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9999.

Authority: 20 U.S.C. 1431.

Dated: May 27, 1993.

William L. Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–12962 Filed 6–2–93; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No.: 84.029]

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: The purpose of this program is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities.

The Training Personnel for the Education of Individuals with Disabilities program supports the National Education Goals by improving services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement called for in the National Education Goals. National Education Goal 1 calls for all children to start school ready to learn, and National Education Goal 3 calls for American students to demonstrate competency in challenging subject matter and to learn to use their minds well.

Eligible Applicants: Institutions of higher education, State agencies, and other appropriate nonprofit agencies are eligible applicants under Special Projects. Institutions of higher education

and appropriate nonprofit agencies are eligible applicants under all other priorities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 318 as amended on December 29, 1992 (57 FR 62094–62109), and on May 7, 1993 (58 FR 27440–27441).

Applications Available: June 28, 1993.

Note: The Department is not bound by any of the estimates in this notice.

TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS FOR PERSONNEL TRAINING

[Application Notice for Fiscal Year 1994]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds [1]	Estimated range of awards (per year)	Estimted size of awards (per year)	Number of awards	Project period in months
Preparation of Leadership Personnel (84.029D)	9/17/93	11/19/93	$2,000,000	$75–000–125,000	$100,000	20	Up to 60
Preparation of personnel for careers in special education (84.029B)	9/17/93	11/19/93	6,000,000	75–000–125,000	100,000	60	Up to 60
Preparation of related services personnel (84.029F)	9/17/93	11/19/93	2,500,000	75–000–125,000	100,000	25	Up to 60
Training early intervention and preschool personnel (84.029Q)	10/1/93	12/1/93	2,250,000	75–000–125,000	100,000	23	Up to 60
Training personnel to serve low incidence disabilities (84.029A)	10/1/93	12/1/93	2,500,000	75–000–125,000	100,000	25	Up to 60
Special Projects (84.029K)	11/19/93	1/19/94	1,500,000	75–000–125,000	100,000	15	Up to 60
Minority Institutions (84.029E)	1/14/94	3/14/94	2,000,000	75–000–125,000	100,000	20	Up to 60
Training educational interpreters (84.029L)	1/14/94	3/14/94	500,000	75–000–125,000	100,000	5	Up to 60

[1] The Administration has requested $90,122,000 for the Personnel Development program for FY 1994. However, the actual level of funding is contingent on final congressional action.

Priorities: Under 34 CFR 75.105(c) (3) and 34 CFR 318, the Secretary gives an absolute preference to applications which meet the following priorities. The Secretary funds under this program only those applications that meet one or more of these absolute priorities.

Absolute Priority 1—Preparation of leadership personnel (34 CFR 318.11(a)(4)).

Absolute Priority 2—Preparation of personnel for careers in special education (34 CFR 318.11(a)(1)).

Competitive Priorities: Within this competition, under 34 CFR 75.105(c)(2), the Secretary will give a competitive preference (by awarding up to 10 additional points) to projects that provide evidence that they will address one or more of the following priorities:

(1) Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities (34 CFR 318.11(a)(9));

(2) Training personnel to work in rural areas (34 CFR 318.11(a)(11));

(3) Training personnel to provide transition assistance from school to adult roles (34 CFR 318.11(a)(12)); or

(4) Improving services for minorities (34 CFR 318.11(a)(14)).

Absolute Priority 3—Preparation of related services personnel (34 CFR 318.11(a)(2)).

Competitive Priorities: Within this competition, under 34 CFR 75.105(c)(2), the Secretary will give a competitive preference (by awarding up to 10 additional points) to projects that provide evidence that they will address one or more of the following priorities:

(1) Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities (34 CFR 318.11(a)(9));

(2) Training personnel to work in rural areas (34 CFR 318.11(a)(11));

(3) Training personnel to provide transition assistance from school to adult roles (34 CFR 318.11(a)(12));

(4) Improving services for minorities (34 CFR 318.11(a)(14)); or

(5) Preparation of paraprofessionals (34 CFR 318.11(a)(13))

Absolute Priority 4—Training early intervention and preschool personnel (34 CFR 318.11(a)(3)).

Competitive Priorities: Within this competition, under 34 CFR 75.105(c)(2), the Secretary will give a competitive preference (by awarding up to 10 additional points) to projects that provide evidence that they will address one or more of the following priorities:

(1) Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities (34 CFR 318.11(a)(9));

(2) Training personnel to work in rural areas (34 CFR 318.11(a)(11));

(3) Improving services for minorities (34 CFR 318.11(a)(14)); or

(4) Preparation of paraprofessionals (34 CFR 318.11(a)(13)).

Absolute Priority 5—Training personnel to serve low incidence disabilities (34 CFR 318.11(a)(10)).

Competitive Priorities: Within this competition, under 34 CFR 75.105(c)(2), the Secretary will give a competitive preference (by awarding up to 10 additional points) to projects that provide evidence that they will address one or more of the following priorities:

(1) Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities (34 CFR 318.11(a)(9));

(2) Training personnel to work in rural areas (34 CFR 318.11(a)(11));

(3) Training personnel to provide transition assistance from school to adult roles (34 CFR 318.11(a)(12));

(3) Improving services for minorities (34 CFR 318.11(a)(14)); or

(4) Preparation of paraprofessionals (34 CFR 318.11(a)(13).

Absolute Priority 6: Special projects (34 CFR 318.11(a)(5)).

Competitive Priorities: Within this competition, under 34 CFR 75.105(c)(2), the Secretary gives a competitive preference to applications that meet one or more of the following competitive priorities. An application that meets one or more of these competitive priorities is selected over applications of comparable merit that do not meet these priorities.

(1) Preparing personnel to meet the National Education Goals (34 CFR 318.11(a)(17)); or

(2) Attention deficit disorders (34 CFR 318.11(a)(19));

Absolute Priority 7—Minority Institutions (34 CFR 318.11(a)(16).

Absolute Priority 8—Training educational interpreters (34 CFR 318.11(a)(18)).

For Applications or Information Contact: Max Mueller, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2651. Telephone: (202) 205–9554. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9999.

Authority: 20 U.S.C. 1431.

Dated: May 27, 1993.

William L. Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–12963 Filed 6–2–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Advisory Committee on Environmental Restoration and Waste Management; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 stat. 770), notice is hereby given of the following Advisory Committee meeting.

Name: Environmental Restoration & Waste Management Advisory Committee (EMAC).

Date and Time: Wednesday, June 16, 1993, 8:30 a.m. to 5:15 p.m.; Wednesday, June 16, 1993, 7:30 p.m. to 10:30 p.m.; Thursday, June 17, 1993, 8:30 a.m. to 5:15 p.m.; Friday, June 18, 1993, 8:30 a.m. to 12:15 p.m.

Place: Denver Marriott West, 1717 Denver West-Marriott Blvd., Golden, CO 80401.

Contact: James T. Melillo, Executive Secretary, EMAC, EM–1, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 479–1191

Purpose of the Committee: The purpose of the Committee is to provide the Assistant Secretary, Environmental Restoration and Waste Management (EM) with advice and recommendations on both the substance and the process of the EM Programmatic Environmental Impact Statement (PEIS) and other EM projects from the perspectives of affected groups and State and local Governments. The EMAC will help to improve the Environmental Restoration and Waste Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to make their views known on the Environmental Restoration and Waste Management Program.

Tentative Agenda

Wednesday, June 16, 1993

8:30 a.m.—Chairman Glenn Paulson Opens Meeting; EMAC Mission Discussion
12:30 p.m.—Lunch
2 p.m.—Mission Discussion Continued
3:30 p.m.—Summary of EMAC Actions from Oak Ridge Meetings and Follow-up
5:45 p.m.—Meeting Adjourns
7:30 p.m.—Public Comment Session
10:30 p.m.—Meeting Adjourned

Thursday, June 17, 1993

8:30 a.m.—Chairman Paulson Reconvenes Public Meeting
12:20 a.m.—Western Governor's Association (WGA) Pilot Tech Development Demonstration and Memorandum of Understanding Presentation
12 noon—Lunch
1:45 p.m.—Complex-wide Facility Transition/Shutdown (Decontamination and Decommissioning)/Interim Reuse of Buildings—Panel Format
4:05 p.m.—Committee Business
5:15 p.m.—Meeting Adjourned

Friday, June 18, 1993

8:30 a.m.—Chairman Paulson Reconvenes Public Meeting; Citizen Participation Experience at Rocky Flats—Panel Format
10:20 a.m.—Committee Business
12:15 p.m.—Meeting Ends

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before, during or after the meeting. Members of the public having questions pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Committee during the public comment session should call (800) 862–8860 and leave a message. Individuals may also register on June 16, 1993, at the meeting. Every effort will be made to hear all those wishing to speak to the committee, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Committee Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 27, 1993.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 93–13075 Filed 6–2–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. GP93–4–000, FERC No. JD93–00670T]

Railroad Commission of Texas, Edwards Limestone Tight Formation Determination; Informal Conference

May 27, 1993.

Take notice that an informal conference will be convened in the above-referenced proceeding on June 7, 1993, at 10 a.m. The conference will be held in room 3400–C at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

For further information, contact Janet Ardinger at (202) 208–0895.

Lois D. Cashell,

Secretary.

[FR Doc. 93–12989 Filed 6–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–346–000]

Arkla Energy Resources Co.; Request Under Blanket Authorization

May 27, 1993.

Take notice that on May 18, 1993, Arkla Energy Resources Company (AER), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP93–346–000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain facilities in Louisiana, under its blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001, all as more fully set forth in the request on file with the Commission and open to public inspection.

AER specifically proposes to abandon one sales tap to Arkansas Louisiana Gas Company (ALG) for resale to a commercial consumer in Louisiana and to abandon Line RM–28, a 2-inch market lateral line used to deliver gas to this tap. AER indicates that ALG is providing service to their customer through ALG's own distribution facilities and AER's facilities are no longer needed.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 157.205) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed

therefore, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–12987 Filed 6–2 –93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–357–000]

Arkla Energy Resources; Request Under Blanket Authorization

May 27,1993.

Take notice that on May 25, 1993, Arkla Energy Resources Company (AER), Post Office Box 21734, Shreveport, Louisiana 71151, filed a prior notice request with the Commission in Docket No. CP93–357–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a sales tap and related facilities for the delivery of natural gas to Arkansas Louisiana Gas Company (ALG), under AER's blanket certificates issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the application which is open to public inspection.

AER proposes to construct and operate a one-inch sales tap in Custer County, Oklahoma, for initial service to the Oklahoma Department of Human Services, a commercial customer. AER would deliver up to 11 Mcf of natural gas per peak day and 540 Mcf annually for ALG's account via this tap. ALG would reimburse AER for the tap's estimated $1,511 construction costs.

AER states that it has adequate system gas supplies to provide the proposed service for ALG. AER also states that its tariff does not prohibit the addition of new delivery points.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 93–12988 Filed 6–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL93–42–000]

Towns and Cities of Clayton, Lewes, Middletown, Milford, New Castle, Newark, Seaford, and Smyrna, DE v. Delmarva Power and Light Co.; Filing

May 27, 1993.

Take notice that on May 19, 1993, the Towns and Cities of Clayton, Lewes, Middletown, Milford, New Castle, Newark, Seaford, and Smyrna, Delaware tendered for filing a complaint and motion for a refund effective date against Delmarva Power and Light Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. Delmarva's answer to the complaint shall be due on or before June 17, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13046 Filed 6–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL93–40–000]

Florida Municipal Power Agency v. Florida Power & Light Company; Filing

May 27, 1993.

Take notice that on May 14, 1993, Florida Municipal Power Agency (FMPA) tendered for filing a complaint against the Florida Power & Light Company (FPL). FMPA states that the complaint addresses five Transmission Service Agreements under which FMPA receives wheeling service from FPL.

FMPA requests that the Commission initiate a complaint proceeding and issue an order: (1) Finding that the transmission rates charged under the Transmission Service Agreements are unjust and unreasonable, produce excessive revenues, and should be reduced as explained in the complaint; (2) establish a refund-effective date 60 days from the date of the filing of this complaint and set the matters at issue in this complaint for hearing; and (3) afford FMPA such other relief as may be deemed appropriate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. FPL's answer to the complaint shall be due on or before June 17, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–12991 Filed 6–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–5–000]

Northwest Pipeline Corp.; Informal Settlement Conference

May 27, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on June 15, 1993 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Kathleen M. Dias (202) 208–0524.

Lois D. Cashell,

Secretary.

[FR Doc. 93–12990 Filed 6–2–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed; Week of May 7 through May 14, 1993

During the Week of May 7 through May 14, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 27, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 7 through May 14, 1993]

Date	Name and location of applicant	Case No.	Type of submission
May 11, 1993	Amoco II/Indiana, Indianapolis, IN	RM251–262	Request for modification/rescission in the Amoco refund proceeding. If granted: Indiana would be permitted to modify a previously approved second-stage refund plan to extend the "Fuel Saver Van Program."
May 12, 1993	Jon Berg, Providence, RI	LFA–0293	Appeal of an information request denial. If granted: The March 19, 1993 Freedom of Information Request Denial issued by the Office of Coal, Nuclear and Alternate Fuels would be rescinded, and Jon Berg would receive access to information withheld concerning Mr. Christopher Freitas for the period from January 1986 until September 1989.
May 13, 1993	John T. Allen, Redmond, WA	LFA–0294	Appeal of an information request denial. If granted: John T. Allen would receive access to four proposals which the Bonneville Power Administration obtained from the Wind Energy Demonstration Project RFP.
Do	U.S. Elevator, Albuquerque, NM	LFA–0295	Appeal of an information request denial. If granted: Fair procedures would be adopted for all Elevator Service Companies who might wish to bid on Contract No. TU–0052.
May 14, 1993	Gulf/New York Telephone Company, Cordova, TN.	RR300–252	Request for modification/rescission in the Gulf refund denial. If granted: The April 13, 1993 Dismissal Letter (Case No. RF300–21730) issued to New York Telephone Company would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	James L. Schwab, Spokane, WA	LFA–0296	Appeal of an information request denial. If granted: The April 30, 1993 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and James L. Schwab would receive access to documents pertaining to OPM contact with the Albuquerque Field Office regarding their background check on him.
Do	National Security Archive, Washington, DC.	LFA–0297	Appeal of an information request denial. If granted: The April 13, 1993 Freedom of Information Request Denial issued by the Freedom of Information and Security Review of the Department of Defense would be rescinded, and National Security Archive would receive access to material withheld by DOE in the Joint Chiefs of Staff chronology entitled "Summary of JCS Positions and Statements on Nuclear Testing, Proliferation, Weapons and Material January 1961–January 1977."

REFUND APPLICATIONS RECEIVED

[Week of May 7 to May 14, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/7/93 thru 5/14/93	Crude Oil Refund applications received	RF272–94697 thru RF272–94708.
5/7/93 thru 5/14/93	Atlantic Richfield applications received	RF304–13948 thru RF304–13949.
5/7/93 thru 5/14/93	Texaco Oil refund applications received	RF321–19727 thru RF321–19737.
5/10/93	Town of Marblehead, MA	RC272–107.
5/10/93	Burkewitz Oil Co	RF300–21739.
5/11/93	Sugarland Canal Service Station	RF346–52.
5/11/93	#516	RF238–90.

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 7 to May 14, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/11/93	Waldo Garcia	RF349–1.
5/14/93	Omaha World Herald Company	RC272–198.

[FR Doc. 93–13076 Filed 6–2–93; 8:45 am]

BILLING CODE 6450–01–P

Cases Filed; Week of April 30 through May 7, 1993

During the Week of April 30 through May 7, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 27, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 30 through May 7, 1993]

Date	Name and location of applicant	Case No.	Type of submission
May 6, 1993	Chicago Power Group, Chicago, IL	LFA–0292	Appeal of an Information request denial. If Granted: The April 8, 1993 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Chicago Power Group would receive access to DOE information.

REFUND APPLICATIONS RECEIVED

[Week of Apr. 30 to May 7, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
4/28/93	Arden DeRuyter	RC272–194.
5/06/93	Chemplex Company	RF340–182.
5/05/93	O.D. Anderson, Inc	RC272–196.
5/04/93	E. Vanderhoof & Sons	RC272–195.
4/30/93 thru 5/07/93	Crude oil refund applications received	RF272–94684 thru RF272–94696.
4/30/93 thru 5/07/93	Atlantic Richfield applications received	RF304–13893 thru RF304–13927.
4/30/93 thru 5/07/93	Texaco refund applications received	RF321–19718 thru RF321–19726.

[FR Doc. 93–13077 Filed 6–2–93; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of April 19 Through April 23, 1993

During the week of April 19 through April 23, 1993 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Federation of American Scientists, 04/22/93, LFA–0279

The Federation of American Scientists (Federation) filed an Appeal from a determination issued by the Office of Classification (OC) of the DOE's Office of Security Affairs. In that determination, the OC denied the Federation's request for information filed under the Freedom of Information Act (FOIA). In its Appeal, the Federation challenged the OC's application of Exemption 5 to the requested document. In considering the Appeal, the DOE found that the OC properly applied the threshold requirements of Exemption 5 to the requested document, and that there was no public interest in its release. However, the DOE remanded this Appeal to the OC to issue a new determination, either releasing reasonably segregable factual material or explaining the reasons for withholding any factual material contained in the document. The Federation's Appeal was accordingly granted in part.

Implementation of Special Refund Prodedures

Metropolitan Petroleum Company, Inc., Metropolitan Fuel Oil Company, 04/21/93, LEF–0032

The DOE issued a Decision and Order implementing special refund procedures to distribute $32,500, plus accrued interest, which Metropolitan Petroleum

Company, Inc. and Metropolitan Fuel Oil Company remitted to the DOE pursuant to a June 5, 1986 Remedial Order. The DOE determined that it would distribute the fund in two stages. In the first stage, the DOE will accept applications for refund from those claiming injury as a result of Metropolitan's violation of Federal petroleum pricing regulations. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution through the States in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986.

Refund Applications

Empire Gas Corportation/Odessa LPG Transport, 04/22/93, RR335–1

Odessa LPG Transport filed a Motion for Reconsideration of a Decision and Order that denied the firm's Application for Refund in the Empire Gas Corporation special refund proceeding (Case No. RF335–33). The Odessa application was denied because the firm failed to rebut the presumption that spot purchasers did not incur injury. In connection with its Motion for Reconsideration, Odessa filed (i) a statement from its President that the Empire refined product purchases had been made to fulfill supply obligations to base period customers and (ii) a comparison of Empire's monthly average selling price with the monthly average selling prices Odessa charged its customers. The statement of the firm's president was found to be insufficient to support the claim that Odessa bought from Empire to meet base period supply obligations. As to the price comparison data, the DOE found that Empire had profited from its resales of Empire propane in six of the eight months Odessa purchased Empire products. Accordingly, the Motion for Reconsideration was denied.

Gulf Oil Corporation/Villa Maria Gulf, 04/22/93, RR300–251

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted in the Gulf Oil Corporation special refund proceeding by Villa Maria Gulf. The Motion for Reconsideration was dismissed because it was filed after the March 1, 1993 deadline established as the final filing date for the Gulf proceeding and the applicant provided no compelling reason why the OHA should reconsider its earlier claim.

Shell Oil Company/Browning Oil Company, Inc., Tri-County Oil Co., Inc., 04/21/93, RF315–7659, RF315–7660

The DOE issued a Decision and Order granting two Applications for Refund filed in the Shell Oil Company special refund proceeding on behalf of Browning Oil Company, Inc. and Tri-County Oil Co., Inc. The DOE found that while the firms were commonly owned, they remained so operationally distinct as to warrant separate consideration of their claims. Accordingly, each firm was granted a refund of $5,000 plus interest under the small claims presumption of injury.

Shell Oil Company/Dvorak's Shell Service, 04/23/93, RF315–7075

The DOE issued a Decision and Order granting an Application for Refund filed in the Shell Oil Company special refund proceeding on behalf of Dvorak's Shell Service (Dvorak's Shell). Dvorak's Shell purchased a total of 3,707,496 gallons of gasoline from Holmes Oil Corporation (Holmes), a Shell-branded jobber. In litigation unrelated to the current proceeding, however, it was determined that approximately 43 percent of the product sold to Dvorak's Shell was actually non-Shell product purchased on the spot market and illegally resold at the higher Shell posted price. Therefore, we granted Dvorak's Shell a refund based upon 57 percent of its total purchases from Holmes, or 2,113,273 gallons. The total refund approved in the Decision and Order was $710 (representing $478 principal and $232 interest).

Texaco Inc./Frontier Companies of Alaska, Inc., 04/20/93, RF321–18718

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding on behalf of Frontier Companies of Alaska, Inc. Frontier filed an Application for Refund based on a purchase volume of 7,654,575 gallons of covered petroleum products. The purchase volume was derived from an estimation methodology that the DOE found to be unacceptable in this instance. Therefore, Frontier was granted a refund of $558 ($413 principal and $145 interest) based only on documented purchases of 375,282 gallons of Texaco covered petroleum products.

Texaco Inc./Green Mountain Texaco, 04/22/93, RR321–46

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Ray C. Pepe, the owner of Green Mountain Texaco. The DOE had previously denied two duplicate Applications for Refund filed on Mr. Pepe's behalf by two different filing services, because Mr. Pepe had wrongly stated on one application that he had not authorized any other firm to file an application on his behalf in the Texaco proceeding. The DOE found that Mr. Pepe was confused by the multiple application forms that he had received from Texaco and the two filing services. The DOE concluded that he did not intend to file duplicate applications. Consequently, the DOE granted the Motion for Reconsideration and approved a refund.

Texaco Inc./Northeast Texaco, 04/21/93, RF321–19265

On August 23, 1990, the DOE issued a Decision and Order in the Texaco Inc. special refund proceeding granting an Application for Refund filed by Northeast Texaco, a retailer of Texaco products. That refund was based upon the applicant's claim that he operated the retail outlet from March 1974 to January 1979, and the volume of purchases at that location between those dates. Subsequently, another applicant filed an application for refund for the same retail location for the period ending November 1975. That second applicant submitted documentary evidence to support its claim. Accordingly, the DOE found that Mr. Vigliaturo, the owner of Northeast Texaco, should repay, with interest, that portion of its refund attributable to purchases made before December 1975.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Bernie's Arco *et al*	RF304–13685	04/19/93
Atlantic Richfield Company/Centre Arco Service *et al*	RF304–13494	04/21/93
Atlantic Richfield Company/Charles E. Moulder, Inc.	RF304–13740	04/22/93
Cardox Div. of Liquid Air Corp	RC272–190	04/22/93
Center Line Public Schools *et al*	RF272–80754	04/21/93

Corn Construction Company	RF272–16007	04/23/93
Corn Construction Company	RD272–16007	
J.J. Garland *et al*	RF272–91107	04/23/93
Kevin Benfer *et al*	RF272–91600	04/23/93
Moberly School District *et al*	RF272–81282	04/19/93
New Miami Local School Dist.	RA272–54	04/23/93
Shell Oil Company/Dairyman, Inc.	RF315–7413	04/20/93
Rushco Shell	RF315–10275	
Texaco Inc./Crow's Texaco Service *et al*	RF321–10649	04/23/93
Texaco Inc./ Denison Texaco	RF321–2221	04/19/93
Texaco Inc./Hammock Texaco *et al*	RF321–15485	04/21/93
Texaco Inc./Miller Brothers Bulldozer & Trucking *et al*	RF321–4697	04/22/93
Texaco Inc./Pilgram Feed Mill Division *et al*	RF321–16082	04/23/93
Texaco Inc./Pop's Texaco	RF321–19704	04/23/93
Texaco Inc./Potter's Texaco Servc. Stat. *et al*	RF321–14001	04/23/93
Texaco Inc./Ritchie's Texaco *et al*	RF321–16441	04/20/93
Town of Leicester, Hwy. Dept. *et al.*	RF272–91200	04/23/93
Town of Monson, Maine *et al*	RF272–88146	04/22/93

Dismissals

The following submissions were dismissed:

Name	Case no.
Atlantic Richfield Company	RF315–7763
Bryant's Gulf	RF300–15328
Carco Texaco	RF321–12045
City of Dallas	RF321–19682
City of Hamden	RF272–87833
City of Humboldt	RF272–87820
City of Princeton	RF272–83384
County of Alger	RF272–87873
County of Franklin	RF272–87814
County of Hudsbeth	RF272–87895
County of Mason	RF272–87863
County of Mayes	RF272–87862
Curt Spotts Gulf	RF300–15480
Danny Tompkins Texaco	RF321–11211
Devilbiss Company	RF272–68135
Egolf Texaco	RF321–10769
El Paso Rock Quarries	RF272–69552
General Freight Systems	RF300–17920
Girard Brothers, Inc	RF321–11972
Hyatt Texaco #1	RF321–12092
Hyatt Texaco #2	RF321–12093
J.F. Twist Mercantile Co	RF272–83430
John & George, Inc	RF315–8704
Knechel Brothers	RF321–11830
L. Wilbur & Son, Inc	RF300–16840
Loveland Texaco	RF321–13924
Med Center Texaco	RF321–19697
Merrill A. Snider	RF315–10168
Pacific Gamble Robinson Co., Inc.	RF321–16829
Paul's Biscayne Shell	RF315–10161
Price Brothers Gulf	RF300–16140
Ritzville School District	RF272–83532
Santa Rosa Elementary	RF272–79364
Santa Rosa High	RF272–79355
Shelnutt Texaco	RF321–10762
Smith's Shell Mart	RF315–8705
Smith's Shell Mart	RF315–8714
Spring City Foundry	RF272–67770
Suburban Shell, Inc	RF315–8260
Tarpon Garden Shell	RF315–8720
Terry's Skyline Texaco	RF321–12012
Town of Irmo	RF272–87815
Upshaw Texaco	RF321–19698
Village Mount of Morris	RF272–83495
Vowell Construction	RF272–69553
Wayne R. Ridgeway	RF321–14949

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 27, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–13078 Filed 6–2–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4662–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 2501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

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

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: National Emission Standard for Mercury (Part 61 Subpart E)—Reporting and Recordkeeping Requirements (EPA ICR No. 0113.05; OMB No. 2060–0097). This is a request for renewal of a currently approved information collection.

Abstract: All facilities which process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, or incinerate or dry wastewater treatment plant sludge must maintain records and submit reports to the Agency.

Records of emission test results and other data needed to determine total emissions must be maintained at the source and made available for inspections for a minimum of two years. Excess emission reports are required semiannually. The Agency uses this information to determine compliance and to select plants or processes for inspection.

Burden Statement: The public annual reporting burden for this collection of information is estimated to average 13 hours per respondent, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the reporting requirements. Public annual record keeping burden for this collection of information is estimated to average 110 hours per respondent.

Respondents: Owners or operators of facilities which process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and incinerate or dry wastewater treatment plant sludge.

Estimated No. of Respondents: 298.

Estimated No. of Responses Per Respondent: 1.24.

Estimated Total Annual Burden on Respondents: 37,066.

Frequency of Collection: quarterly, annually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street SW., Washington, DC 20460

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: May 21, 1993.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 93–13055 Filed 6–2–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4663–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

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

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes (Subpart III), and Distillation Operations (Subpart NNN)—Reporting and Recordkeeping Requirements (EPA ICR No. 0998.04; OMB No. 2060–0197). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of SOCMI air oxidation processes and distillation operations must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. The owners or operators of affected facilities must continuously monitor parameters indicating the performance of the control device or recovery equipment. They must also maintain records to show that the control device or recovery equipment is operated and maintained such that the reduced emissions reflect the capabilities of the best technological system of continuous emission reduction. They must report deviations in operating parameters on a semiannual basis. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 17 hours per response for reporting, and 85 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of SOCMI air oxidation processes and distillation operations.

Estimated Number of Respondents: 45 for air oxidation processes and 1,062 for distillation operations.

Estimated Number of Responses Per Respondent: 6.

Estimated Total Annual Burden on Respondents: 205,131 hours.

Frequency of Collection: One-time notifications and reports for new facilities; semiannual reporting.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street SW., Washington, DC 20460

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: May 27, 1993.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 93–13056 Filed 6–2–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4662–6]

Review of National Primary Ambient Air Quality Standards for Sulfur Oxides; Proposed Consent Decree

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; opportunity for public comment.

SUMMARY: Notice is hereby given of a proposed consent decree in litigation concerning review of the national primary ambient air quality standards for sulfur oxides under the Clean Air Act ("Act"). As discussed more fully below, the Environmental Protection Agency ("EPA") is providing an opportunity for public comment on the proposed decree under section 113(g) of the Act.

DATES: Written comments on the proposed decree must be received by July 6, 1993.

ADDRESSES: Written comments should be sent, preferably in triplicate, to Gerald K. Gleason, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Copies of the proposed decree are available from Diane L. Weeks at the same address (telephone 202–260–7606).

FOR FURTHER INFORMATION CONTACT: John H. Haines (Program Officer), telephone 919–541–5533 or Gerald K. Gleason (Senior Attorney), telephone 202–260–7623.

SUPPLEMENTARY INFORMATION: In *American Lung Association* v. *Browner*, No. CV–92–5316 (ERK) (E.D.N.Y.), the American Lung Association and other plaintiffs sued EPA under section 304 of the Act to compel review and, if appropriate, revision of the national primary ambient air quality standards ("NAAQS") for sulfur oxides, codified at 40 CFR 50.4, under section 109(d) of the Act. EPA and the plaintiffs have moved to lodge with the U.S. District Court for the Eastern District of New York a proposed consent decree intended as an alternative to further litigation in the case. The proposed decree would require EPA by April 1, 1994, either (1) to take final action on the primary standards portion of a pending proposal not to revise the NAAQS for sulfur oxides (53 FR 14926, April 26, 1988) or (2) to sign a revised notice of proposed rulemaking ("reproposal") proposing to revise the primary NAAQS for sulfur oxides. In the latter case, the proposed decree would require a public comment period of 60 to 120 days and final action on the

reproposal within one year after the close of the public comment period.

Final approval and entry of the proposed decree are subject to section 113(g) of the Act, which requires notice and opportunity for comment on certain consent orders and settlement agreements to which the United States is a party. Accordingly, for a period of thirty (30) days following the date of publication of this notice, EPA will receive any written comments on the proposed decree. Under section 113(g), EPA or the Department of Justice may withhold or withdraw consent to the proposed decree if the comments disclose facts or circumstances indicating that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Dated: May 26, 1993.

Gerald H. Yamada,

Acting General Counsel.

[FR Doc. 93–13054 Filed 6–2–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 26, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0325

Title: Section 80.605, U.S. Coast Guard Coordination

Action: Extension of a currently approved collection

Respondents: Individuals or households, state or local governments, non-profit institutions, businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting

Estimated Annual Burden: 47 responses; 1.1 hours average burden per response; 52 hours total annual burden

Needs and Uses: This rule is necessary to ensure that no hazard to marine navigation will result from the grant of applications for non-selectable transponders and shore based radionavigation aids. The Coast Guard is responsible for making this determination under 14 U.S.C. 18. Section 308(b) of the Communications Act of 1934, as amended, mandates that the Commission have such facts before it to determine whether an application should be granted or denied. The potential hazard to navigation is a critical factor in determining whether this type of radio device should be authorized. The information is used by Licensing Division, Private Radio Bureau, to determine whether an applicant for non-selectable transponder ship and coast or shore based radionavigation stations should be granted. If the collection of information were not conducted, stations posing a hazard to marine navigation could be licensed inadvertently and/or long delays in the processing of applications could result due to the necessity for coordination between the FCC, the Coast Guard and the applicant.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–12969 Filed 6–2–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1943]

Petitions for Reconsideration, Application for Review and Motion for Stay of Actions in Rulemaking Proceedings

May 27, 1993.

Petitions for reconsideration and clarification, application for review and motion 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 18, 1993. See § 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: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Station. (Ashland, California, Rolla, and Monroe City, Missouri) (MM Docket No. 91–181, RM Nos. 7696 & 7817)

Number of Petitions Filed: 1

Subject: Amendment to § 1.773 of the Commission's Rules Regarding Pleading Cycle for Petitions Against Tariff Filings Made on 14 Days' Notice. (CC Docket No. 92–117)

Number of Petitions Filed: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Beverly Hills, Chiefland, Holiday, Micanopy and Sarasota, Florida (MM Docket No. 92–195, RM Nos. 7091, 7146, 8123 & 8124)

Number of Petitions Filed: 1

Subject: Implementation of section 3 of the Cable Television Consumer Protection and Competition Act of 1992. Tier Buy-Through Prohibition (MM Docket No. 92–262)

Number of Petitions Filed: 1

Subject: Implementation of section 8 of the Cable Television Consumer Protection and Competition Act of 1992. Consumer Protection and Customer Service (MM Docket No. 92–263)

Number of Petitions Filed: 2

Application for Review

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Bald Knob and Clarendon, Arkansas) MM Docket No. 90–651, RM No. 7544)

Number of Applications Filed: 1

Subject: Request for Waiver of § 97.313(b) of the Commission's Rules Governing Transmitter Power Standards in the Amateur Service.

Number of Applications Filed: 1

Motion for Stay

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Beverly Hills, Chiefland, Holiday, Micanopy and Sarasota, Florida (MM Docket No. 92–195, RM Nos. 7091, 7146, 8123 & 9124)

Number of Motions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–12968 Filed 6–2–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Port of New York and New Jersey/P&O Containers Ltd., et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the

following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200775

Title: Port of New York and New Jersey/P&O Containers Ltd. Container Incentive Agreement

Parties: The Port Authority of New York and New Jersey ("Port"); P&O Containers Ltd. ("P&O")

Synopsis: The Agreement provides that the Port will pay P&O a container incentive of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993, provided each container is shipped by rail to or from points more than 260 miles from the port.

Agreement No.: 224–200776

Title: Port of New York and New Jersey/Croatia Line Container Incentive Agreement

Parties: The Port Authority of New York and New Jersey ("Port"); Croatia Line ("Croatia")

Synopsis: The Agreement provides that the Port will pay Croatia a container incentive of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993, provided each container is shipped by rail to or from points more than 260 miles from the port.

Dated: May 27, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–12966 Filed 6–2–93; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 90–23; Petition No. P1–93]

Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce; Tariffs and Service Contracts; Supplemental Report No. 4 and Order

In the matter of Australia/Eastern U.S.A. Shipping Conference, Australia-Pacific Coast Rate Agreement, and Australia-New Zealand Direct Line—Petition for Temporary Exemption From Electronic Tariff Filing.

In its December 17, 1992, *Supplemental Report No. 3 and Notice* in this proceeding (57 FR 59999), the Federal Maritime Commission ("FMC" or "Commission") established a revised phase-in schedule for the filing of tariff data into the Automated Tariff Filing and Information System ("ATFI"). The complete schedule is presently, and will remain, as follows (all dates are in 1993):

Trade area	Begin	Complete
• [Voluntary (early) filing of ANY tariff.	After Feb 21].	
A. Worldwide/Asian & South Pacific.	Feb 22	Jun 4.
B. European	Jun 14	Aug 27.
C. Africa/Mid East	Sep 13	Sep 24.
D. North America/Caribbean.	Sep 29	Oct 8.
E. Central/South America.	Oct 11	Nov 12.
F. Terminals/Domestic Trades.	Nov 22	Dec 31.
G. New Essential Terms.	Nov 22	

Filers must notify the ATFI Hot Line at 703–883–8350 ten (10) days before beginning to convert a full tariff under the above schedule, and all paper tariffs not converted by the "Complete" date are subject to cancellation by order of the Commission in an appropriate proceeding. See *Supplemental Report No. 3 and Notice* for further details.

This Report and Order address petitions for waiver of applicable rules and comments thereon, as well as other comments made in this proceeding, which were to be submitted by April 30, 1993. See 58 FR 25 of January 4, 1993.

Additionally and unless special permission is granted, all electronically-filed tariffs shall become fully effective no later than 90 days from the last day of the applicable filing window, e.g., for tariffs filed during the first window which ends on June 4, the effective date may be no later than September 4, 1993. If individual extensions for filing are granted through the petition-for-exemption process, the effective date may be later, i.e., 90 days from the new deadline date. For the implementation phase, the last effective date will be April 1, 1994 (90 days from December 31, 1993, the close of the last filing window.), unless further extended by order of the Commission.[1]

COMMENTS

Comments have been filed by: The Asia North America Eastbound Rate Agreement, South Europe/USA Freight Conference, U.S. Atlantic & Gulf/Australia-New Zealand Conference, and the "8900 Lines" ("The Conferences"); Sea-Land Service, Inc. ("Sea-Land"); and the ATFI Working Group ("AWG"), consisting of the American West African Freight Conference; Caribbean and Central America Discussion Agreement; the "8900" Lines Agreement; Inter-American Discussion Agreement; Inter-American Freight Conference; Israel Trade Conference; South Europe/U.S.A. Freight Conference; Trans-Atlantic Agreement; Transpacific Westbound Rate Agreement; U.S. Atlantic & Gulf/Australia-New Zealand Conference; United States Atlantic & Gulf/Western Mediterranean Rate Agreement; A.P. Moller—Maersk Line; Crowley American Transport, Inc.; Evergreen Marine Corporation (Taiwan) Ltd.; Sea-Land Service, Inc.; Wilhelmsen Lines AS; and Zim-Israel Navigation Co. AWG is authorized by FMC Agreement No. 203–011405 to advocate common positions before governmental and other bodies, and to discuss, evaluate and reach agreement with respect to matters pertaining to the compiling, filing, retrieval, storage, dissemination, and use of electronic and other tariff and service contract information.

Exemptions

None of the commenters in Docket 90–23 (Sea-Land, the Conferences and AWG) requested an extension of time to file tariffs later than the windows applicable to the filers represented. Petition No. P1–93, requesting a temporary exemption from the electronic filing requirements of 46 CFR part 514, was filed on May 10, 1993, by the Australia/Eastern USA Shipping Conference, Australia-Pacific Coast Rate Agreement, and Australia-New Zealand Direct Line ("Petitioners"). The Petitioners request that the "Complete" date of June 4, 1993, by which they would have to file their tariffs, be extended by sixty days to August 4, 1993, for the filing of superseding tariffs by a new conference, i.e., the Australia/United States Containerline Association

[1] The Commission has not previously established a deadline for effectiveness, as opposed to filing, of tariffs.

("AUSCLA"). This new agreement (FMC No. 202–011407) became effective under the Shipping Act of 1984 on May 24, 1993, but will not be "registered" under Australian Law until mid to late July, 1993, after which, the new agreement will file new tariffs, and the old conference and carrier tariffs will be terminated. The exemption, if granted, will allegedly avoid the expense of converting the old tariffs to electronic form, only to be completely superseded almost immediately. The petition for exemption was filed pursuant to 46 CFR 502.69 and 514.8(a) and was published for public comment by May 24, 1993, in the **Federal Register** on May 17, 1993 (58 FR 28876). No comments were received.

Given the unique situation described above, the Commission grants the Petitioners until August 4, 1993, to electronically file the AUSCLA tariffs, which will supersede their existing paper tariffs. The new tariffs must be made effective no later than 90 days from the date of filing.

The application process for obtaining an exemption from the electronic filing requirement is the same as for a petition for an exemption from the requirements of the shipping statutes or regulations, i.e., filing and opportunity for pubic comment. Shippers and other carriers would appear to have an interest in any petition to postpone electronic filing. Accordingly, and in fairness to all, the Commission will continue to require the filing of such petitions whenever filers are having difficulties with making the window deadlines. See the Supplementary Information to the interim rule at 57 FR 36257 (August 12, 1992).

As long as the window deadlines are complied with, the Commission believes there is sufficient flexibility to allow filers to submit their tariffs and make them effective with minimal burden to the industry or the Commission. For example, the Commission will allow tariffs to be filed with up to a ninety-day notice period from the last day of the appropriate window before the tariff becomes effective. This will allow filers sufficient time to correct any deficiencies that they discover in their filing. It will then also allow sufficient time to correct any items that might be rejected by the Commission.

Additionally, the Commission is authorizing a special procedure with respect to commodity descriptions. In January 1993, the Commission issued Information Bulletin No. 4–93 cautioning the industry that its ATFI filings must comply with applicable tariff filing requirements, as contained in 46 CFR part 514. Among other things, the Commission advised that commodity descriptions may not be vague and ambiguous, and may not include such broad descriptions as "department store merchandise," or "goods for the manufacture of * * *." Since that time, the Commission has received a number of inquiries with respect to the commodity-description issue, including the AWG May 25, 1993, letter. Moreover, a number of ATFI tariffs and/or commodity descriptions have been rejected because they contain vague or ambiguous commodity descriptions.

Because there appears to be some uncertainty and confusion regarding this issue, the Commission is adopting a procedure that will allow filers to avoid the immediate rejection of any non-compliant commodity description if the commodity-description filing specifies an expiration date no later than December 31, 1993. The Commission's staff is available upon request to discuss commodity descriptions with filers to assist them in making the appropriate corrections. As a result of this process, any deficient commodity descriptions must be replaced with fully compliant items before the expiration date. Commodity descriptions that do not contain an expiration date will be subject to review and, if appropriate, rejection. While these procedures are different from those proposed in AWG's May 25, 1993, letter, they should provide the basis for proceeding with ATFI implementation without further delay or the need for other formal procedures. Accordingly, the approach in this Order is without prejudice to future Commission consideration of other proposals of AWG or anyone else to facilitate implementation, whether or not they may involve rulemaking.

In their comments, the Conferences note that here have been relatively few tariffs filed in ATFI to date and recommend that the Commission undertake a formal or informal investigation to identify areas of concern to filers so that they can be effectively addressed. Other than the issues the Conferences raise in their comments, no reasons for such delay are identified. If the reasons for delay are not within the direct control of the filer but have prompted the first-window filer to hold up its electronic filing of tariff data, the Commission would consider granting individual petitions for exemption from electronic filing for up to 60 days (until August 4, 1993.)[2]

These procedures are relatively lenient and, hopefully, will accommodate most situations that could arise. Extensions of time from the window deadlines will continue to involve the filing of a petitions for exemption with reasons, which should be provided for each filer. The formal petitions may afford some protection to each filer and substantially help the Commission to later identify other filers whose tariffs may be subject to cancellation for failure to file.

Other Matters Raised in the Comments

While the Docket No. 90–23 invitation for comments by April 30, 1939, appeared in the notice of the First Interim Amendments to part 514, the comments themselves primarily addressed matters not directly involving rulemaking and none at all warranted rulemaking at this time. The following is a brief discussion of the items raised.

Addition of Data to the ATFI Database

One cause of delay in filing may be the time it takes to add validated geographic locations to the ATFI glossary, as pointed out by the Conferences. AWG expands this to include other additions to ATFI validation tables, but erroneously states that there are no rules or guidelines governing a request for the addition of data to the ATFI system. Such procedures are clearly set forth in 46 CFR 514.8(d)(4), and at this time, the Commission is processing additions proposed by AWG members.

With so many proposed additions, the process has taken time and the Commission welcomes AWG's and the Conferences' suggestions to expedite it through, for example, contracting out. The Commission is looking into all various options, but none of them can be effectuated soon enough to facilitate implementation of the first window. To allow the filing of new data without validation by the Commission for a period of time until it could become validated is not feasible.

Accordingly, if essential additions to validation tables cannot be made timely, the vehicle for obtaining any necessary extension of time to file is the petition for exemption pursuant to § 514.8(a). Any such petition should set forth the history of the filer's efforts to have locations added and the extent to which the process has required the delay in filing. Additionally, for the near future, a 90-day effective day for an initially-filed object or full tariff would

[2] In addition to Petition P1–93, a petition for exemption of NYK Line was submitted on May 26, 1993, and will be published in the **Federal Register** for public comment.

accommodate many other necessary additions.

Precedence of Algorithms over Text

Section 514.10(d)(1)(ii) of title 46 CFR, provides that if there is any conflict between the algorithm and the textual description of the assessorial, the algorithm shall take precedence. The Conferences argue that the text-based rule should prevail over the algorithm, or if the Commission has any reservations about this, it should at least defer any decision.

Sea-Land, in its separate comments, agrees with the Commission's approach in the interim rule, and states that, to decide otherwise is a prescription for commercial and regulatory chaos. Sea-Land explains:

> Algorithms which definitively result in consistent, understandable calculations are the fundamental building block for clear and unambiguous tariffs, by extension, evenhanded treatment of shippers. * * * To require the filing of Algorithms on one hand, but then defang them by giving preference to text on the other, would effectively remove any incentive for the tariff filer to do the job correctly in the first place.
>
> Opportunities for mischief by tariff filers would abound. * * * Sea-Land believes that a regulatory environment which encourages error prevention rather than error correction is the soundest course. We therefore urge the Commission to maintain its present position on algorithms.

The Commission agrees with Sea-Land and will maintain its present position and deny the Conferences' request to change or defer the operation of § 514.8(a). See also the Supplementary Information for the August 12, 1992, Interim Rule at 57 FR, pp. 36251–36256, and 36263–36264.

Postponement of the Effective Date of a Tariff Filing

AWG and the Conferences note that under the current system, an amendment can postpone the effective date of a tariff or a single tariff object, but that this is not possible in ATFI at this time. The parties are correct and that is why the Commission recommends that for initial tariffs in ATFI, the filer provide up to 90 days advance notice for effectiveness. This should provide an opportunity to ensure that its electronic filings are accurate. The Commission is continuing to explore the feasibility of pursuing the incorporation of a change to the system to permit postponements.

Testing, Class Rates, Multiple Rate Bases and Postal Codes

The Conferences, concerned about the potential of filing a tariff which contains an inaccurate algorithm or other error, request that the Commission establish some mechanism which allows carriers and conferences to file their tariffs in ATFI on a trial basis to determine if they have been accurately converted to ATFI format, correctly reflect the commercial intent of the carriers, and yield correct rate and charge calculations. Essentially the same request and justification had been submitted by ANERA to the FMC's Director, Office of Information Resources Management, in April of this year. ANERA's correspondence is being placed in the record of this proceeding, along with the Commission's response.

The Commission cannot provide for a separate testing capability on either the production system or the backup system, now that ATFI has entered the production phase. Any attempt to establish a testing facility would jeopardize the sizing of the system and there are not enough resources to support it. There have been many opportunities for testing, primarily during the extended prototype phase, and testing similar to that requested still can be obtained in batch filing certification sessions and interactive "practice" filing.

Other matters raised by AWG but already being handled separately are: multiple rate bases; Postal Codes; and class rates, which ATFI now can accommodate for commodity, but not location, categories (classes). AWG also requests that the Commission include rate bases other than those presently available in ATFI, but does not describe which rate bases it wants. The procedure for adding new transaction data already exists, as stated above. See 46 CFR 514.8(d)(4).

Charges in Currencies Other Than U.S. Dollars

Charges for tariff services in foreign countries may be set forth in local currency, but, as previously requested by industry, are converted to U.S. dollars in the calculation process. AWG wants to be able to override this functionality so that the charges can remain in the foreign currency. If a filer wants the "bottom-line" rate to be expressed in the foreign currency, it can so designate in the "currency default" function. If not, the calculation user may have difficulty in obtaining a clear bottom-line figure.

Pro-Rating of Rates and Charges

AWG complains that ATFI does not have the capacity to provide "pro-rating," for example, for overflow cargo to be rated at a pro-rated per-container rate. This is incorrect. Such a rule, similar to that in current paper tariffs, can be provided in ATFI, and if the rate can be predetermined with accuracy, an appropriate algorithm can be constructed. If it cannot be predetermined, however, an algorithm cannot or need not be constructed, as the Commission stated in response to previous industry complaints. See 46 CFR 514.10(d)(1)(iv).

Expiration of 14-Digit Numbers; Essential Terms

AWG requests that the Commission allow "expired" 14-digit numbers to be reused, especially if the new TLI for which the carrier wishes to use the number is identical to the expired TLI. While intended for identical items, the database approach militates against reuse in order to prevent just the confusion that AWG claims will arise by not allowing it. Further, AWG argues that this problem is particularly severe in the context of the essential terms of service contracts. Essential terms, however, now can be filed in full-text, as opposed to a database, format, and there no longer is such a thing as a "TLI" in essential terms. See 46 CFR 514.17(d) and accompanying analysis at 57 FR 36267–36268 (August 12, 1992) and 58 FR 27 (January 4, 1993). AWG also argues that requiring multiple container shipments to be filed as assessorials and a TLI to be linked to that assessorial in essential terms. The January 1993 interim amendments which permit essential terms to be filed in full-text format eliminates any such problems in this regard.

Similarly, AWG incorrectly states that the interim rule allows assessorials in only Rule 10 of the ET publication. Mandatory Term 10 of 46 CFR 514.17(d)(7)(x) allows the filer to either set forth every assessorial, or provide "a complete cross-reference to the place(s) where it may be found." Moreover, these "rules" (terms) are in the essential terms "document," not the essential terms "publication," unless the filer wants to put generic rules in the publication, which are applicable to all documents. The flexibility is there.

Finally AWG urges the Commission to provide an opportunity for public review and input on any proposed modifications to ATFI software or filing procedures relating to the essential terms of service contracts. This was done in 1992 and resulted in the January 1993 changes requested by the Conferences and others. See above.

Operational Issues

AWG suggests that the FMC add more incoming lines to ATFI. That we have recently done. Also, AWG's fears that a caller may "camp-out" on the system are allayed by the automatic log-off after

10 minutes of inactivity. AWG's suggestion that the FMC should take steps to ensure that all parties registering as filers are in fact filers is already implemented through the registration process, whereby the tariff owner designates who may modify its tariff, and the ID/password system whereby filers may access only their own tariffs. If they have no tariffs, they cannot access anything as a filer.

AWG request that the Hot Line be in operation up to 24 hours service a day. Budget constraints do not permit this. However, there does not yet appear to be a need for such expansion of hours, in view of an answering service and next-business-day call-back by the Hot-Line operators. These operators are knowledgeable on technical matters, but do not have the authority to resolve "whatever problems that may arise," as AWG requests.

AWG's suggestion that there be a centralization point for dissemination of ATFI information, especially on changes made to the system and related matters, is a valid one and the Commission will further consider it. Changes, however, continue to be promptly noticed in the System News, Documentation, and in Commission notices.

AWG urges the Commission to revise ATFI to allow a type of tariff adoption, which can be accomplished now under the paper system by a relatively simple filing. This issue has been explored and rejected. Moreover, to provide this functionality would appear to be "value-added" and unfairly compete with tariff services.

Where a same-day filing can be withdrawn ("W") as erroneous under 46 CFR 514.9(b)(23), AWG requests that it be completely deleted from the system so as not to confuse users or embarrass the filer. The basic structure of ATFI, which mandates that everything possible be kept in the system as a historical record militates against this approach. Moreover, if the questionable filing is promptly replaced or superseded, users will see the old filing in "History."

AWG requests that the system automatically delete "orphaned" TLIs, i.e., TLIs that remain in the system after the associated commodity description is deleted. The system was designed so that filers would delete all related objects. This was done to ensure that filers had complete control over their individual entries. The requested functionality would be a step in the direction of permitting another entity (in this case the system) to change someone else's filing and, for this reason, is inadvisable. Accordingly, the Commission does not believe that the present design of the system is flawed in this regard.

AWG's request that tape filings be accepted after 5 p.m., which is the deadline under § 514.8(c)(3). The requested change cannot be accommodated. On-line batch filing and interactive filing allow amendments at any time.

AWG recommends that the FMC offer batch filers the option of receiving in their E-mail EDI-like responses (for acknowledgement and/or rejection of filings) which would allow "synchronization" of databases. This functionality will be available on the daily (subscription) database tapes. Any further sophistication requested by AWG would become value-added in competition with the private sector.

Conclusion

The foregoing considered, the Commission sees no need to amend part 514 at this time or to change the implementation schedule, with the qualifications specifically set forth above.

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–13090 Filed 6–2–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P2–93]

NYK Line Petition for Temporary Exemption From Electronic Tariff Filing Requirements; Filing of Petition

Notice is hereby given that Nippon Yusen Kaisha ("NYK Line") has filed a petition, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Specifically, NYK Line requests exemption from the June 4, 1993, electronic filing deadline for a period of sixty (60) days. Petitioner states that it currently has nineteen (19) independent tariffs in various trade lanes, and plans to restructure and consolidate those tariffs into two export and two import tariffs, all of world-wide scope (plus a bill of lading and an equipment interchange agreement tariff). Petitioner avers it needs the temporary exemption to allow it to devote necessary staff time to the consolidation and restructuring effort.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than June 11, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for Petitioner: Kathleen Mahon, Esq. Lillick & Charles, One World Trade Center, suite 950, Long Beach, California 90831–0950.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–13091 Filed 6–2–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Reserve Bank Services

[Docket No. R–0727]

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved new Federal Reserve Bank services related to checks not collected through the Federal Reserve Banks and enhancements to the Federal Reserve Banks' funds transfer service. The services are designed to facilitate a paying bank's responsibility to settle for checks presented by private-sector presenting banks and to enable paying banks to continue to provide timely cash management information to their corporate customers. Specifically, the Board has approved presentment point services that could increase the efficiency of making private-sector presentments, payor bank services for checks not collected through the Reserve Banks, and a new Fedwire product code to facilitate settlement for checks presented by private-sector banks. The Board has not approved development of a Federal Reserve Bank bilateral settlement service because other settlement mechanisms adequately meet the needs of paying banks and presenting banks.

DATES: The information in this notice is effective as of May 26, 1993.

FOR FURTHER INFORMATION CONTACT: Florence M. Young, Assistant Director (202/452–2745) or Thomas C. Luck, Senior Financial Services Analyst (202/452–3935), Division of Reserve Bank Operations and Payment Systems. For the Hearing impaired *only:* Telecommunication Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The Federal Reserve Banks currently provide a variety of services to banks,[1] including check collection and net settlement services. The Federal Reserve Banks assess fees to banks using their services. In March 1991, the Board proposed new and enhanced services that the Federal Reserve Banks could offer in light of the same-day settlement rule that the Board had proposed in January 1991 (56 FR 10429, March 12, 1991).

On September 30, 1992, the Board approved amendments to Regulation CC that provide for same-day settlement by paying banks for checks presented by private-sector banks (57 FR 46956, October 14, 1992). Under the same-day settlement rule, a paying bank is required to settle for checks presented by private-sector banks on the day of presentment, if specified conditions are met. The amendments provide an 8 a.m. (local time at the place of presentment) presentment deadline for same-day settlement. A check would qualify for same-day settlement if it were presented at a location designated by the paying bank that is consistent with the check processing region associated with the routing number encoded on the check. Under the amendments, if a bank presents a check in accordance with the time and location requirements for same-day settlement, the paying bank either must settle for the check on the business day it receives the check without charging a presentment fee or must return the check prior to the time for settlement. The settlement must be in the form of a credit to the presenting bank's account (or the account of a correspondent settlement agent) at a Federal Reserve Bank. Regulation CC permits banks to vary provisions of the regulation by agreement. Thus, a paying bank could agree with a presenting bank to accept checks for same-day settlement at a presentment deadline other than 8 a.m., or a presenting bank may accept settlement in another form agreeable to it.

Summary

The Board proposed that the Reserve Banks offer several new or enhanced services to facilitate the implementation of the same-day settlement rule. The proposal included offering (1) a presentment point service under which a paying bank could designate its local Federal Reserve office as a presentment point for checks presented to it by a private-sector bank, and (2) information services to payor banks that would provide data on checks that are not collected through the Federal Reserve. The Board also proposed that the Reserve Banks make certain enhancements to the Fedwire format to enable banks to identify, on an automated basis, those funds transfers related to settlement for check presentments and associated adjustment activity. Further, the Board requested comment on whether the Federal Reserve Banks should offer a new bilateral settlement service.

The Board received 58 comments in response to the proposed services to be offered by the Federal Reserve Banks in a same-day settlement environment.[2] The breakdown of commenters is:

Commenter	Count
Commercial Banks/BHCs	36
Savings Banks	7
Credit Unions	5
Trade Associations	4
Clearing Houses	3
Miscellaneous	3
Total	58

The majority of the commenters supported the Federal Reserve's proposed presentment point service and information services for payor banks. Most commenters also favored the proposed enhancement of the Fedwire format. On the other hand, most commenters indicated that a bilateral settlement service would not be utilized because it was perceived to be cumbersome and costly. Commenters stated that other existing settlement options, including the enhanced Fedwire service, would be adequate to enable paying banks to settle timely for checks presented by private-sector banks.

The Board approved the Federal Reserve Banks' offering presentment point services and certain electronic information services related to checks not collected through the Federal Reserve. These new services are intended to provide an alternate location at which a paying bank may receive check presentments and to facilitate a paying bank's continued ability to provide timely cash management information to its corporate customers. The Board also approved a new Fedwire product code to facilitate payments and requests for payment for checks presented by private-sector banks under the same-day settlement rule. Because of the high cost and lack of interest from banks, the Board has decided not to implement a Federal Reserve bilateral settlement service for checks presented by private-sector presenting banks.

Following is a summary of the comments received on the proposed services, other issues raised by respondents, and a description of the services that the Board approved.

New Federal Reserve Services

Presentment Point Service. The Board proposed that the Federal Reserve Banks offer a new service under which a paying bank could designate its local Federal Reserve office as a presentment point for same-day settlement checks presented to the paying bank by a private-sector bank. The proposed new service would allow a private-sector presenting bank to deliver checks to the paying bank's local Federal Reserve office for subsequent pick-up by the paying bank. Under the proposal, presentment of checks would occur at the time the Federal Reserve office received the checks. The paying bank would be responsible for settling with the presenting bank for the checks. The presentment point service, as originally proposed, would have required paying banks to negotiate agreements with presenting banks to designate the paying bank's local Federal Reserve office as an alternate presentment location.

The Board received 53 comments on the proposed presentment point service. While some commenters stated that they would not need such a service, the majority of commenters supported the Federal Reserve's offering a presentment point service.

Many commenters indicated that a paying bank should have the right to designate the place of presentment for its checks. Some commenters indicated that demand for the proposed service would be greater if a paying bank could unilaterally designate the Federal Reserve office as its place of presentment. This position was supported by several commenters who believed that smaller paying banks may find the service beneficial. On the other hand, one commenter stated that the presentment point service would not be beneficial to community banks. In addition, several commenters stated that the service would not appeal to banks that were members of clearinghouse arrangements.

The Board believes that some banks would consider designating a Federal

[1] Regulation CC (12 CFR part 229) defines bank to include all depository institutions—commercial banks, savings institutions, and credit unions. A paying bank is a bank, by, at, or through which a check is payable and to which it is sent for payment or collection. The Uniform Commercial Code defines presenting bank as a bank, other than the paying bank, that presents a check.

[2] Two Reserve Banks submitted comments on the Board's proposal. Those comments were not included in the analysis of public comments.

Reserve office as the exclusive location for same-day settlement presentments (i.e., the "primary" presentment point). In adopting the same-day settlement rule, the Board approved provisions that allow a paying bank to designate a location, including its local Federal Reserve office, as a presentment point. Thus, if a paying bank designates its Federal Reserve office as a presentment point for same-day settlement checks, any presenting bank must present such checks at that location to qualify for same-day settlement and may also present other checks (i.e., not for same-day settlement) drawn on the paying bank at that location as well.

Under the Uniform Commercial Code (UCC), presentments to a designated presentment point may be made by a private-sector presenting bank until the paying bank's cut-off hour, which is normally 2 p.m. local time. Thus, checks presented after 8 a.m. local time but before the UCC cut-off hour would be subject to the settlement and return provisions of the UCC.[3] Of particular concern to a paying bank would be the provisions regarding the time-frame within which checks presented after 8 a.m. must be returned. Because some paying banks may prefer to receive checks that are presented after the same-day settlement deadline at their own facilities, or may wish to vary the same-day settlement rule with certain presenting banks, the Reserve Banks have developed an alternate presentment point service, which would be offered in addition to the primary presentment point service. Under this service, a paying bank would agree with a presenting bank that checks delivered to a particular Federal Reserve office—either the paying bank's local Reserve office or another Reserve office—would constitute presentment. In such an arrangement, the agreement between the paying bank and the presenting bank would establish, among other things, the time and terms of presentment, settlement arrangements, and the handling of returned checks.[4]

To facilitate use of the two presentment point services by paying banks, the Reserve Banks developed an optional, enhanced service that would provide information on checks that are delivered to Federal Reserve offices. The information provided to the paying bank would include the identification of the collecting bank, the amount of the checks, and the time the checks were received at the Federal Reserve office.

The Board approved the Federal Reserve Banks' offering two new services, a primary presentment point service and an alternate presentment point service, under which a paying bank could designate its local Federal Reserve office—or, in the case of the alternate presentment point service, agree with presenting banks on any Federal Reserve office—as a place of presentment for checks presented by a private-sector presenting bank. The Board also approved an optional service that could be used in conjunction with the presentment point services that would provide information on checks that are presented at a Federal Reserve office.

Some commenters believed that standards should be established for banks using the Federal Reserve's presentment point service. The Board considered the need for standards for checks presented by private-sector presenting banks in adopting the same-day settlement rule. The Board concluded that presenting banks and paying banks could address these issues more effectively within the context of the good faith standard.

To use the primary presentment point service, a paying bank must enter into an agreement with its local Federal Reserve office. The Reserve office will accept cash letters from presenting banks, time-stamp the incoming deliveries, provide verification of receipt to the delivering agent, physically control the cash letters, and provide verification of the time of receipt to the paying bank or its designated agent. The Federal Reserve office will incur no liability or accountability for the checks other than that associated with its duty to exercise ordinary care while the checks are in the possession of the Federal Reserve office.

Presenting banks must package and label separately all same-day settlement cash letters presented at Federal Reserve offices to distinguish them from other checks being deposited for collection through the Federal Reserve. If a Federal Reserve office receives checks for a paying bank that does not subscribe to the presentment point service, it would treat those checks as if they were a fine-sort deposit at the Federal Reserve for the next available fine-sort deadline. The Federal Reserve will not be responsible for monitoring any presentment deadline agreed to by the paying bank and the presenting bank. A paying bank will be required to provide the Federal Reserve office advance notice before commencement or termination of the agreement.

To use the alternate presentment point service, a paying bank must enter into an agreement with a Federal Reserve office, local or in another territory, and agreements with each presenting bank. Agreements between a paying bank and a presenting bank might specify (1) the time(s) of delivery of checks to the Federal Reserve office, (2) any restrictions on the types of presentments, and (3) settlement arrangements.

The Reserve office would time-stamp and control incoming deliveries. If a Reserve office receives checks for a paying bank that does not have an agreement with a bank attempting to present checks to it, the Reserve office would treat the checks as a fine-sort deposit for collection by the Federal Reserve at the next available deadline.

Under the enhanced presentment point service, a paying bank may elect to receive, via voice mail, fax, or telephone, the following information for each presentment made at a Federal Reserve office: (1) The collecting bank identification, (2) the time of delivery, and (3) the dollar amount of the checks.

The Board also requested comment on a proposed fee structure for presentment point services. Specifically, the Board proposed that a fixed fee, which was estimated to be in the range of $15 to $25 per day, be charged to the paying bank for the presentment point service. The Board questioned whether a portion of the costs of providing the presentment point service should be recovered through a fee assessed to the presenting bank.

Several commenters stated that the proposed fixed daily fee was an appropriate approach. Three commenters discussed alternatives to the proposed fee structure. Two commenters indicated that the fee should be based on the number of packages handled by the Federal Reserve office. One commenter stated that, for an intercept processor, the daily fixed fee should be applied per location, rather than per paying bank.

[3] The pre-1990 version of the UCC, in effect in most states, permits settlement for checks by cash, or, if accepted by the presenting bank, by credit to a Federal Reserve or correspondent account or by a remittance draft. The 1990 version permits settlement by cash or credit to a Federal Reserve account as well as other means accepted by the presenting bank. The time of settlement under the UCC is midnight on the day of presentment, rather than the close of Fedwire as provided for same-day settlement checks.

[4] A paying bank that uses the Federal Reserve's alternate presentment point service could also designate another location as its "primary" presentment point for same-day settlement for those presenting banks with whom the paying bank does not have an agreement. If the paying bank does not designate a "primary" presentment point, those presenting banks with whom it does not have an agreement could present checks for same-day settlement at any location identified in § 229.36(b) of Regulation CC (12 CFR 229.36(b)).

Thirty-one commenters responded to the Board's question concerning assessing the presenting bank a portion of the fee. Seventeen commenters indicated that only the paying bank should be charged, eight commenters preferred charging the presenting bank, and six commenters stated that the fee should be shared by the presenting bank and the paying bank. Two commenters, who favored the Federal Reserve's charging the paying bank, indicated that the paying bank and the presenting bank would negotiate which party would ultimately bear the cost of the settlement.

The Board believes it is appropriate that only the paying bank be assessed the fee because under the same-day settlement rule a presenting bank may not have an option as to where it must make presentment. The Reserve Banks have further analyzed the costs of providing presentment point services and have concluded that there are fixed overhead costs associated with receiving presentments for each paying bank, and there are also variable costs associated with handling presentments received from each presenting bank. As a result, the Board adopted a fee structure that includes a daily minimum fee and a variable fee for each bank presenting checks to a paying bank.

The fees for the alternate presentment point service would be higher than the fees for the primary presentment point service, in order to recover the costs of monitoring the source of receipt of presentments. Fees for the enhanced presentment point services would be higher than for the basic presentment point services (primary and alternate) to reflect the cost of providing additional information to payor banks. The following table illustrates the fee structure and expected range of prices for the presentment point services. The actual fees will be announced by each Reserve Bank following the Board's approval of the Reserve Banks' 1994 fees for the check service in October 1993.

FEE SCHEDULE FOR PRESENTMENT POINT SERVICES

Service	Minimum fee	Variable fee [5]
Basic Primary ..	$5.00–$8.00	$0.50–$1.00
Basic Alternate	$6.00–$10.00.	
Enhanced Primary.	$10.00–$16.00.	$1.00–$2.00
Enhanced Alternate.	$12.00–$18.00.	

[5] Fee assessed for each bank presenting checks to the paying bank.

Supplemental Payor Bank Services. The Federal Reserve Banks currently offer services to payor banks with respect to checks collected through the Reserve Banks. These services, which include account totals, MICR capture, special sort, and electronic presentment,[6] are offered to (1) accelerate availability, in the case of truncation and extended-MICR services, (2) assist paying banks in assembling payment data to facilitate the provision of corporate cash management services, and (3) reduce the paying bank's operating costs.

The Board proposed that the Federal Reserve Banks offer supplemental payor bank services for checks presented by private-sector banks either at a Federal Reserve office designated by the paying bank as a presentment point, or presented to another designated presentment point and subsequently delivered to the Federal Reserve office. Two types of services were proposed—regular and premium. Under the regular service, the presenting bank or the paying bank would deliver the checks to the Federal Reserve, generally by the latest deadlines established by the Federal Reserve office for the deposit of checks drawn on the paying bank. The Federal Reserve office would intermingle checks received under the regular service with checks being collected through the Federal Reserve that are designated for payor bank services. Under the premium service, the Federal Reserve would accept checks from presenting or paying banks at a later presentment deadline and would provide information to the paying bank based on agreements with that bank.

The Board requested comment on whether presenting banks would present checks at the paying bank's Federal Reserve office, even if they had to agree with the paying bank to present the checks earlier than 8 a.m. Under the proposed premium service, at the option of the paying bank, Federal Reserve offices would accept checks from presenting banks or paying banks at a presentment deadline later than that established for the regular service. Because of this later receipt, checks would not be intermingled with those being collected through the Federal Reserve.

The Board received 47 comments on the proposed supplemental payor bank services. Most commenters supported the Federal Reserve's offering the proposed services. Many commenters pointed out that these services would be most beneficial to banks offering corporate cash management services. There was no consensus among the commenters as to whether early presentment at a Federal Reserve office would be acceptable, although the responses seemed to focus on the cost effectiveness of such a practice from the presenting bank perspective. For example, one commenter said it would be willing to present earlier in order to take advantage of lower courier costs in presenting to a single location. Another commenter argued that the 8 a.m. deadline should be uniform and, therefore, it would be unwilling to deliver prior to that time.

Based on the positive response from commenters and the efficiencies associated with the use of payor bank services, the Board approved the Federal Reserve Banks' offering supplemental payor bank services to a paying bank for checks presented to its local, or an alternate, Federal Reserve office as a presentment point or for checks delivered to the Federal Reserve office by the payor bank. The supplemental payor bank services that will be offered will include account totals, MICR capture, and special sort services as well as "delayed delivery" and "safekeeping" services. These latter services will mirror the current extended MICR capture and truncation services, respectively, in all aspects except that delivery of the electronic data from checks that have been previously presented to the paying bank (either directly or via the Federal Reserve's presentment point service) does not constitute presentment to the paying bank by the Federal Reserve Bank.

The information from checks that are delivered to a Federal Reserve office up to two hours after the appropriate fine sort deadline for city, RCPC, or country items, respectively, or by 6 a.m., whichever is earlier, will be included in the first transmission. For checks received after this cut-off time, but by 8 a.m. local time, the payor bank service information will be transmitted no earlier than 9:30 a.m. Eastern Time.

[6] The account totals service provides paying banks with the dollar total and the number of checks being presented for specific individual accounts, or for a grouping of accounts. The MICR capture service provides paying banks, via tape or transmission, the MICR-line data from checks being presented to the paying banks. The special sort service provides paying banks with a specified subset of its checks, outsorted and presented separately from the remainder of its checks. The electronic presentment services, such as extended MICR capture and truncation, provide paying banks with MICR-line data from checks presented to the paying banks through the Federal Reserve. Presentment occurs when the data are delivered electronically to the paying bank. The physical checks may be retained at the Federal Reserve office for several days in order to provide return services before they are delivered to the paying bank or they may be safekept by the Reserve office.

Payor bank service information on checks received after 8 a.m. local time will be transmitted later in the day by special agreement.

Because the paying bank is responsible for settlement with the presenting bank under the same-day settlement rule, the Federal Reserve will perform neither settlement nor subsequent adjustment functions involving the checks for which it provides supplemental payor bank services. A paying bank will receive all the relevant settlement data on the day checks are presented. Due to the timing of processing, the data provided for a given day's checks may not include all adjustment information, which may be provided with reconcilement information on the next business day.

It is important to note that the Federal Reserve would not act as a collecting bank with respect to checks for which it provides supplemental payor bank services. The paying bank, however, must agree to indemnify the Federal Reserve from any losses in connection with the provision of this service because the Federal Reserve may be characterized as a collecting bank, notwithstanding its disclaimer of that status. The timing of implementation of supplemental payor bank services at individual Federal Reserve offices will vary based on demand for the product by local paying banks and resources available in each office.

The Board's proposal estimated that the total fees for regular supplemental payor bank services would be approximately the same as the sum of the fees for providing payor bank services on fine-sort checks collected through the Federal Reserve, plus the fine-sort collection fee. Fees for the proposed premium service were estimated to be higher than the fees for the regular service because the checks would have been run during peak processing times. The Board requested comment on whether a portion of the fee for the supplemental payor bank service should be charged to the presenting bank, or whether the entire fee should be assessed to the paying bank. Twenty-seven commenters responded to the Board's question. Twenty favored charging the paying bank, and four indicated that the fee should be shared by the presenting and paying banks. Three banks believed that the fee should be apportioned based on the benefits received.

The Board believes that the paying bank should be assessed the entire fee for the supplemental payor bank services because it is the bank receiving the benefit of the services. The fees assessed by the Reserve Banks for supplemental payor bank services will be comparable to the fees currently charged for payor bank services. Because the supplemental payor bank services are similar to fine-sort deposits, a per item fee will be assessed to cover the cost of opening and processing the checks. In addition, the paying bank would pay the current payor bank service fees associated with the specific payor bank products used. Further, if a paying bank designates the Federal Reserve as a presentment point, it would be assessed a daily minimum fee equal to the daily minimum fee(s) for the payor bank product(s) used plus $1.00 to $10.00, depending upon the type of presentment point service used. As with regular payor bank services, Reserve offices may establish peak and off-peak variable fees for supplemental payor bank services.

Some Reserve Banks have received requests to provide certain payor bank services for checks not collected through the Federal Reserve before the same-day settlement rule becomes effective. It is anticipated that individual Reserve Bank proposals may be submitted to the Director of the Division of Reserve Bank Operations and Payment Systems for approval under delegated authority. The Reserve Banks will provide a 30-day notice before offering new services. In the majority of cases, Reserve Bank fees for these services will be announced by each Reserve Bank following the Board's approval of the Reserve Banks' 1994 fees for the check service in October 1993.

Enhancements to the Fedwire Format to Facilitate Settlement. The Board proposed that the Reserve Banks enhance the Fedwire format so that banks could identify, on an automated basis, those funds transfers related to settlement for check presentments and associated adjustment activity. Specifically, the Board envisioned that designating certain Fedwire funds transfers as check settlement or adjustment transfers could be accomplished by establishing a new product code[7] for differentiation of those transfers from other funds transfers. By using the existing Fedwire "bank-to-bank information" (BBI) field, a paying bank could explain any difference between the transfer amount and the cash letter total, identify adjustment activity, or detail individual cash letter totals, if the transfer amount represented settlement for multiple cash letters. In addition, the Board requested the public's views on which particular structured third-party field should be used to convey detailed information related to the transfer amount.

Similarly, the Board envisioned that use of the "request for credit transfer" (subtype code 31), which is a non-value message that requests the receiver to originate a value transfer to the designated party, could facilitate notification by a presenting bank to a paying bank of the amount of presentments. For example, if the checks are presented to a service bureau for processing, the presenting bank may wish to use a request for credit transfer message to notify the paying bank of the amount of the cash letter.

Finally, comments were requested on other changes to the Fedwire funds transfer service that would be desirable to facilitate the settlement of checks.

The Board received 46 comments that responded directly to its proposal to enhance the Fedwire funds transfer format to differentiate check same-day settlement transfers from other funds transfers. None of the commenters opposed the use of the funds transfer service to settle check presentments on a same-day basis. Commenters generally indicated that the existing format, with enhancements, would facilitate the settlement process and allow efficient automated processing of check settlement transactions. Moreover, several commenters noted that they currently settle cash letters by Fedwire and that they believe it is an effective mechanism. These commenters noted, however, that the proposed enhancements to differentiate check-related transfers would be very valuable. A few commenters indicated that the current funds transfer format could adequately accommodate check settlement transactions without further enhancement, but did not specifically object to any of the proposed enhancements. These commenters also noted that significant increases in the volume of check same-day settlement transfers would increase the need for the proposed enhancements.

Commenters overwhelmingly endorsed the Board's proposal to identify a new product code for check same-day settlement transfers. Several commenters noted that it is easy to modify the product code field and to edit it without extensive automated system changes. Conversely, one commenter was concerned that the existing Fedwire format could not be changed enough to identify check settlement transactions uniquely, particularly if an obsolete code was

[7] A product code is a code which enables the receiver of the message to determine the purpose of the transfer. Currently, the valid product codes are: BTR/Bank Transfer, beneficiary is a bank; CTR/Customer Transfer, beneficiary is a non-bank; DEP/Deposit to Sender's account; DRW/Drawdown; FFR/Fed Funds Returned; and FFS/Fed Funds Sold.

reactivated for same-day settlement purposes. That commenter suggested a new Fedwire format be developed. Several commenters noted that adding a new product code would require some system changes and requested that banks be notified well in advance of the implementation date.

All commenters supported the use of the "bank-to-bank information" field to convey detailed information related to check settlement transactions. Several commenters noted that field size limitations could be overcome by supplemental messages, facsimiles or telephone communication. A few commenters suggested that the field be structured to facilitate editing.

Based on the comments received, the Board believes that the existing Fedwire format can be used to settle same-day settlement transactions. The Board approved the Reserve Banks' plans to enhance the Fedwire funds transfer format to provide a new product code, CKS/Check Settlement, so that banks can identify, on an automated basis, those funds transfers related to the settlement of check presentments and associated adjustment activity. The Board also endorses the use of the existing BBI field to convey the details of the check settlement transaction. Structuring of the BBI field will not be mandatory, but may be used on a voluntary basis. The Federal Reserve Banks will not reject messages that do not comply with the voluntary structuring of the BBI field. Existing transaction codes also will be used: Check same-day settlement transactions should be marked "settlement transfer" (type code 16) with "normal transfer" (subtype code 00) to remit settlement proceeds, or "request for credit transfer" (subtype code 31) to initiate settlement requests and the "funds transfer honoring a request for credit transfer" (subtype code 32) to respond. The regular funds transfer fee (currently $0.53) will be assessed to both the originating bank and the receiving bank for a check same-day settlement transfer through the Fedwire funds transfer service. The new product code will be available when the same-day settlement rule is effective, January 3, 1994.[8]

Evaluation of Proposed Changes. The Board's March 1990 policy statement, "The Federal Reserve in the Payments System," indicates that all new services or major service enhancements proposed by the Federal Reserve must meet certain criteria and must be subject to a competitive impact analysis based on the procedures set forth in that policy statement.

First, new or enhanced services must meet the following tests: (1) Projected revenues must fully recover the costs of providing the service, (2) the service must provide a clear public benefit, and (3) the service must be one that other providers alone cannot be expected to provide. In its request for comment, the Board questioned whether the proposed presentment point and supplemental payor bank services meet the criterion that private-sector providers alone cannot be expected to provide such services with reasonable effectiveness, scope and equity.

Most of the 10 commenters addressing the question agreed that the proposed services met the Board's criterion. A majority of the commenters believed that similar services would be offered by private-sector service providers if there were a demand for the services. Some commenters noted that development of a capability to offer payor bank services would be expensive and that it would be more economical for the Federal Reserve Banks to offer such services. One commenter stated that the proposed supplemental services again would place the private sector and the public sector in direct competition on a service where the public sector determines the rules.

The range of fees proposed by the Reserve Banks for the presentment point services reflects their estimates of the costs of providing the services. Additional cost and usage information should be available when the Reserve Banks set 1994 check fees. This information will be used to establish specific 1994 fees, with the objective of recovering the costs of providing the presentment point services. As experience is gained with these services, fees will be adjusted to reflect actual experience. The proposed fees for the supplemental payor bank services are consistent with the Reserve Banks' current payor bank service fees, which are recovering the costs of providing the services.

Offering the presentment point services should yield public benefits because the service will permit multiple paying banks to use one presentment location. Unlike the locations of other service providers, Reserve Bank locations currently are served on regular transportation routes and are convenient for many presenting banks because they may also deposit checks at Federal Reserve offices. As a result, offering the services should reduce the transportation resources that would otherwise be necessary for presenting banks to transport checks to paying banks. In addition, it is likely that other service providers would offer presentment point services, but would most likely offer them only in conjunction with other services. The Board believes, therefore, that it is unlikely that the needs of all banks interested in designating a presentment point will be met by private-sector service providers.

Supplemental payor bank services provide public benefits by supporting effective account management by corporate cash managers. Facilitating cash management through payor bank services on checks presented by private-sector presenting banks allows for more efficient use of corporate funds. In addition, the supplemental payor bank services would enable paying banks to receive payor bank service transmissions from one source, which may facilitate their internal corporate cash management operations.

Similar services are not widely offered by the private sector today because some paying banks currently impose barriers to presentment by private-sector presenting banks, if such presentments would impede their ability to provide cash management services or would otherwise adversely affect their operations. The Board believes that private-sector service providers may be reluctant to offer similar services immediately since significant capital investment may be necessary. Without immediate and widespread response from the private sector, a level of service that would allow the product to be available with reasonable effectiveness, scope and equity may not be available without Federal Reserve Bank participation. The Board believes that, initially, the supply of the services that the private-sector firms would offer would not be sufficient to satisfy the demands of payor banks. The Board, therefore, believes that the Reserve Banks should offer payor bank information services.

In assessing the competitive impact of the presentment point and supplemental payor bank services, consideration was given to whether the services would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services and, if they did, whether the effects are due to legal differences or to a dominant market position deriving from such legal differences. The comments received on the Board's proposal did not raise any issues that indicated that private-sector service providers would be unable to

[8] Fedline users will be able to input the new product code by data entry in January 1994; the Fedline multiple-choice menu will be updated during early 1994. Details concerning use of the new product code will be incorporated in the Reserve Banks' operating circulars.

compete effectively with the Federal Reserve.

The Board believes that the Federal Reserve's offering presentment point services would not affect adversely private-sector entities that could be designated as presentment points by paying banks. The Federal Reserve's services do not rely on the existence of legal differences between the Federal Reserve Banks and other service providers. Typically, a paying bank would designate as a presentment point the location of a data processing firm or a correspondent bank that performs demand deposit accounting for the checks drawn on the paying bank. The Federal Reserve Banks do not provide demand deposit accounting services and do not have any inherent advantages in providing presentment point services, with the possible exception of the convenience of a location where checks are already delivered and picked up by collecting banks and paying banks.

Although the Federal Reserve is currently a dominant provider of payor bank services, the implementation of the same-day settlement rule, which provides private-sector banks the right to obtain same-day settlement for checks directly presented to paying banks, should enable private-sector banks to compete effectively with the Federal Reserve. There are, however, no legal differences that would prevent private-sector banks from providing services to paying banks that are similar to the services provided by the Reserve Banks. Generally, a presenting bank, because it has possession of the checks, would have an advantage in offering timely and cost-effective payor bank services to the paying bank.

The Federal Reserve service would allow the paying bank to incorporate checks collected through private-sector channels with the checks that are eligible for the Federal Reserve's current payor bank services. Because of the requirement for timeliness of the data by the paying bank, and in light of the current base of payor bank services being performed by the Federal Reserve Banks, paying banks may choose the Federal Reserve as the supplier of payor bank services for all of the checks on which a paying bank desires to receive payor bank services.

Services Not Approved by the Board

Bilateral Settlement Service. The Board requested comment on whether the Federal Reserve Banks should offer a new bilateral settlement service for the settlement of checks not collected through the Federal Reserve. Under a bilateral settlement service, the paying bank and the presenting bank could authorize the Federal Reserve to settle for checks presented by the presenting bank and for subsequent adjustments through accounts maintained at the Federal Reserve. The presenting bank would initiate the settlement entry by transmitting payment information to the Federal Reserve. Under the proposal, the Federal Reserve would function settlement entries to specified reserve accounts during two cycles each day, with provision for reversal of erroneous entries.

The Board received 40 comments on the bilateral settlement service. The proposed service was viewed by nearly all of the commenters as costly, complicated, and more risky than other available forms of settlement. Twenty-six of the 31 commenters that addressed the demand for a Federal Reserve bilateral settlement service believed that such a service would not be useful to banks and that existing alternative settlement mechanisms were adequate to meet same-day settlement requirements. For example, several commenters stated that the proposed service offered few additional benefits and that current options are adequate to meet the needs of banks. One commenter concluded that the proposed service was too cumbersome, costly, and entailed unacceptable risks.

Three check clearinghouses indicated that the bilateral settlement service was unnecessary and unlikely to be utilized extensively. These commenters recommended that the Federal Reserve propose a multilateral settlement service under which a presenting bank would provide a settlement agent, such as a clearinghouse, with settlement data for each paying bank to which a presenting bank had presented checks. The settlement agent would prepare a file containing a net debit or net credit for each participating bank and notify the Federal Reserve of the settlement amounts. The Federal Reserve would function the settlement entries, much as it does for local settlement arrangements. The commenters envisioned that the multilateral settlement arrangements could be local, regional or nationwide.

Four commenters supported further development of a bilateral settlement service. One commenter believed that a bilateral settlement service could be superior to Fedwire funds transfer settlement, and that an effective, reasonably priced settlement system is required to achieve more balanced competition between private collecting banks and the Federal Reserve Banks.

Based on the comments received, it appears that the demand for a bilateral settlement service would be limited. Because the potential cost of developing the service are high, it is unlikely that the Reserve Banks would be able to recover the costs of providing such a service. The Board, therefore, believes the bilateral settlement service should not be pursued further at this time. The Board notes that the Federal Reserve Banks currently provide multilateral net settlement services to over 100 check clearing arrangements. Conceptually, a settlement agent, such as a clearinghouse, could obtain any necessary agreements from the participants in the settlement arrangement and arrange with the Federal Reserve Bank to function net entries to the accounts of the participants at the Federal Reserve. The Reserve Banks would consider requests for new check settlement arrangements proposed by groups of banks interested in improving the efficiency of settling for checks cleared in the private sector.

Other Potential Federal Reserve Services. In its request for comment, the Board discussed several new or enhanced services that the Reserve Banks might offer in a same-day settlement environment but that the Board rejected, at this time, for a number of reasons. Following is a summary of the comments received by the Board on those services.

Transportation Services. The Board considered whether three types of transportation services might be offered by the Reserve Banks in conjunction with implementing the same-day settlement rule: (1) Requiring Reserve Banks to permit conjunctive business on intradistrict transportation networks, (2) permitting conjunctive business on the Federal Reserve Banks' Interdistrict Transportation System (ITS), and (3) arranging transportation for the delivery of same-day settlement checks to paying banks. In each case, the Board determined that no significant public benefit would be realized from offering these services. In the first case, couriers are permitted to seek conjunctive business when it is operationally feasible and does not jeopardize the expeditious delivery of checks by the Federal Reserve Banks. In the second case, the Board believed that the time-critical nature of the interdistrict check collection system required the Federal Reserve Banks to maintain control of ITS.

Five commenters discussed transportation services. Four commenters indicated that the Federal Reserve Banks should offer local transportation services for checks processed by private-sector banks. These commenters reasoned that the Federal Reserve Banks would continue

to transport checks they collect and, thus, were in a good position to offer the service to private-sector banks. One commenter stated that the Federal Reserve Banks' experience with the issue of transportation services was outdated and the concerns raised by the Federal Reserve Banks no longer exist. Another commenter suggested that the Federal Reserve request comment on an interdistrict delivery service because the decade-old experience may not be relevant now. This commenter also suggested that the Federal Reserve authorize a pilot project to test such a new transportation service. During the late 1970s, the Federal Reserve Banks experimented with conjunctive business on the ITS network and the delays experienced in delivering checks caused float to rise to high levels. Because of the divided loyalties of couriers and the inherent decentralized decision-making, the Federal Reserve Banks were unable to obtain reliable delivery of their checks at scheduled times. The Board believes that the Reserve Banks' experience with conjunctive business on the ITS network during the 1970s is likely to be indicative of the control problems that would become evident in the current environment.

The Board continues to believe that no clear public benefit would be realized by offering conjunctive business on the Federal Reserve's ITS network nor in offering other transportation services at this time. Moreover, these services are readily available and do not require Federal Reserve involvement to ensure banks are able to obtain services.

Adjustment Service. The Board evaluated whether the Federal Reserve Banks should offer a new priced adjustment service to handle adjustments for checks not collected through the Federal Reserve. Currently, the Reserve Banks handle adjustments only for checks collected or returned through the Federal Reserve. Because there appear to be no significant public benefits associated with the Federal Reserve Banks' offering a new adjustments service and because other providers can serve as intermediaries in exchanges of adjustment documentation or as arbiters for check adjustments, the Board determined that the Federal Reserve Banks should not offer such a service.

Several commenters stated that the Federal Reserve should offer an adjustment service. They saw the existence of a structured, automated, Fed-administered system as critical to the success of same-day settlement. One commenter stated that a priced adjustment service merits further review and another commenter suggested that a priced adjustment service is necessary because the good faith standard is not sufficient for resolving all adjustment issues. Another commenter suggested that the Federal Reserve should offer an adjustment service, at least during the initial implementation of same-day settlement. One commenter, however, stated that there is no need for a Federal Reserve Bank adjustment service if the settlement service is adequate to handle adjustments.

The Board attempted to incorporate procedures for handling adjustments between private-sector banks in the design of the bilateral settlement service. The commenters on that service found the procedures to be complicated and cumbersome, and believed that alternative settlement arrangements were adequate. As a result, the Board did not approve implementing an adjustment service at this time.

By order of the Board of Governors of the Federal Reserve System, May 27, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–13027 Filed 6–2–93; 8:45 am]

BILLING CODE 6210–01–P

Corporacion Bancaria de Espana, S.A., 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 28, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Corporacion Bancaria de Espana, S.A., Madrid, Spain; to become a bank holding company by acquiring 69.2 percent of the voting shares of Banco Exterior de Espana, and thereby indirectly acquire Extebank, Stony Brook, New York.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Corte Banc Corporation, New Orleans, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank & Trust, New Orleans, Louisiana.

2. First National Bancorp, Gainesville, Georgia; to acquire 100 percent of the voting shares of The Community Bank of Carrollton, Carrollton, Georgia.

3. SouthTrust Corporation, Birmingham, Alabama; SouthTrust of Florida, Inc., Jacksonville, Florida; and South Florida Financial Corporation, Cape Coral, Florida; to merge with Gulf & Southern Financial Corporation, Fort Myers, Florida, and thereby indirectly acquire The National Bank of Lee County, Fort Myers, Florida.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Heritage Bancshares Group, Inc., Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Geiger Corporation, Minneapolis, Minnesota, and thereby indirectly acquire Heritage Bank, N.A., Holstein, Iowa; and Heritage Bancshares Corporation, Willmar, Minnesota, and thereby indirectly acquire Heritage Bank, N.A., Willmar, Minnesota.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Worthen Banking Corporation, Little Rock, Arkansas; to merge with First Bentonville Bancshares, Inc., Bentonville, Arkansas, and thereby indirectly acquire FIRSTBANK, N.A., Bentonville, Arkansas.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Mutual Bancshares, Everett, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Everett Mutual Savings Bank, Everett, Washington.

Board of Governors of the Federal Reserve System, May 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–13030 Filed 6–2–93; 8:45 am]

BILLING CODE 6210–01–F

Thelma Holmes Duft and Ray Elwyn Stamm, 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 23, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Thelma Holmes Duft and Ray Elwyn Stamm, to acquire an additional 1.82 percent for a total of 10.2 percent of the voting shares of First Lena Corporation, Lena, Illinois, as the result of a stock redemption, and thereby indirectly acquire Citizens State Bank of Lena, Lena, Illinois.

2. Dennis B. Long and Anne L. Long, to acquire 0.86 percent of the voting shares; and Thomas B. Bryan and Sally A. Bryan; to acquire 0.86 percent of the voting shares of Bancorp of Rantoul, Inc., Rantoul, Illinois, and thereby indirectly acquire Bank of Rantoul, Rantoul, Illinois. Each couple will jointly own a total of 10.69 percent.

Board of Governors of the Federal Reserve System, May 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–13031 Filed 6–2–93; 8:45 am]

BILLING CODE 6210–01–F

North Milwaukee Bancshares, Inc., 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 28, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. North Milwaukee Bancshares, Inc., Milwaukee, Wisconsin; to acquire NM Processing, Inc., Milwaukee, Wisconsin, and thereby engage in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the City of Milwaukee, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire through its wholly owned subsidiary, Norwest Investment Services, Inc., Minneapolis, the assets of the Bloomington, Minnesota Office of Citicorp Investment Services, Long Island City, New York, and thereby engage in full-service brokerage pursuant to § 225.25(b)(15); and the sale of annuities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in the Minneapolis, Minnesota Metropolitan Area. Comments on this application must be received by June 17, 1993.

Board of Governors of the Federal Reserve System, May 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–13032 Filed 6–2–93; 8:45 am]

BILLING CODE 6210–01–F

Peoples State Bancshares, Inc., 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 23, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Peoples State Bancshares, Inc., Grant, Alabama; to engage *de novo* through its subsidiary, Gunter Mountain Finance, Inc., Grant, Alabama, in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the State of Alabama.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Old National Bancorp, Evansville, Indiana; to engage *de novo* through its subsidiary, ONB Investment Services, Inc., Evansville, Indiana, in providing full service securities brokerage services pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–13033 Filed 6–2–93; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Multiple Award Federal Supply Schedule

The General Services Administration, Office Supplies and Paper Products Commodity Center is reviewing Special Item Number 466–1, Self-Adhesive Labels for Dry and Wet Toners, under Multiple Award Federal Supply Schedule FSC Group 75, Part XI, FSC Class 7530 for the purpose of changing the method of supply to competitive award. Some sizes, types, styles, etc., within an item category may be removed from the Multiple Award Schedule for competitive award while other sizes, types, styles, etc., may continue being supplied from the Schedule. Comments regarding this matter may be directed to Mrs. Veronica Turner, Engineering and Commodity Management Division (2FYEM), room 20–130, 26 Federal Plaza, New York, NY 10278. Comments should be made within thirty days from the date of this notice and should address the potential impact on small business concerns.

Dated: May 19, 1993.

Harold E. Murrell,

Director, Office Supplies and Paper Products Commodity Center (2FY).

[FR Doc. 93–12972 Filed 6–2–93; 8:45 am]

BILLING CODE 6820–24–M

Multiple Award Federal Supply Schedule

Notice is hereby given that the Office Supplies and Paper Products Commodity Center, Federal Supply Service, is developing technical requirements, which may state part number or equal, for Special Item Number 466–1, Self-Adhesive Labels for Dry and Wet Toners, on Multiple Award Federal Supply Schedule, FSC Group 75, Part XI, FSC Class 7530 for conversion to competitive award. Some sizes, types, styles, etc., within an item category may be removed from the Multiple Award Schedule for competitive award while other sizes, types, styles, etc., may continue being supplied from the Schedule. Upon their availability, the technical requirements will be made available to all interested parties for comment. Requests for the technical requirements should be submitted to Mr. Martin Prince, Engineering and Commodity Management Division (2FYEE), room 20–130, 26 Federal Plaza, New York, NY 10278. Requests for technical requirements should be made within thirty days from the date of this notice.

Dated: May 19, 1993.

Harold E. Murrell,

Director, Office Supplies and Paper Products Commodity Center (2 FY).

[FR Doc. 93–12973 Filed 6–2–93; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: David Anderson, Lomita, CA, PRT–775811.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Pine Louw, "Bankfontein", Springfontein, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Robert Costerella, Arcadia, CA, PRT–776107.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Pine Louw, "Bankfontein", Springfontein, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: David Wilson, El Segundo, CA, PRT–776359.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Pine Louw, "Bankfontein", Springfontein, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Hexagon Farms, San Juan Bautista, CA, PRT–776349.

The applicant requests a permit to import one captive-born male jaguarundi (*Felis yagouaroundi panamensis*) from Blijdorp Zpp, Rotterdam, Netherlands for enhancement of propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 27, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–12992 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972,

as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

Applicant: U.S. Fish and Wildlife Service, File no. PRT–777239, National Ecology Research Center, Fort Collins, Colorado.

Type of Permit: Scientific Research.

Name and Number of Animals: Sea Otters (*Enhydra lutris*) Up to 150 animals of both sexes and of all ages will be captured. 80 of the 150 otters will be surgically implanted with radio transmitter. Animals weighing 20 pounds or less will not be instrumented.

Summary of Activity to be Authorized: The applicant requests a permit to take (capture, recapture, drug, tag, implant transponder chip, surgically implant radio transmitter, collect blood, extract pre-molar) to monitor behavior, demography and natural history of this particular population of sea otters.

Source of Marine Mammals for Research: Wild sea otters located off the coast of Washington State.

Period of Activity: From 1993 through December 1998.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 432, Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director. Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business working hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, OMA, 4401 North Fairfax Drive, room 432, Arlington, VA 22203. Phone: (1–800–358–2104); Fax: (703/358–2281).

Dated: May 27, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority

[FR Doc. 93–12993 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

Indian Gaming; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to notice.

SUMMARY: The following correction is being made to **Federal Register** notice document 93–10335 beginning on page 26438 in the issue of Monday, May 3, 1993:

On page 26438, second column, Summary, the State was previously listed as the State of Washington. This should be corrected to read the State of Montana.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 14, 1993.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–12974 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AK–964–4230–05–P; F–14861–A2 and F–14861–B2]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Golovin Native Corporation for approximately 7,714 acres. The lands involved are in the vicinity of Golovin, Alaska, within Tp. 12 S., R. 22 and 23 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 6, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 93–12985 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–JA–P

[ID–030–03–4210–05; IDI–29468]

Realty Action; Jefferson County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of action—amendment of Medicine Lodge Resource Management Plan (RMP), Notice of Realty Action (NORA) sale of public land in Jefferson County, Idaho.

NOTICE: Notice is hereby given that the Bureau of Land Management (BLM) has amended the Medicine Lodge RMP to allow for the direct sale of a parcel of public land to Jefferson County for a sanitary landfill.

SUMMARY: The following described public land has been examined and through a public supported land use planning process has been determined as suitable for direct sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, at no less than the fair market value of $6,800.

Boise Meridian, Idaho

T. 6 N., R. 33 E.,
Sec. 12: S½SE¼.

The area described contains 80 acres in Jefferson County.

When patented, the land will be subject to the following reservations:

1. Ditches and Canals.
2. Highway Right-of-Way BL 049504 held by the Idaho Department of Transportation.

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**.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from operation of 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.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sale can be obtained by contacting Barbara Klingenberg, Realty Specialist, at (208) 524–7544.

Planning Protest

Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240, within 30 days of this notice.

Sale Comments

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the land sale to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401. Objections will be reviewed by the State Director who may sustain, vacate or modify the realty action. In the absence of any planning protests or objections regarding the land sale, this realty action will become the final determination of the Department of the Interior and the planning amendment will be in effect.

Dated: May 21, 1993.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 93–12640 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–GG–M

[ID–060–02–4210–05; IDI–28747]

Realty Action and Proposed Plan Amendment, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability—amendment of the Cascade Resource Management Plan (RMP)/ Notice of Realty Action (NORA)—Exchange of Public Lands in Kootenai, Washington, Valley, Boise, and Adams Counties, Idaho.

SUMMARY: Notice is hereby given that the BLM has completed a proposal to amend the Cascade RMP to allow for transfer of certain public lands in Washington, Valley, Boise, and Adams Counties in exchange for State owned lands in Kootenai County, Idaho, and for four other purposes.

SUPPLEMENTAL INFORMATION: The following described lands have been examined and through the public supported land use planning process have been determined to be suitable for transfer by land exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Non-Federal lands to be acquired are described as:

Boise Meridian

T.49N., R.4W., sec. 16: SW¼NE¼ south of high water line, SW¼NW¼, SW¼, W½SE¼
T.48N., R.5W., sec. 36: lots 3,4, E½NE¼, SW¼NE¼

The area described above contains approximately 492.34 acres.

Public lands to be transferred are described as:

Boise Meridian

T.18N., R.4E., sec. 6: lot 1
sec. 9: S½
T.17N., R.2W., sec. 5: S½SW¼
sec. 8: lots 2,3,4, SW¼NW¼, W½SW¼
sec 21: S½SW¼, SW¼SE¼
T.17N., R.4E., sec. 21: E½SW¼
sec. 22: S½SE¼NE¼, SW¼SW¼
sec. 34: S½
T.16N., R.4W., sec.17: N½NE¼
T.16N., R.4E., sec.12: NE¼NE¼, SE¼
sec. 13: NE¼NE¼
T.11N., R.4E., sec.20: S½SE¼
T.10N., R.3E., sec.23: S½SW¼
sec. 26: W½
sec. 27: S½S½SW¼, NE¼SE¼SW¼, SE¼NE¼SW¼, S½N½SE¼, S½SE¼
sec. 28: E½SE¼
sec. 33: NE¼NE¼
sec. 34: NW¼NW¼
T. 9N., R.3E., sec. 3: lots 3,4, N½SW¼, NW¼SE¼
sec. 11: S½NW¼, N½SW¼
sec. 14: SE¼SW¼, W½SE¼, SE¼SE¼
sec. 35: lots 1,2,3,4, N½, N½S½
T.9N., R.2E., sec.11: NW¼SE¼

The area described above contains approximately 2,914.06 acres.

The purpose of this exchange is to acquire the non-Federal lands which have high public values for recreation. Acquisition of those lands will allow continued public access to Coeur d'Alene Lake and prevent closure of two developed recreation sites.

The value of the lands to be exchanged will be approximately equal; some above-described public lands may not be included in order to equalize values.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions: ditches and canals, all rights-of-way of record. Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

The Cascade RMP was amended for four other purposes. They are:

1. To specify management actions on 854.78 acres of land known as the Dautrich Preserve.
2. To allow for the direct sale of 0.4 acres to the City of Idaho City, Idaho currently under a Recreation and Public Purposes lease.
3. To provide management direction for lands upon revocation of withdrawals.
4. To provide management direction for acquired lands.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the conditions of the land exchange or other planning decisions may be obtained by contacting John Fend, Cascade Area Manager, at (208) 334–3300.

PLANNING PROTEST: Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 1800 "C" Street, NW., Washington, DC 20240, within 30 days of publication of this notice.

LAND EXCHANGE COMMENTS: For a period of 45 days from the publication of this notice, interested parties may submit comments regarding the land exchange to the District Manager, Bureau of Land Management, 3948 Development Ave., Boise, ID 83705. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any planning protests or objections regarding the land exchange, this realty action will become the final determination of the Department of Interior and the planning amendment will be in effect.

Dated: May 25, 1993.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 93–12981 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–GG–M

[WY–040–4210–05; WYW 89490]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Sublette County has been examined and

found suitable for classification for conveyance to Sublette County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Sublette County proposes to use the land for a solid waste transfer station.

Sixth Principal Meridian

T. 33 N., R. 110 W.,
Sec. 2, NE¼SE¼NE¼.

The above lands contain 10.00 acres.

FOR FURTHER INFORMATION CONTACT: David Harper, Realty Specialist, Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941, 307–367–4358.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate, reserving all minerals to the United States. The land is to be sold to Sublette County. The Sublette County Commissioners wish to acquire the lands for the operation of a solid waste transfer station to meet the domestic needs of the citizens of Sublette County.

The proposed sale is consistent with the Pinedale Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The land contains no other known public values. Detailed information concerning this action is available for review at the Bureau of Land Management, Pinedale Resource Area Office, 432 E. Mill Street, Pinedale, Wyoming 82941.

Conveyance of the public land will be subject to:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.
2. Reservation of all minerals to the United States of America, together with the right to prospect for, mine and remove the minerals.
3. All valid existing rights documented on the official public land records at the time of conveyance.
4. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The segregative effect will end upon issuance of the patent or 18 months from the date of this publication, whichever comes first.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a solid waste transfer station. 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 Federal, State, and local 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 solid waste transfer station.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments regarding the proposed conveyance and/or classification of the lands to the Bureau of Land Management, District Manager, Rock Springs, P.O. Box 1869, Rock Springs, Wyoming 82902–1869. Any adverse comments will be reviewed by the State Director, who man sustain, vacate, or modify this realty action. In the absence of any objections this proposed realty action will become final, and the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: May 17, 1993.

David E. Harper,

Realty Specialist.

[FR Doc. 93–13048 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–22–M

[OR–943–4210–06; GP3–252; OR–49219]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 290.02 acres of public lands for protection of the Galice Creek Recreation Area near Grants Pass, Oregon. This notice closes the lands for up to 2 years from surface entry and mining. The lands have been and remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by September 1, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, 503–280–7162.

SUPPLEMENTARY INFORMATION: On May 25, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the public land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Revested Oregon and California Railroad Grant Lands

T. 34 S., R. 8 W.,
sec. 35, S½SE¼SE¼.
T. 35 S., R. 8 W.,
sec. 2, lots 7 to 14, inclusive, and lots 16, 17, and 19, N½SW¼NE¼, SE¼NW¼, and NW¼SW¼;
sec. 3, SE¼NE¼SE¼ and E½SE¼SE¼.

The areas described aggregate 290.02 acres in Josephine County.

The purpose of the proposed withdrawal is to protect the significant historic and recreational values along Galice Creek.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Temporary land uses that may be permitted by the authorized officer during the period of temporary segregation include sale of vegetative materials, issuance of recreational use

permits, and all public use activities considered casual use.

Dated: May 26, 1993.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–12982 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–33–M

[WY–930–4210–06; WYW 128871]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau (BLM) proposes to withdraw approximately 820 acres of public land and Federal minerals, 1,800 acres of public surface only, and 3,200 acres of Federal minerals underlying private lands in Teton County, to protect important recreation, scenic, riparian, and wildlife resource values along the Snake and Gros Ventre Rivers near Jackson, Wyoming. This notice closes the lands for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

EFFECTIVE DATE: June 3, 1993. Comments and requests for a public meeting must be received by September 1, 1993.

ADDRESSES: Comments and requests should be sent to the Wyoming State Director, BLM, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Arlan Hiner, Pinedale Resource Area Manager, P.O. Box 768, Pinedale, Wyoming 82941, (307) 367–4358.

SUPPLEMENTARY INFORMATION: On May 26, 1993, a petition/application was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land and Federal minerals from settlement, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Wyoming

T. 40 N., R. 116 W.,
Secs. 28, 29, 30, 31, 32, 33, and 34.
T. 40 N., R. 117 W.,
Secs. 3, 10, 11, 14, 23, 24, and 25.
T. 41 N., R. 116 W.,
Secs. 5, 6, 7, and 18.
T. 41 N., R. 117 W.,
Secs. 12, 13, 23, 24, 25, 26, 34, and 25.
T. 42 N., R. 116 W.,
Secs. 20, 21, 29, 32, and 34.

The area described contains approximately 820 acres of public surface and Federal minerals, 1,800 acres of public surface only, and 3,200 acres of Federal minerals underlying private lands in Teton County.

The purpose of the proposed withdrawal is to protect the important recreation, scenic, riparian, and wildlife values pending further study and development of appropriate, and possibly longer-term, actions to protect and manage the resources.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, rights-of-way, cooperative agreements, or discretionary land use authorizations of a temporary nature which do not significantly disturb the surface of the land or impair the existing values of the area.

Dated: May 27, 1993.

James K. Murkin,

Acting State Director, Wyoming.

[FR Doc. 93–13009 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–22–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–347]

Commission Determination Not To Review an Initial Determination Granting Partial Summary Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the matter of certain Anti-Theft Deactivatable Resonant Tags and Components Thereof.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (ID) in the above-captioned investigation granting partial summary determination that respondent Toyo Aluminum K.K. (Toyo) does not directly infringe the patents in issue.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: On April 6, 1993, Toyo filed a motion for summary termination, alleging that it does not manufacture or sell any anti-theft resonant tags or components thereof that infringe the patents at issue in this investigation. Toyo alleged that it manufactures and sells to another respondent laminated circuit materials that do not infringe the patents at issue because those laminated circuit materials do not include any provision for deactivation or any indented substrate region as required by the asserted claims of the patents in issue.

Complainant Checkpoint Systems Inc. (Checkpoint) opposed the motion in its entirety. The Commission investigative attorney argued that Toyo is entitled to a partial summary determination on the issue of direct infringement, but that the motion should be denied with respect to contributory infringement.

On May 4, 1993, the presiding administrative law judge (ALJ) issued an ID (Order No. 6) granting Toyo's motion in part and denying it in part. The ALJ treated Toyo's motion as a motion for summary determination. He granted Toyo's motion with respect to direct infringement but denied the motion with respect to contributory and induced infringement. No petitions for review or agency comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and § 210.53 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3000. Hearing-impaired persons are advised that information on the matter can be

obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: May 26, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–13024 Filed 6–2–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–227]

Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers

AGENCY: United States International Trade Commission.

ACTION: Notice of deadline to submit comments in connection with 1993 annual report.

EFFECTIVE DATE: May 21, 1993.

FOR FURTHER INFORMATION CONTACT: James E. Stamps (202–205–3227), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit annual reports to the Congress and the President on the impact of the act on industries and consumers in the United States. The Commission instituted the present investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) on March 21, 1986, for the purpose of gathering and presenting such information on the CBERA. Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The eighth report, covering calendar year 1992, is to be submitted by September 30, 1993.

In the original notice of investigation, it was announced that, as provided in section 215(b) of the CBERA, the Commission in such reports is required to assess the actual effect of the act on the United States economy generally as well as on appropriate domestic industries and to assess the probable future effects of the act.

Written Submissions

The Commission does not plan to hold a public hearing in connection with the eighth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Statements also are invited on the potential effects of the North American Free-Trade Agreement on U.S. imports under the CBERA. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of part 201 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary of the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than June 29, 1993.

Address all submissions to the Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1809.

Issued: May 26, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–13021 Filed 6–2–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–348]

Commission Determination Not To Review Initial Determinations Granting Joint Motions To Terminate the Investigation With Respect to Three Respondents on the Basis of Licensing Agreements

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the matter of certain in-line roller skates with ventilated boots and in-line roller skates with axle aperture plugs and component parts thereof

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determinations (IDs) in the above-captioned investigation granting joint motions to terminate the investigation with respect to certain respondents on the basis of licensing agreements.

ADDRESSES: Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Anjali Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Rollerblade, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the unauthorized importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots, and in-line roller skates with axle aperture plugs and component parts thereof, that allegedly infringe claims 1, 2, 3, 4, 5, 6, 7, or 8 of U.S. Letters Patent 5,171,033, and/or claim 5 of U.S. Letters Patent 5,048,848. On March 18, 1993, the Commission voted to institute an investigation of the complaint and published notice of its investigation in the **Federal Register** (58 FR 16204 (March 25, 1993)).

On April 7, 1993, complainant Rollerblade, Inc. and respondents, California Pro U.S.A. Corporation (California Pro) and Playmaker Co., Ltd. (Playmaker) jointly moved for the termination of the investigation with respect to those two respondents on the basis of two separate patent licensing agreements (Motion Docket No. 348–1). On April 16, 1993, the Commission investigative attorney supported the joint motion. On April 29, 1993, the presiding administrative law judge issued an ID (Order No. 1) terminating the investigation with respect to California Pro and Playmaker.

On April 19, 1993, Rollerblade and respondent Keys Fitness Products (Keys) also jointly moved for the termination of the investigation with respect to Keys on the basis of a patent licensing agreement (Motion Docket No. 348–3). On April 26, 1993, the Commission investigative attorney supported the joint motion. On April 29, 1993, the presiding administrative law judge issued an ID (Order No. 2)

terminating the investigation with respect to Keys.

No petitions for review, or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53(h) (19 CFR. 210.53(h)).

Issued: May 24, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–13025 Filed 6–2–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–342]

Metallurgical Coke: Baseline Analysis of the U.S. Industry and Imports

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing

---

SUMMARY: Following receipt of a request on May 6, 1993, from the House Committee on Ways and Means, the Commission instituted investigation No. 332–342, Metallurgical Coke: Baseline Analysis of the U.S. Industry and Imports.

EFFECTIVE DATE: May 21, 1993.

FOR FURTHER INFORMATION CONTACT: General inquiries regarding the investigation may be directed to Ms. Cynthia B. Foreso (202–205–3348) or Mr. Eric Land (202–205–3349), Energy, Chemicals, and Textiles Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on legal aspects of the investigation, contact Mr. William Gearhart of the Commission's Office of the General Counsel (202–205–3091). The media should contact Ms. Peg O'Laughlin, Director, Office of Public Affairs (202–205–1819). Hearing-impaired persons can obtain information on this study by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

As requested, the Commission in its report will seek to provide a baseline analysis of the U.S. coke industry and how it is affected by increasing imports from major world producers, particularly Japan. Other producing countries such as China and the former Eastern Bloc will also be studied. In its report, the Commission will evaluate the impact of significant market and trade issues related to consuming industries on the availability of coke in the United States, Japan, China, and the other nations to be studied. The report will also analyze the production practices and other factors associated with coke production in the United States and, to the extent feasible, in the other countries to be studied.

More specifically, as requested by the Committee, the Commission, in conducting its study, will review for the U.S. market and the markets in Japan, China, and the former Eastern Bloc nations the following issues:

(1) Coke market practices, such as cost recovery, pricing practices, by-product valuation (i.e., coal chemicals), and coke quality;
(2) Environmental controls and costs;
(3) Transportation costs in the U.S. market;
(4) Other market factors, such as government support, quality, and other significant market factors; and
(5) Other major factors affecting the production of coke.

Public Hearing

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on October 5, 1993. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC, 20436, no later than noon, September 17, 1993. Any prehearing briefs (original and 14 copies) should be filed with the Secretary not later than noon, September 27, 1993. Any post hearing briefs should be filed by October 15, 1993.

Written Submissions

In addition to or in lieu of filing prehearing or posthearing briefs, interested parties are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than October 15, 1993. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC, 20436.

Issued: May 21, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–13022 Filed 6–2–93; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Defense Conversion Adjustment (DCA) Demonstration Projects To Be Funded With Department of Defense (DoD) Funds

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor, Employment and Training Administration (DOL/ETA), announces a second round of Defense Conversion Adjustment (DCA) demonstration projects to be funded with Department of Defense (DoD) appropriated funds. DoD has provided funds to ETA to support programs to provide retraining and readjustment services for dislocated workers under title III of the JTPA. DoD has also provided funds for demonstration projects to encourage and promote innovative responses to dislocations resulting from reductions in defense expenditures or by the closure of military installations. This notice describes the process that eligible entities must use to apply for demonstration funds, the subject areas for which applications shall be accepted for funding, how grantees are to be selected, and the responsibilities of grantees. It is anticipated that approximately $5 million will be available for this round of funding. Based on the availability of funds and the needs of the Department, additional competitions for DCA demonstration projects may be announced.

DATES: Applications for grant awards will be accepted commencing June 3, 1993. The closing date for receipt of applications shall be August 2, 1993, at 2 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to Division of Acquisition and Assistance, Attention: Gwendolyn Baron-Simms, Reference: SGA/DAA 93–003, Employment and Training Administration, U.S. Department of Labor, room S–4203, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs. Telephone: (202) 219–5577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of four parts. Part I provides the background and purpose of the demonstration projects. Part II identifies demonstration policy and topics. Part III describes the application process and provides detailed guidelines for use in applying for demonstration grants and the selection criteria used in reviewing applications. Part IV describes the reporting requirements.

Table of Contents

Part I. Background

A. Authorities
B. Purposes of the demonstrations

Part II. Demonstration Policy and Topics

A. Basic policy
B. Demonstration topics
Code 001—Dislocation aversion
Code 002—Increased worker mobility
Code 003—Community planning
Code 004—Locally initiated

Part III. Application Process

A. Eligible grantees
B. Application procedures
C. Statement of work/Project summary
D. Rating criteria for award

Part IV. Reporting Requirements

Part I. Background

A. Authorities

Under a Memorandum of Agreement (MOA) between DOL and DoD, DoD is funding Defense Conversion Adjustment (DCA) projects under title III of the JTPA and such DCA demonstration projects as agreed to by DoD and DOL.

On July 9, 1992, the Department of Labor (Department or DOL) published a notice in the **Federal Register**, "Job Training Partnership Act: Title III National Reserve Grants; Availability of Funds and Application Procedures for Program Year 1992." 57 FR 30536. That announcement describes the procedures to be used by eligible grantees in applying for grants of DCA funds to deliver traditional dislocated worker services to eligible individuals on a non-demonstration basis.

On May 12, 1992, the Department published in the **Federal Register** an announcement soliciting proposals for DCA demonstration projects. 57 FR 20366. Twelve demonstration grants were awarded and announced on November 12, 1992. With this notice, DOL is announcing a second solicitation of DCA demonstration grant applications to establish demonstration projects for workers dislocated or threatened with dislocation due to reduced defense expenditures.

B. Purposes of the Demonstrations

Each demonstration project is to offer services and activities, or to develop the plans, information or experience necessary to offer such activities, to assist workers affected by defense-related dislocations in combinations and formats not currently found or anticipated in basic title III or standard DCA projects. The Department believes that a wide variety of innovative projects will provide the opportunity to evaluate the effectiveness of specific responses, and to identify exemplary approaches that address the specific problems faced in defense-related dislocations.

Part II. Demonstration Policy and Topics

A. Basic Policy

1. Awards. DOL and DoD will select up to five applicants in each category. It is anticipated that the maximum grant awards will be $500,000.

2. Evaluation. These demonstration projects will be evaluated by an independent contractor to be selected and funded by the Department of Labor under a separate agreement. Grantees must make available participant records as specified by the evaluation contractor.

3. Eligible participants. Workers eligible for assistance under these demonstration grants are those individuals who: (a) Have been terminated or laid off or received a notice of termination or layoff from defense-related employment and are unlikely to return to their previous industry or occupation; (b) have been terminated or received a notice of termination of defense-related employment, as a result of any permanent closure of or any substantial layoff at a plant, facility or enterprise; (c) work in a facility at which the employer has made a public announcement that such facility will close or (d) are otherwise at risk of dislocation, as a result of a reduction in DoD procurement or the full or partial closure of a military facility.

Projects which propose to serve workers at risk or dislocation shall describe how such workers shall be identified. Projects which propose to serve workers who are currently employed, including those at risk of dislocation, shall describe how prospective participants will be selected to receive assistance under the grant from among the larger group of employed at-risk workers. An application which proposes to serve employed workers who have not received a notice of layoff must clearly describe how "at risk of dislocation" is to be demonstrated. The extent to which such a proposal describes an appropriate procedure for identifying "at-risk" workers will be considered in the selection process.

4. Allowable activities. Grant funds awarded under these demonstrations may be used to provide the services described in JTPA section 314. Services under title III are classified as: Rapid response assistance, basic readjustment services, retraining, administration, and needs-related payments and supportive services. These activities are more fully described in the statute.

5. Initial grant period. Applications must clearly describe project activities to the undertaken during the initial 18-month period of performance. Funding of subsequent project activity shall be at the Department's option, based on the availability of funds, effective program operation and the needs of the Department.

6. Cost limitations. DCA demonstration grants are not subject to the cost limitations for formula-funded title III grants at section 315 of the JTPA. However, any offeror proposing administrative costs that exceed 15 percent of the budget or needs-related payments and supportive services that exceed 25 percent of the budget shall provide a narrative justification.

B. Demonstration Topics

DOL/DoD will consider applications for defense-related demonstrations in the following areas. Applications must include sufficient information upon which DOL and DoD can determine that the applications are responsive to one of the project descriptions listed below:

001 Dislocation aversion. The goal of this project category is to reduce the number of workers who would otherwise be laid-off as a result of defense cutbacks and closures, by retraining the affected workforce of a defense employer that is converting its operations as part of a restructuring program. This demonstration program is to provide early intervention services including worker retraining for eligible workers who are at risk of losing their jobs as a result of defense cutbacks, so

that they qualify for new jobs being created as the defense employer reorganizes operations under a conversion and/or diversification plan.

An application to assist workers at a preselected employer must identify the firm or firms whose employees are to be served by the project. The application must describe each firm's existing mode of production and the need and strategy for successful conversion or diversification (i.e., a conversion or diversification plan specific to the workers and firm targeted for assistance). The application must describe the means by which workers at risk of dislocation shall be identified. It must identify the current skills and training levels of employees threatened with dislocation, the number to be served by the project, the new skills required by the conversion or diversification, the means of selecting workers for participation, and what services will be offered to the remaining affected workers, if any, who are not selected for this training.

An application to assist workers at employers who have yet to be identified must describe in detail the procedures to be used to identify such employers who may participate in this project using the information identified in the above paragraph. An application must ensure that the affected employees or their representative(s) will be consulted concerning the proposed activities, during both the design and implementation stages of the project.

The application must include information on the non-JTPA resources committed to this project, including employer funds, secured and unsecured loans, grants, and other forms of assistance, public and private. JTPA funds are to be used for allowable activities under title III which are in addition to those which would otherwise be available in the area in the absence of such funds.

002 Increased worker mobility. This project's purpose is to increase worker mobility through innovative assessment, job development and job matching techniques, and retraining in needed occupations.

One potential approach under this demonstration project could involve targeting services on dislocated workers whose occupational skills have been acquired primarily in a workplace setting, who lack degrees or certificates attesting to their knowledge and abilities, and who are unlikely to remain in their specific occupation. Such a program would facilitate the placement of experienced workers whose academic credentials may not adequately reflect the currency, breadth, or depth of their occupational experience.

A second approach could be targeted to reapplying closely aligned defense-related skills to demand occupations, and/or providing significant retraining from a defense-only skill to one marketable in the civilian workplace. Such efforts would focus first on industry needs and occupational requirements, then on development of appropriate curricula and training activities.

All applications in this category must indicate which occupational group or groups of workers will be targeted for assistance, and must describe how the project will recruit and serve such individuals. Any eligible grantee may apply, but applications are particularly sought from employer associations and employee representatives.

003 Community planning. The goal of this demonstration project is to mobilize Federal, State, and local resources under comprehensive plans for coordinated community adjustment efforts for areas suffering significant economic dislocation as a result of defense-related layoffs. This demonstration program will center on communities where a military base or defense contractor(s) accounts for a substantial share of local economic activity, and where the resources required to cope with such dislocations far exceed those available to the community. Special emphasis should be on development of strategies to replace the economic base of the affected community, and may include identification of appropriate fields for entrepreneurial training, if appropriate.

Traditionally, Federal planning assistance has focused on reuse of Federal property. The components of this demonstration program will be activities where reuse of Federal property is not at issue. Projects should be designed to do the following: (1) Identify the broad range of community needs resulting from a defense related dislocation which have a significant impact on the community, (2) develop a comprehensive plan to respond to those needs, and (3) establish a community-based task force to coordinate and oversee the implementation of the plan. Activities may include provision of an immediate response to individual hardships created by the loss of the community's economic base. This demonstration should include cooperative agreements between the local Private Industry Council, the State JTPA program, economic development agencies, and other organizations capable of assisting in comprehensive planning and delivery of services. Any eligible grantee may apply, but applications are particularly sought from substate grantees under title III of JTPA.

004 Locally initiated response. The purpose of this category is to test carefully designed but unsolicited creative responses to defense related layoffs. Subjects may include retraining in order to apply defense-related skills to civilian occupations, assistance to professional, technical, and managerial dislocated workers, self-employment training, and appropriate early intervention strategies for workers whose layoff is reasonably certain. Critical skills programs, development of employer outreach procedures and other attempts to link State retraining efforts with State economic development agency activities to create new employment in the community, nationwide job search assistance and as well as other areas of inquiry with relevance to the national dislocated worker program may also form the basis of applications in this category.

An application in this category must clearly identify the objectives to be achieved through the proposed intervention, including planned outcomes.

Part III. Application Process

A. Eligible Grantees

Eligible grantees for demonstration projects funded under this announcement include States, title III substate grantees, employers, employer associations, and representatives of employees. States and substate grantees are defined at section 301 of the Act. An application from a State agency shall be submitted by the Governor.

Employers may apply if they have terminated or laid off, or are planning to terminate or lay off, employees as a result of reduced defense expenditures. Employer associations may apply if they include eligible applicant employers.

Representatives of employees, including labor unions, may apply if they represent employees who are or will be eligible for DCA assistance.

DOL expects that, in such cases where more than one eligible grantee wishes to apply for a grant to serve the same target population, applicants will establish appropriate linkages and submit a single application under a single proposed administrative entity.

B. Application Procedures

1. Submission of Proposal

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts—Part I, the

Financial Proposal, and Part II, the Technical Proposal. Each application will be considered for only one demonstration project category. The demonstration project category being applied for must be identified on Standard Form (SF)–424, item 11 (Attachment No. 1), and on the front of each proposal, in accordance with the following:

Code 001—Dislocation aversion
Code 002—Increased worker mobility
Code 003—Community planning
Code 004—Locally initiated response

The Financial Proposal, Part I, shall contain the SF–424, "Application for Federal Assistance" (Attachment No. 1), and SF 424–A, "Budget" (Attachment No. 2). The Federal Domestic Assistance Catalog number is 17.246. The budget shall include on a separate page(s) a cost analysis of the budget, identifying in detail the amount of each budget line item attributable to each of the title III cost categories of section 314 of JTPA.

Federal funds will not support training which the employer is in a position to, and would otherwise, provide.

Federal funds may not be used for acquisition of production equipment. The only type of equipment that may be acquired with federal funds is equipment necessary for the operation of the grant. If equipment is purchased, grant funds may cover only those costs which are appropriate and reasonable. In such an instance, the cost of the equipment is to be prorated over the projected life of the equipment to determine the cost to the grant. No funds may be expended for equipment without prior written approval from DOL.

Applicants may budget limited amounts of grant funds to work with technical expert(s) to provide advice and develop more complete project plans.

The budget should also identify any non-JTPA resources committed to this project, including employer funds, in-kind resources, secured and unsecured loans, grants, and other forms of assistance, public and private.

The technical proposal, Part II, shall demonstrate the offeror's capabilities in accordance with the Statement of Work/Project Summary in Section C. No cost data or reference to price shall be included in the technical proposal.

2. Late Proposals

Any proposal not reaching the designated place, by the specified time and date of delivery requirements will not be considered, unless mailed five (5) days prior to the closing date. The term "Postmark" means a printed, stamped or otherwise placed impression (exclusive of postage meter-machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employers of the U.S. Postal Service.

3. Hand-delivered Proposals

It is preferred that the proposals be mailed five days prior to the closing date. However, hand-delivered proposals must be received by 2 p.m., Eastern Time by August 2, 1993. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

4. Period of Performance

The period of performance will be eighteen (18) months from the date of grant execution. It is anticipated that approximately $5 million will be available for funding these projects. The maximum grant award will be $500,000.

5. Option to Extend Grants

Based on the availability of funds, effective program operation and the needs of the Department, the grant(s) may be extended for up to two additional years.

6. Definitions

Unless otherwise indicated in this announcement, definitions of terms used herein shall be those definitions found in the Job Training Partnership Act, as amended, particularly at Section 4 and Section 301.

7. Page Count Limit

Applications are to be limited to 30 single-side pages, single-spaced.

C. Statement of Work/Project Summary

Each application must include in the appropriate section(s) (1) that information identified in the discussion under Part II.B., (2) that information related in the Demonstration topics above, and (3) any other information necessary for the Department to evaluate the application in terms of the selection criteria identified in Part III.C. Each application should generally follow the format outlined here:

1. Target Group

A description or profile of the workers targeted for assistance by the project, including but not limited to:

- The skill deficiencies of the target group and how each was determined;
- The new skills and skill requirements that are required; and
- The process to be used to identify participants for this demonstration program from among those eligible for participation.

2. Defense Impact and Need

A discussion of the impact and the economic consequences of reductions in defense industry employment, or reductions in the number of DoD military and civilian personnel in the State(s) and in the specific substate area(s) likely to receive assistance under this grant.

- The severity of the circumstances faced by the affected workers, firm(s), and/or community, including, for services to workers at-risk of layoff, a demonstration of the likelihood of worker dislocations absent Federal intervention, and
- Any other relevant information concerning the area to be served by the project.

3. Non-Duplication of Available Services/Maintenance of Effort

An explanation of how it will be determined that the activities to be conducted with funds under this demonstration project are in addition to those which would otherwise be available in the absence of such funds.

In the case of proposals under Category 001 (Dislocation Aversion), an application to avert dislocations must discuss employer policies toward employee retraining and retention in lieu of termination and any existing commitments established through the collective bargaining process or otherwise affecting employee retraining and retention such as "bumping" rights, early retirement offerings, and related activities.

In the case of proposals under Category 003 (Community Planning), an application must describe how activities proposed under the DCA grant would supplement planning activities funded through DoD's Office of Economic Adjustment and other fund sources, if applicable.

4. Coordination and Linkages

A description of the relationship between the Demonstration Program project and the existing Title III program, any applicable DoD programs, local institutions and agencies involved in economic development activities, and other available resources which will enhance the opportunities for success of the demonstration project.

- Evidence of consultation with the State JTPA agency, if appropriate, and substate grantee(s), as appropriate.

5. Consultation With Organized Labor

If appropriate, evidence of consultation with organized labor concerning this application.

6. Non-JTPA Resources

A discussion of the other services and resources in terms of how each will contribute to the objectives of the demonstration.

• Any application proposing to serve currently employed workers, including such proposals under Category 001, must indicate the specific contribution of the employer, and labor organization (if appropriate).

7. Services

A description of the activities to be conducted. The activities must be allowable under section 314 of the Act.

For proposals under Category 003 (Community Planning), the proposal must identify the organizations which will participate in the planning process, and describe the role each is expected to play in responding to the needs of the affected work force. A Community Planning proposal which also provides for the delivery of basic readjustment and retraining assistance to participants shall include appropriate information from the list below.

Proposals under categories 001, 002 and 004 must include:

• A description of the outreach, recruitment, and intake system to achieve planned enrollment levels.

• A description of how the project will determine the plan of assistance for each of the workers.

• The specific occupations selected for training.

• The services to be provided and the service mix, including:

• How the prescribed interventions will meet the needs of the target population;

• A discussion of how the skill training activities address participants' specific skill deficiencies.

• Identification of the service provider(s), including demonstrated effectiveness (past experience).

• A plan showing the timing of all services and appropriate decision points.

8. Outcomes

The projected results of the project, including as appropriate:

• Clear descriptions/definitions of measurable goals and outcomes to determine the project's effectiveness, particularly those relating to participants' satisfactory completion of the project, and other "successful" outcomes;

• The number of participants projected to enroll in, and successfully complete, the program;

• Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;

• Participants' average wages prior to and at completion of project; and

• Any additional measurable, performance-based outcomes that are relevant to the proposed intervention and which may be readily assessed during the period of performance of the project. An explanation of how such additional measures are relevant to the purpose of the demonstration program.

• In addition to measurable outcomes, the proposal should provide other appropriate information on projected results including, if appropriate, how the demonstration will lead to a more broadly based workforce and how its flexibility and adaptability to change will be enhanced by the actions proposed in the demonstrations.

9. Technical Input

A description of how the proposed plan was developed including any expert input, previous demonstrations, research, and other information which will establish the research context for the proposed demonstration.

10. Innovation

A description of how the proposed approach represents an innovative method of addressing the needs of dislocated workers. Applications which do not represent a departure from standard title III or DCA processes and procedures will be considered non-responsive.

11. Replicability

Any relevant information to demonstrate that the approach proposed may be applicable to a broad series of dislocated worker problems across the country.

D. Rating Criteria for Award

Prospective offerors are advised that the selection of grantee(s) for award is to be made after careful evaluation of proposals by a panel of specialists within DOL and DoD. Panelists will evaluate the proposals for acceptability with emphasis on the various factors enumerated below. The panel results are advisory in nature and not binding on the Grant Officer.

Evaluations will be made not only on the basis of what the proposed offeror intends to do during the 18–month grant, but also on the usefulness of the demonstration after the end of the grant period, including possible extensions of the grant.

Grant application will be considered for funding where DoD has concurred that the workers to be served by the project described in the application have been, or are likely to be, dislocated as a result of reduced expenditures by the United States for defense or by closure or substantial reductions at United States military facilities.

1. Technical Evaluation (75 points)

Target Group and Services. The clearly identified needs of the target group and, if appropriate, the community, as well as the process for selecting participants for this demonstration program from those eligible for participation. The services to be provided, including the degree to which the services appear to meet the needs of the target population. The degree to which such services are appropriate to the type of demonstration proposed. (25 points)

Innovation and Replicability. The novelty of the proposed approach. The likelihood that the approach may be applicable to a broad series of dislocated worker problems across the country. (25 points)

Coordination and Linkages; Utilization of Resources. The extent to which the project will be integrated with other existing program, community, and company resources. (15 points)

Demonstrated Experience. Experience in the oversight and operation of programs requiring management capabilities and experience similar to the proposed program. (10 points)

2. Cost Evaluation (25 points)

The cost effectiveness of the project as indicated by cost per participant, cost per placement, and cost per activity in relation to services provided and outcomes anticipated.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. Applications may be rejected where the information required is not provided in sufficient detail to permit adequate assessment of the proposal. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. Evaluations by reviewers are advisory only to the Grant Office.

Part IV. Reporting Requirements

1. Dislocated Worker Special Project Reports as required by the grant award documents.

2. Standard Form 269, Financial Status Report Form.
3. Quarterly Progress Reports.
4. Final Project Report including an assessment of project performance.

Signed at Washington, DC, this 27 day of May, 1993.

Carolyn M. Golding,

Acting Assistant Secretary of Labor.

BILLING CODE 4510-30-M

Attachment No. 1—Application for Federal Assistance (Standard Form 424)

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (specify):

_____

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

Attachment No. 2—Budget Form - Non Construction Programs (Standard Form 424A)

BUDGET INFORMATION - Non Construction Programs

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget	
CFDA NUMBER	FEDERAL	NON-FEDERAL	FEDERAL	NON-FEDERAL
1. _____	$_____	$_____	$_____	$_____
2. _____	$_____	$_____	$_____	$_____

COST CATEGORY	FEDERAL FUNDING			NON-FEDERAL CONTRIBUTION		
DIRECT COST	CURRENT FEDERAL BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED FEDERAL BUDGET	CURRENT AWARDEE BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED AWARDEE BUDGET
(A) PERSONNEL						
(B) FRINGE BENEFITS						
(C) TRAVEL & PER DIEM						
(D) EQUIPMENT **						
(E) SUPPLIES						
(F) CONTRACTUAL						
(G) OTHER						
TOTAL DIRECT COST						
INDIRECT COST						
TOTAL ESTIMATED COST						

** SEE PART IV - SPECIAL CONDITION #9 AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

[FR Doc. 93-13035 Filed 6-2-93; 8:45 am]
BILLING CODE 4510-30-C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access integral file segments of textual materials and Watergate-related portions of Nixon White House tapes among the Nixon Presidential historical materials.

DATES: The National Archives intends to make the integral file segments of textual materials and Watergate-related portions of the Nixon White House tapes described in this notice available to the public beginning July 15, 1993. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before July 7, 1993.

ADDRESSES: The materials will be made available to the public at the National Archives' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions asserting claims of legal rights or privilege must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Clarence F. Lyons, Jr., Acting Director, Nixon Presidential Materials Staff, 703–756–6498.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened consist of 73.4 cubic feet. In addition, the National Archives is proposing to open 21 segments of Watergate-related Nixon White House tapes from 15 separate conversations, totaling approximately 1 hour and 19 minutes of listening time.

White House Central Files

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. This is the tenth of a series of openings of Central Files: the previous openings were on December 1, 1986; March 22, 1988; December 9, 1988; July 17, 1989; December 15, 1989; August 22, 1991; February 19, 1992; July 24, 1992; and May 17, 1993.

Some of the materials designated for opening on July 15, 1993, were selected from the Subject Files of the Central Files. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories. Listed below are subject categories of the Subject Files that will be made available to the public on July 15, 1993.

Subject Category	Volume (cubic feet)
Federal Government (FG)	0.3
U.S. Courts of Customs and Patent Appeals (FG56)	
U.S. Customs Court (FG57)	
U.S. Court of Military Appeals (FG58)	
Administrative Office of the United States Court (FG59)	
Federal Judicial Center (FG60)	
National Security-Defense (Prisoners) (ND18–3)	5.8
Speeches (SP)	67.3

Nixon White House Tapes

This is the fourth opening of Nixon White House tapes. The first opening, on May 28, 1980, included 12 and ½ hours of conversations used as evidence in Watergate trials. The second opening, on June 4, 1991, included 47 and ½ additional hours of conversations obtained by the Watergate Special Prosecution Force but not used in court. The third opening, on May 17, 1993, included approximately 3 additional hours of Watergate-related segments for the months of May and June 1972.

The National Archives proposes to open Watergate-related segments from Nixon White House tapes for July 1972. The National Archives will propose additional abuse of power segments for public access on a periodic basis in monthly groupings as final review and processing are completed.

There are no transcripts for these tapes. Tape logs, prepared by the National Archives, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each segment of conversation released. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

The sound recordings will be made available to the general public in the research room at 845 S. Pickett Street, Alexandria, Virginia, Monday through Friday between 8 a.m. and 4:30 p.m. Listening stations will be available for public use on a first come, first served basis. The National Archives reserves the right to limit listening time in response to heavy demand. No copies of the sound recordings will be sold or otherwise provided. No sound recording devices will be allowed in the listening area. Researchers may take notes. Copies of the tape log entries will be available for purchase.

Public access to some of the items in the textual file segments and some portions of the White House tapes will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (PRMPA Regulations).

Dated: May 27, 1993.

Raymond A. Mosley,

Acting Archivist of the United States.

[FR Doc. 93–13029 Filed 6–2–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date/Time: June 21–22, 1993, 8 a.m.–5p.m.

Place: Double Tree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Win Aung, Staff Associate, Engineering Education and Centers Division, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, (1776 Annex).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Combined Research/Curriculum Development program.

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 28, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–13015 Filed 6–2–93; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE).

Date and Time: June 24, 1993; 8:30 a.m.–5:30 p.m. (Open) and June 25, 1993; 8:30 a.m.–1 p.m. (Open).

Place: Rooms 1242 and 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 1800 G Street, NW., rm. 1225, Washington, DC 20550.Telephone: (202) 357–7461.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To review the Report to Congress and to review assessments of participation rates of all segments of society in science and engineering.

Agenda: June 24: 1:30 p.m. to 5:30 p.m.—Presentations/discussions of Report to Congress; review of assessments of participation rates of all segments of society in science and engineering; 5:30 p.m.—Reception; June 25: 8:30 a.m. to 1 p.m.—Discussion of CEOSE Report to Congress, NSF education programs and NSF future directions.

Dated: May 28, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–13014 Filed 6–2–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Industrial Innovation Interface; 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: July 26 & 27, 1993; 8:30 a.m. to 5 p.m.

Place: Room V–502, National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Richard I. Schoen, Deputy Division Director of Industrial Innovation Interface, 1110 Vermont Avenue, NW., rm. V–502, Washington, DC 20550. Telephone (202) 653–5202.

Purpose of Meeting: To provide advice the recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Management of Technological Innovation Program.

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 28, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–13013 Filed 6–2–93; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors of the Materials Research Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Materials Research Advisory Committee (MRAC).

Date and Time: June 21–23, 1993; 8:30 am–5 pm.

Place: Room 543, 1800 G Street, NW., Washington, DC.

Type of Meeting: Part-Open.

Contact Person: Dr. John H. Hopps, Jr., Director, Division of Materials Research (DMR), room 408, National Science Foundation (NSF), 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–9794.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials during closed session; and to discuss current and future operations of the Division of Materials Research during the open session.

Closed Session: June 21–22, 1993, 8:30 am–5 pm—To provide oversight review of the Division of Materials Research programs.

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.

Agenda: Open Session: June 23, 1993, 8:30 am–5 pm.

8:30 am—Review and Approval of Minutes of October 1992 Meeting
9 am—Report of Committee of Visitors
10:30 am—Meeting with Acting Director, NSF
11 am—Discussions about Programs, Budgets, and Organization of DMR, and Advisory Mechanisms for Materials Research
12:30 pm—Luncheon Meeting with Assistant Director, Directorate for Mathematical and Physical Sciences
1:30 pm—Continuation of Discussions
5 pm—Adjourn

Dated: May 28, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–13012 Filed 6–2–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Illinois Power Co., Soyland Power Cooperative, Inc., Clinton Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–461]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of 10 CFR part 50, Appendix J, Sections III.A.1(a), III.D.1.(a), and III.A.5.(b); and issuance of a one-time partial exemption from the requirements of Sections III.B.1.(b), III.B.3, and III.D.2 to Illinois Power Company, et al. (IP, the licensee), for the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

Environmental Assessment

Identification of Proposed Action

10 CFR Part 50, Appendix J, Section III.A.1.(a)

The proposed action would grant a partial exemption from section III.A.1.(a) of appendix J to 10 CFR part 50, which requires, in part, that periodic Type A tests shall be terminated if potentially excessive leakage paths are identified which will interfere with the satisfactory completion of these tests. This section then requires that local leakage rates be measured through those paths exhibiting potentially excessive leakage and that repairs and/or adjustments be made prior to restarting the Type A test. This partial exemption would allow for a method to successfully complete the containment integrated leakage test when it is determined that excessive local leakage exists.

The proposed action is in accordance with Item 1 of the licensee's request for partial exemption dated February 17, 1993.

10 CFR Part 50, Appendix J, Section III.D.1.(a)

The proposed action would grant a partial exemption from the requirements of section III.D.1.(a) of appendix J to CFR part 50. This section requires that a set of three Type A tests be performed at approximately equal intervals during each 10-year service period and that the third test of each set be conducted when

the plant is shut down for the 10-year plant inservice inspection (ISI). The licensee's request is for a partial exemption from the requirement to perform the third Type A test when the plant is shut down for the 10-year plant ISI.

The proposed action is in accordance with Item 2 of the licensee's request for partial exemption dated February 17, 1993.

10 CFR Part 50, Appendix J, Section III.A.5.(b)

The proposed action would grant a partial exemption from the requirement in section III.A.5.(b) of appendix J to 10 CFR part 50. This requirement stipulates that for a Type A test, the measured leakage rate, L_m, be less than 75 percent of the maximum allowable leakage rate, L_a measured at the calculated peak containment internal pressure, P_a. Under the partial exemption the acceptance criteria for the "as found" leakage rate would be the maximum allowable leakage rate, L_a, while the acceptance criteria for the "as left" leakage rate would remain at 0.75 L_a.

The proposed action is in accordance with Item 3 of the licensee's request for partial exemption dated February 17, 1993.

10 CFR Part 50, Appendix J, Section III.B.1.(b), III.B.3, and III.D.2

The proposed action would grant a one-time partial exemption from the requirements in sections III.B.1.(b), III.B.3, and III.D.2 of Appendix J to 10 CFR Part 50. These sections require that containment penetrations be leak rate tested at least every two years and that the leakage rate measurement be added to the combined leakage rate for all penetrations subject to Type B and C tests to verify that the total combined leakage rate is less than the acceptance criteria. The partial exemption would apply to the Inclined Fuel Transfer System (IFTS) containment penetration IMC–4 for Clinton Power Station operating cycle 5.

The proposed action is in accordance with the licensee's request for partial exemption dated April 16, 1993.

The Need for the Proposed Action

10 CFR Part 50, Appendix J, Section III.A.1.(a)

The proposed partial exemption is needed to avoid delays during refueling outages in the event that potentially excessive local leakage paths are found while conducting containment integrated leakage rate tests.

10 CFR Part 50, Appendix J, Section III.D.1(a)

The proposed partial exemption is needed to avoid unnecessary restraints in outage scheduling. The licensee proposes to perform the three Type A tests at approximately equal intervals within each 10-year period, with the third test of each set conducted as close as practical to the end of the 10-year period. However, there would be no required connection between the Appendix J 10-year interval and the inservice inspection (ISI) 10-year interval. The Type A tests and the 10-year ISI program are independent of each other and provide assurances of different plant characteristics. The licensee performs the ISI inspection requirements throughout the 10-year inspection interval. As a result, there is no extended outage in which the 10-year ISI examinations are performed. Consequently, the subject coupling requirement offers no benefit either to safety or to economical operation of the facility.

10 CFR Part 50, Appendix J, Section III.A.5.(b)

The proposed partial exemption is needed to avoid unnecessary Type A testing of the reactor primary containment leakage rate. Granting this partial exemption would avoid an increased testing frequency as required by Section III.6.b in the event that the "as found" leakage rate was equal to or greater than 0.75 L_a.

10 CFR Part 50, Appendix J, Section III.B.1.(b), III.B.3, and III.D.2

The proposed partial exemption is needed as a result of the potential inability to perform a valid Type B local leak rate test (LLRT) on the two-ply bellows assembly of IFTS containment penetration IMC–4. After reviewing the facts provided in NRC Information Notice 92–20, "Inadequate Local Leak Rate Testing," the licensee determined that due to the design and configuration of the IFTS containment penetration bellows assembly the current method for performing Type B testing on the bellows assembly may be inadequate. The licensee is evaluating a number of options to provide a valid, reliable Type B test on the subject penetration. However, due to the lead time involved in replacing the bellows assembly with a new design or developing a special test box for the penetration, it will not be possible to complete a valid Type B test of this penetration during the next refueling outage currently scheduled to begin in September 1993.

Environmental Impacts of the Proposed Action

The Commission's staff has determined that granting the proposed partial exemptions would not significantly increase the probability or amount of expected primary containment leakage and that containment integrity would, thus, be maintained.

10 CFR Part 50, Appendix J, Section III.A.1.(a)

The only differences between the proposed requirements and the current requirements of 10 CFR part 50 appendix J, section III.A.1.(a) are that: (1) the potentially excessive leakage paths would be repaired and/or adjusted after completion of the Type A test rather than before the test; and (2) the Type A test leakage rate would be partially determined by calculation (i.e., adding the local leak rates after repairs and/or adjustments for those components that were isolated for excessive leakage to the overall leakage rate measured in the Type A test) rather than by direct measurement. The acceptance criteria for the "as left" containment integrated leakage rate, however, would remain the same.

10 CFR Part 50, Appendix J, Section III.D.1.(a)

The only difference between the proposed requirements and the current requirements of 10 CFR part 50, appendix J, section III.D.1.(a) would be that the third Type A test for each 10-year service period would not necessarily be conducted when the plant is shut down for the 10-year plant inservice inspection. The number of required Type A tests and the periodicity of these tests would not be changed.

10 CFR Part 50, Appendix J, Section III.A.5.(b)

The only difference between the proposed requirements and the current requirements of 10 CFR part 50, appendix J, section III.A.5.(b) would be that instead of a single acceptance criteria of 0.75 L_a for the Type A tests, there would be an "as found" acceptance criteria of L_a and an "as left" acceptance criteria of 0.75 L_a. The acceptance criteria in appendix J of 0.75 L_a was established in order to provide a margin of 25 percent to account for possible deterioration of the reactor primary containment leak-tightness during the time between the periodic Type A tests. There is no need to account for deterioration at the end of a Type A test interval since the "as found" leakage corresponds to the

actual condition of the containment at the end of the test interval. The proposal would continue to maintain the requirement that the reactor primary containment (i.e., the "as left" condition) leakage rate be re-established to less than 0.75 L_a prior to the restart of the plant.

10 CFR Part 50, Appendix J, Section III.B.1.(b), III.B.3, and III.D.2

Under this proposal, the requirements of 10 CFR part 50 appendix J, Section III.B.1.(b), III.B.3, and III.D.2, to complete a valid Type B test of IFTS penetration 1MC–4, would not be met until the fifth refueling outage. Until an adequate modification can be made to allow a valid Type B test to be performed on this penetration, the licensee would continue to test the bellows assembly as previously tested. While it is recognized that these results may be questionable, they reflect the relative leakage rate of the penetration. In addition, the licensee would perform a thorough examination of the outer bellows surface and the integrity of the bellows will be confirmed as part of the integrated leak rate test to be performed during the outage.

Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed partial exemptions otherwise affect radiological plant effluents. Therefore, the Commission's staff concludes that there are no significant radiological environmental impacts associated with the proposed partial exemptions.

With regard to potential nonradiological impacts, the proposed partial exemptions involve changes to surveillance and testing requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission's staff concludes that there are no significant nonradiological environmental impacts associated with the proposed partial exemptions.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement, dated May 1982, related to the operation of the Clinton Power Station, Unit 1.

Agencies and Persons Consulted

The staff consulted with the State of Illinois regarding the environmental impact of the proposed action. The State had no comment.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed partial exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for partial exemptions dated February 17 and April 16, 1993, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington DC and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 24th day of May 1993.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Acting Director, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–13016 Filed 6–2–93; 8:45 am]

BILLING CODE 7590–01–M

Pike Community Hospital, Waverly, OH; Order Imposing Civil Monetary Penalty

[Docket No. 030–20620, License No. 34–21409–01 EA 92–247]

I

Pike Community Hospital (Licensee) is the holder of Byproduct Material License No. 34–21409–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on September 21, 1983. The license was amended in its entirety on February 9, 1989, and is due to expire on April 30, 1994. The license was most recently amended on July 21, 1989. The license authorizes the Licensee to possess and use byproduct materials for medical use and in vitro studies in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on September 29, 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 January 22, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letters dated February 22, 1993, and February 24, 1993. In its responses, the Licensee partially denies Violation No. 2 and requests mitigation of the proposed civil penalty based upon its corrective action.

III

After consideration of the Licensee's responses 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 violations occurred as stated and that the penalty proposed for the violations 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 $3,750 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.

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 III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

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 Violation 2, and

(b) Whether, on the basis of such violation and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 24th day of May 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusions

On January 22, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection on September 29, 1992. Pike Community Hospital responded to the Notice in letters dated February 22, 1993, and February 24, 1993. In its responses, the Licensee partially denies Violation No. 2 and requests mitigation of the proposed civil penalty. The NRC's evaluation and conclusions regarding the licensee's requests are as follows:

Restatement of Violations

1. 10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with the requirements of Part 20 and which are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, as of September 29, 1992, the licensee did not make surveys to assure compliance with that part of 10 CFR 20.101 that limits the radiation exposure to the extremities and skin of the whole body. Specifically, the licensee did not evaluate the full extent of Tc–99m contamination which may have been present on a technologist who was involved in spills on September 3 and 4, 1992, to determine the radiation dose to the hands and forearms and skin of the whole body.

2. 10 CFR 35.21(a) requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures. The licensee's procedures are described in the licensee's application dated June 22, 1988, and were approved by License Condition No. 13.

The licensee's application dated June 22, 1988, states in Item 10.5 that the licensee will establish and implement the model spill procedures published in Appendix J of Regulatory Guide 10.8, Revision 2.

Appendix J of Regulatory Guide 10.8, Revision 2, "Model Spill Procedures," requires the Radiation Safety Officer to follow up on the cleanup of a minor spill and complete the Radioactive Spill Report and the Radioactive Spill Contamination Survey that are identified as Exhibit 10 and Exhibit 11 of Regulatory Guide 10.8, Revision 2.

Contrary to the above, as of September 29, 1992, the licensee, through its Radiation Safety Officer, failed to ensure that radiation safety activities were being performed in accordance with the above procedures. Specifically, the Radiation Safety Officer did not follow up on the cleanup of minor Tc–99m spills that occurred on September 3 and 4, 1992, and did not complete the Radioactive Spill Report (Exhibit 10) and the Radioactive Spill Contamination Survey (Exhibit 11).

3. 10 CFR 35.21(a) requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures. The licensee's procedures for monitoring, calculating, and controlling air concentrations of byproduct material are described in the licensee's application dated June 22, 1988, and were approved by License Condition No. 13.

The licensee's application dated June 22, 1988, states in Item No. 10.13 that the licensee will established and implement the model procedure for monitoring, calculating, and controlling air concentrations that was published in Appendix O of Regulatory Guide 10.8, Revision 2.

Appendix O of Regulatory Guide 10.8, Revision 2, "Model Procedure for Monitoring, Calculating, and Controlling Air Concentrations," requires the licensee to collect data and perform a calculation to estimate the occupational radiation dose from aerosols.

Contrary to the above, as of September 29, 1992, the licensee, through its Radiation Safety Officer, failed to ensure that radiation safety activities were being performed in accordance with the above procedures. Specifically, the Radiation Safety Officer did not collect the required data and perform the required calculations to estimate the occupational radiation dose from aerosols.

4. 10 CFR 35.20(c) requires that the licensee's ALARA program to include, in part, a review of summaries of the types and amounts of byproduct material used, and occupational doses, and continuing education and training for all personnel who work with or in the vicinity of byproduct material.

Contrary to the above, as of September 29, 1992, the licensee's ALARA program did not include the program aspects listed above.

5. 10 CFR 35.21(a) requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures. The licensee's procedures for evaluating implementation of the radiation safety program are described in the licensee's application dated June 22, 1988, and were approved by License Condition No. 13.

The licensee's application dated June 22, 1988, states in Item No. 10.1 that the licensee will issue the model Radiation Safety Committee charter published in Appendix F of Regulatory Guide 10.8, Revision 2.

Appendix F of Regulatory Guide 10.8, Revision 2, "Model Radiation Safety Committee Charter and Radiation Safety Officer Delegation of Authority," requires the Radiation Safety Committee to review at least annually the Radiation Safety Officer's summary report of the entire radiation safety program. The review must include an examination of records, reports from the Radiation Safety Officer, results of NRC inspections, written safety procedures, and the adequacy of the management control system.

Contrary to the above, from September 1989 to September 1992, the Radiation Safety Committee did not review the Radiation Safety Officer's summary report of the entire radiation safety program annually. Further the Committee review did not include an examination of records, reports from the Radiation Safety Officer, results of NRC inspections, written safety procedures, and the adequacy of the management control system.

6. 10 CFR 35.220 requires that the licensee authorized to use byproduct material for imaging and localization possess a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 100 millirem per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 milliren per hour to 1000 millirem per hour.

Contrary to the above, as of September 29, 1992, the licensee did not possess a portable radiation detection survey instrument and a portable radiation measurement survey instrument capable of measuring the above listed dose rates.

7. 10 CFR 35.50(b)(2), (3), and (4) require, in part, that a licensee perform tests for accuracy, linearity, and geometry dependence upon installation of the dose calibrator.

Contrary to the above, the licensee did not perform tests for accuracy, linearity, and geometry dependence upon installation of the dose calibrator that occurred on September 3, 1992.

8. 10 CFR 35.50(b)(3) requires, in part, that a licensee test each dose calibrator for linearity over the range of its use between the highest dosage that will be administered to a patient and 10 microcuries.

Contrary to the above, the licensee's dose calibrator linearity tests performed on March 16, June 22, and September 15, 1992, covered only the range between 30 millicuries and 10 microcuries and the highest dosage that the licensee administers to a patient is 40 millicuries.

9. 10 CFR 35.50(b)(4) requires, in part, that a licensee test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used.

Contrary to the above, the licensee did not test its dose calibrator for geometry dependence at the time of installation. Specifically, the dose calibrator was not

tested for geometry dependence when it was installed in Room 130, during the summer of 1991.

10. 10 CFR 35.50(e) requires, in part, that a licensee retain records of dose calibrator tests for three years unless directed otherwise, and that the records include the signature of the Radiation Safety Officer.

Contrary to the above, as of September 29, 1992, the licensee retained records of dose calibrator tests which did not include the signature of the Radiation Safety Officer.

11. 10 CFR 35.70(a) requires that a licensee survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

Contrary to the above, as of September 29, 1992, the licensee failed on numerous occasions to survey with a radiation detection instrument at the end of the day those areas where radiopharmaceuticals were routinely administered.

12. 10 CFR 35.70(h) requires that a licensee retain a record of each contamination and ambient radiation exposure rate survey required by 10 CFR 35.70. The record must include, in part, a plan of each area surveyed and the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters.

Contrary to the above, as of September 29, 1992, the licensee failed to retain records of surveys that included a plan of the area surveyed and the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters.

13. 10 CFR 35.21(a) requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures. The licensee's procedures are described in the licensee's application dated June 22, 1988, and were approved by License Condition No. 13.

The licensee's application dated June 22, 1988, states in Item No. 10.12 that the licensee will establish and implement the model procedure for area surveys that was published in Appendix N of Regulatory Guide 10.8, Revision 2.

Appendix N of Regulatory Guide 10.8, Revision 2, "Model Procedure for Area Surveys," requires the licensee's Radiation Safety Officer to review and sign the ambient dose rate and removable contamination survey records at least monthly and also promptly in those cases in which action levels were exceeded.

Contrary to the above, as of September 29, 1992, the licensee, through its Radiation Safety Officer, failed to ensure that radiation safety activities were being performed in accordance with the above procedures. Specifically, the Radiation Safety Officer did not sign records of ambient dose rate and removable contamination surveys as required.

14. 10 CFR 35.59(d) requires that a licensee retain records of leakage test results for five years; and that the records contain the model number, and serial number if assigned, of each source tested; the identity of each source radionuclide and its estimated activity; the measured activity of each test sample expressed in microcuries; a description of the method used to measure each test sample; the date of the test; and the signature of the Radiation Safety Officer.

Contrary to the above, as of September 29, 1992, the licensee's records of leakage test results did not contain the signature of the Radiation Safety Officer.

15. 10 CFR 35.59(g) requires, in part, that a licensee retain for five years records of quarterly physical inventories of sealed sources in its possession, and that the records contain the model number of each source, and serial number if one has been assigned, the identity of each source radionuclide and its nominal activity, the location of each source, and the signature of the Radiation Safety Officer.

Contrary to the above, as of September 29, 1992, the licensee's records of physical inventories of its sealed source did not include the signature of the Radiation Safety Officer.

16. 10 CFR 19.11(a) and (b) require, in part, that the licensee post current copies of Part 19, Part 20, the license, license conditions, documents incorporated into the license, license amendments and operating procedures; or that the licensee post a notice describing these documents and where they may be examined. 10 CFR 19.11(c) requires that a licensee post Form NRC–3, "Notice to Employees."

Contrary to the above, on September 29, 1992, the licensee did not post copies of the following documents: 10 CFR Part 19; 10 CFR Part 20; License No. 34–21409–01 Amendment Nos. 1, 2, and 3; the licensee's application dated June 22, 1988; Regulatory Guide 10.8, Revision 2; and the licensee's letter dated June 21, 1989; or a notice describing these documents and where they may be examined.

Summary of Licensee's Response to Violation No. 2

The Licensee admits that through its Radiation Safety Officer (RSO), it failed to follow up on the radioactive spills that occurred on September 3 and 4, 1992, by completing the Radioactive Spill Report and the Radioactive Spill Contamination Survey. However, the Licensee denies that the RSO "failed to investigate these spills and to implement necessary corrective actions to prevent recurrence."

The Licensee states that immediately following the spills, the RSO, acting in conjunction with the hospital's Chief Executive Officer (1) evaluated the mask used and identified an alternative mask that produced a more effective seal during aerosol procedures; and (2) initiated a policy discontinuing aerosol procedures of the type involved in the spill incidents (i.e., those performed on ventilator patients or others unable to assist in carrying out the procedure). According to the Licensee, subsequent to receipt of the NRC Inspection Report, the RSO continued and completed his investigation and the following corrective actions were taken: the RSO, Radiation Safety Committee, and technical staff thoroughly reviewed spill procedures; all aerosol procedures have been suspended until ventilation system changes and air flow studies are completed; and a new procedure was enacted,requiring a trial use of the mouthpiece by the patient without the radiopharmaceutical aerosol, before the actual procedure is performed.

NRC Evaluation of Licensee's Response to Violation No. 2

The Licensee admits that the required radioactive spill reports and radioactive spill contamination survey were not prepared. The Licensee denies that the RSO "failed to investigate these spills and to implement necessary corrective actions to prevent recurrence." However, the citation was much more specific in that it addressed the failure of the RSO to follow up on the *cleanup* of Tc–99m spills that occurred on September 3 and 4, 1992.

With regard to followup on the cleanup of the spills, the RSO was not present at the Licensee's facilities when the spills occurred on September 3 and 4, 1992. The technologist telephoned the RSO on September 3, 1992, and explained difficulties with the lung imaging process. (During the TC–99m DTPA aerosol lung ventilation study, the technologist noticed leakage around the patient's inhalation mask and the resulting images indicated contamination on the patient and no activity in the lungs, i.e., a "radioactive spill."). The RSO instructed the technologist to contact the medical physics consultant, other area hospitals, and the imaging system applications specialist. These individuals gave assistance to the technologist. However, the RSO made no special efforts to follow up on the cleanup of the spill. On the contrary, the RSO did not even visit the Licensee's facilities until September 8, 1992, according to his routine schedule. Given the half-life of Tc–99m, by the time the RSO arrived on the site, it would have been impossible for him to determine what individuals and surfaces had been contaminated and whether the cleanup had been effective.

Therefore, based on the above, the Staff concludes that the Radiation Safety Officer did not follow up on the cleanup of spills that occurred on September 3 and 4, 1992, as required by Appendix J of Regulatory Guide 10.8, Revision 2.

Summary of Licensee's Request for Mitigation

The Licensee states that it believes the NRC is under the impression that the hospital was fully aware on September 29, 1992, the date of inspection visit by the inspector, of all of the violations cited in the inspection report. The Licensee further states that it received a verbal report from the inspector on September 29 which discussed the problem of having an incorrect survey meter; and that other issues and problems were discussed, but in a general fashion and without identifying those in an official sense as being either "violations" or "areas of concern."

The Licensee asserts that, at the inspector's exist interview, problems were discussed in a general fashion without identifying them in an official sense as being either violations or areas of concern. The Licensee asserts that it became aware, as a result of the inspector's visit and report, that the hospital had a serious problem in terms of not following prescribed NRC policies and procedures. The

Licensee asserts that its ability to initiate corrective action, however, was limited to the information that was made available. According to the Licensee, until the inspector's written report describing each individual violation and area of concern was received by the hospital by FAX on January 7, 1993, and by mail on January 11, 1993, the Licensee did not know what specific violations existed in order to begin a more extensive corrective action effort.

The Licensee asserts that, as indicated by the hospital's rapid response within four days of its receipt of the January 7 written Inspection Report, it likewise would have responded much earlier and with the same degree of diligence had the written Inspection Report been provided at an earlier date. The Licensee requests that the amount of civil penalty be reconsidered, and that it be allowed mitigation for its corrective action.

NRC Evaluation of Licensee's Request for Mitigation

The Notice of Violation and Proposed Imposition of Civil Penalty dated January 22, 1993, states that although both the broad and specific corrective actions appear to be acceptable, the NRC is concerned that many of these actions were not implemented following the September 1992 inspection.

The NRC Enforcement Policy provides that, notwithstanding good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, mitigation of the civil penalty will not normally be considered and escalation may be considered to address the licensee's failure. The inspector's exit meeting was conducted with the hospital's President and Chief Executive Officer, and two medical technologists. The meeting lasted approximately 45 minutes. The inspector discussed all of the violations included in the Notice and, in accordance with established NRC procedure, characterized them as apparent violations of NRC requirements. The President and Chief Exeuctive Officer took notes during the meeting and asked pertinent questions. Even granting the Licensee's apparent confusion about what constituted a violation and what constituted an area of concern, the exit meeting provided sufficient notice for Licensee management, after consultation with its Radiation Safety Officer, to further investigate the problems that were discussed and to initiate corrective action to restore safety and compliance.

Although in its response to Violation 2, the Licensee claims that the RSO took certain actions "immediately following the spills," these actions cannot be characterized as "immediate." When the RSO arrived on September 8, he instructed the technologist to prepare an incident report. On September 14, 1992, the technologist prepared an incident report that was reviewed at the Radiation Safety Committee on September 28, 1992. The NRC inspection was conducted on September 29, 1992. Although the spills occurred on September 3 and 4, no corrective actions were taken prior to the NRC inspection.

Based on the above, the Staff concludes that mitigation is not warranted based upon the Licensee's corrective action.

NRC Conclusion

Based on its evaluation of the licensee's response, the NRC staff concludes that the violations did occur as stated, and that an adequate basis for mitigation of the civil penalty has not been provided by the Licensee. Accordingly, NRC concludes that the proposed civil penalty in the amount of $3,750 should be imposed.

[FR Doc. 93–13017 Filed 6–2–93; 8:45 am]
BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on May 5, 1993 (58 FR 26803). Individual authorities established or revoked under Schedules A and B and established under Schedule C between April 1 and April 30, 1993, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1993, will also be published.

Schedule A

The following exceptions were established:

Department of the Air Force

Positions of professor, associate professor, assistant professor, and instructor, in the Dean of Faculty, Commandant of Cadets, and Director of Athletics organizations of the United States Air Force Academy, Colorado. Effective April 6, 1993.

Department of the Army

Positions of professor, associate professor, assistant professor, and instructor, at the United States Army Command and General Staff College, Fort Leavenworth, Kansas, associated with courses of instruction of at least 10 months duration for employment not to exceed up to 5 years, which may be renewed in 1, 2, 3, 4, or 5-year increments indefinitely thereafter. Effective April 6, 1993.

Schedule B

The following exception was established:

National Endowment for the Humanities

One Humanities Administrator, Dissertation Grants/Summer Seminars for College Teachers, Division of Fellowships and Seminars. Effective April 4, 1993.

The following exception was revoked:

Department of Transportation, Federal Railroad Administration

Regional Director of Railroad Safety, Fort Worth, Texas. Effective April 4, 1993.

Schedule C

Department of Agriculture

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective April 16, 1993.

Assistant Regional Director (Vicksburg, MS) to the Regional Director, Rural Development Administration. Effective April 19, 1993.

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective April 20, 1993.

Confidential Assistant to the Director, Office of Public Affairs. Effective April 27, 1993.

Department of Commerce

Confidential Assistant to the Chief of Staff. Effective April 6, 1993.

Confidential Assistant to the Chief of Staff. Effective April 6, 1993.

Confidential Assistant to the Chief of Staff. Effective April 6, 1993.

Confidential Assistant to the Chief of Staff. Effective April 6, 1993.

Special Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective April 12, 1993.

Special Assistant to the Chief of Staff. Effective April 12, 1993.

Confidential Assistant to the Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration. Effective April 14, 1993.

Executive Assistant to the Counsellor and Chief of Staff. Effective April 23, 1993.

Director, Office of Consumer Affairs to the Secretary of Commerce. Effective April 23, 1993.

Special Assistant to the Under Secretary, National Oceanic and

Atmospheric Administration. Effective April 23, 1993.

Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective April 27, 1993.

Department of Defense

Executive Assistant to the Secretary of Defense. Effective April 6, 1993.

Staff Assistant to the Secretary of Defense. Effective April 6, 1993.

Paralegal Specialist to the Judge, United States Court of Military Appeals. Effective April 21, 1993.

Paralegal Specialist to the Judge, United States Court of Military Appeals. Effective April 21, 1993.

Paralegal Specialist to the Chief Judge, United States Court of Military Appeals. Effective April 21, 1993.

Paralegal Specialist to the Chief Judge, United States Court of Military Appeals. Effective April 21, 1993.

Public Affairs Specialist to the Special Assistant to the Secretary of Public Affairs. Effective April 30, 1993.

Public Affairs Specialist to the Special Assistant to the Secretary of Public Affairs. Effective April 30, 1993.

Public Affairs Specialist to the Special Assistant to the Secretary of Public Affairs. Effective April 30, 1993.

Department of Education

Confidential Assistant to the Chief of Staff. Effective April 1, 1993.

Confidential Assistant to the Chief of Staff. Effective April 1, 1993.

Director, Scheduling and Briefing Staff to the Chief of Staff. Effective April 2, 1993.

Confidential Assistant to the Chief of Staff. Effective April 6, 1993.

Special Assistant to the Secretary of Education. Effective April 20, 1993.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective April 20, 1993.

Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary. Effective April 23, 1993.

Confidential Assistant to the Chief of Staff. Effective April 23, 1993.

Special Assistant to the Deputy Secretary. Effective April 23, 1993.

Special Assistant to the Chief of staff. Effective April 23, 1993.

Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective April 23, 1993.

Confidential Assistant to the Director, Executive Secretariat. Effective April 23, 1993.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective April 23, 1993.

Confidential Assistant to the Chief of Staff, Office of the Secretary. Effective April 23, 1993.

Department of Energy

Confidential Assistant to the Chief of Staff. Effective April 1, 1993.

Intergovernmental Affairs Specialist to the Deputy Assistant Secretary of Intergovernmental Affairs. Effective April 1, 1993.

Department of Health and Human Services

Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media). Effective April 13, 1993.

Confidential Assistant (Advance) to the Director of Scheduling, Office of the Secretary. Effective April 14, 1993.

Special Assistant to the Secretary of Health and Human Services. Effective April 14, 1993.

Special Assistant to the Secretary of Health and Human Services. Effective April 14, 1993.

Special Assistant to the Secretary of Health and Human Services. Effective April 14, 1993.

Special Assistant to the Secretary of Health and Human Services. Effective April 14, 1993.

Special Assistant to the Secretary. Effective April 15, 1993.

Special Assistant to the Secretary. Effective April 15, 1993.

Special Assistant to the Secretary. Effective April 15, 1993.

Special Assistant to the Secretary. Effective April 16, 1993.

Special Assistant to the Secretary. Effective April 19, 1993.

Director of Scheduling to the Chief of Staff. Effective April 29, 1993.

Confidential Assistant to the Administrator, Health Care Financing Administration. Effective April 29, 1993.

Department of Housing and Urban Development

Assistant Director to the Director, Executive Secretariat, Office of Administration. Effective April 14, 1993.

Special Assistant to the Secretary of Housing and Urban Development. Effective April 14, 1993.

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective April 14, 1993.

Special Assistant to the Secretary of Housing and Urban Development. Effective April 14, 1993.

Legislative Officer to the Deputy Assistant Secretary for Legislation. Effective April 14, 1993.

Special Assistant to the Secretary of Housing and Urban Development. Effective April 14, 1993.

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective April 14, 1993.

Special Assistant to the Secretary of Housing and Urban Development. Effective April 14, 1993.

Deputy Assistant Secretary for Economic Development to the Assistant Secretary for Community Planning and Development. Effective April 14, 1993.

Special Assistant to the Secretary for Public Liaison to the Secretary of Housing and Urban Development. Effective April 14, 1993.

Special Assistant to the Assistant Secretary for Public Affairs. Effective April 14, 1993.

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective April 29, 1993.

Department of the Interior

Press Secretary to the Director of Communications. Effective April 6, 1993.

Special Assistant to the Secretary of the Interior. Effective April 6, 1993.

Special Assistant to the Secretary of the Interior. Effective April 19, 1993.

Special Assistant to the Assistant to the Secretary, Office of Congressional and Legislative Affairs. Effective April 27, 1993.

Department of Justice

Special Assistant to the Assistant Attorney General. Effective April 15, 1993.

Deputy Director to the Director, Office of Policy and Communications. Effective April 15, 1993.

Department of Labor

Special Assistant to the Secretary of Labor. Effective April 14, 1993.

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective April 20, 1993.

Confidential Assistant to the Secretary of Labor. Effective April 29, 1993.

Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective April 29, 1993.

Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective April 29, 1993.

Department of State

Member, Policy Planning Staff to the Director, Policy Planning Staff. Effective April 23, 1993.

Department of the Treasury

Public Affairs Specialist to the Director, Office of Public Affairs. Effective April 2, 1993.

Special Assistant to the Counselor to the Secretary. Effective April 6, 1993.

Senior Policy Analyst to the Deputy Assistant Secretary, Corporate Finance. Effective April 6, 1993.

Director, Office of Legislative Affairs to the Senior Deputy Assistant Secretary for Legislative Affairs. Effective April 12, 1993.

Director, Office of Public Affairs to the Deputy Assistant Secretary (Public Affairs). Effective April 14, 1993.

Special Assistant to the Assistant Secretary for Economic Policy. Effective April 16, 1993.

Staff Assistant to the Director of Scheduling and Advance. Effective April 16, 1993.

Special Assistant to the Deputy Assistant Secretary for Administration. Effective April 20, 1993.

Staff Assistant to the Director, Office of Legislative Affairs. Effective April 23. 1993.

Department of Veterans Affairs

Special Assistant to the Secretary of Veterans Affairs. Effective April 16, 1993.

Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective April 20, 1993.

Special Assistant to the Assistant Secretary for Congressional Affairs. Effective April 29, 1993.

Equal Employment Opportunity Commission

Media Contact Specialist to the Acting Director for the Office of Communications and Legislative Affairs. Effective April 30, 1993.

Environmental Protection Agency

Confidential Assistant to the Administrator. Effective April 6, 1993.

Congressional Liaison Specialist to the Associate Administrator. Effective April 6, 1993.

Special Assistant to the Associate Administrator for Communications, Education and Public Affairs. Effective April 6, 1993.

Congressional Liaison Specialist to the Associate Administrator for Congressional and Legislative Affairs. Effective April 12, 1993.

Research Assistant to the Administrator. Effective April 20, 1993.

Special Assistant to the Administrator. Effective April 20, 1993.

Director, Congressional Liaison Division to the Associate Administrator for Congressional and Legislative Affairs. Effective April 27, 1993.

Deputy Director to the Director, Congressional Liaison Division. Effective April 27, 1993.

Federal Emergency Management Agency

Special Assistant to the Associate Director, State and Local Programs and Support Directorate. Effective April 30, 1993.

Federal Maritime Commission

Executive Assistant to the Chairman. Effective April 22, 1993.

General Services Administration

Special Assistant to the Associate Administrator for Business, Industry & Government Affairs. Effective April 30, 1993.

Interstate Commerce Commission

Confidential Assistant to the Commissioner. Effective April 6, 1993.

Special Assistant to the Director, Office of Congressional and Legislative Affairs. Effective April 20, 1993.

National Aeronautics and Space Administration

Public Affairs Specialist to the Administrator of National Aeronautics and Space Administration. Effective April 16, 1993.

Office of Personnel Management

Confidential Assistant to the Director, Office of Personnel Management. Effective April 19, 1993.

Office of Science and Technology Policy

Assistant to the Director for Intergovernmental Affairs and Policy to the Director, Office of Science and Technology Policy. Effective April 14, 1993.

General Counsel to the Director, Office of Science and Technology Policy. Effective April 15, 1993.

Special Assistant to the Director, Office of Science and Technology Policy. Effective April 15, 1993.

Office of the United States Trade Representative

Public Affairs Assistant to the Assistant United States Trade Representative for Public Affairs. Effective April 30, 1993.

Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Assistant U.S. Trade Representative of Congressional Affairs. Effective April 30, 1993.

Confidential Assistant to the U.S. Trade Representative. Effective April 30, 1993.

Pension Benefit Guaranty Corporation

Confidential Assistant to the Executive Director. Effective April 14, 1993.

President's Commission on White House Fellowships

Confidential Assistant to the Director. Effective April 23, 1993.

United States Information Agency

Special Assistant to the Associate Director, Bureau of Policy and Programs. Effective April 6, 1993.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–12928 Filed 6–2–93; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of proposed new routine use for existing system of records.

SUMMARY: The purpose of this document is to provide information for public comment concerning the Postal Service's proposal to add a new routine use to system USPS 120.035, Personnel Records—Employee Accident Records. The new routine use will permit the Postal Service to obtain from members of the American Insurance Association Index information needed for accident and injury analysis and corrective action. This notice complies with subsection (e)(11) of the Privacy Act which requires agencies to publish advance notice of any new use of information in a system.

DATES: This proposal will become effective without further notice 30 days from the date of this publication (July 6, 1993), unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Comments may be mailed to Records Office, US Postal Service, 475 L'Enfant Plaza SW., rm 8831, Washington DC 20260–5940, or delivered to room 8831 at the above address between 8:15 a.m. and 4:45 p.m. where they will be available for inspection during those hours.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, Records Officer (202) 268–2924.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing the addition of a new routine use for its Privacy Act

system USPS 120.035, Personnel Records—Employee Accident Records. That records system contains employee accident and occupational injury or illness histories, injury claim controversion status information, and occupational safety and health statistics. Information collected by the system is used to establish an effective safety and health program. In fulfilling that function, the Postal Service has an obligation to identify circumstances that caused or contributed to an accident so that appropriate corrective action may be taken in the interests of employee safety and protection of postal revenues. The proposed routine use will permit disclosure of limited information in order to obtain information relative to pre-existing medical conditions that may have caused or contributed to an accident or that may have been aggravated by a subsequent injury. If the true causes of accidents and injuries are not known, accident analysis will be ineffective resulting in misplaced corrective actions and loss of postal revenues through decreased production and unnecessary compensation payments.

Under the new routine use, minimum information about postal employees reporting work-related injuries and illnesses may be provided to the American Insurance Services Group which operates an index system that accumulates personal injury claim records from insurance companies and self-insured employer subscribers. As a subscriber to the index system, the Postal Service must submit the injured/ill employee's name, home address, date and place of accident, and any claim identifier. That information will become part of the index system and be used to search the file and generate a report of any injuries that appear to relate to the same individual. The Postal Service will verify information received from the index system and, in doing so, may contact the employee's insurer or former employer. The information will then be used to determine the relationship of any pre-existing condition to a reported Postal Service accident, injury, or illness. As required by postal regulations, indications of violations of law will be referred to the Chief Postal Inspector who may establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published at 56 FR 11798 on March 20, 1991).

New routine use No. 4 is compatible with the purposes for which information is collected within USPS 120.035; i.e., to provide for proper evaluation of safety and health data and necessary corrective action. Obtaining information about preexisting medical conditions that may relate to work-related accidents, injuries, or illnesses will serve to properly identify cause factors on which accident analysis and corrective actions are based.

Disclosure to the index system is not expected to adversely impact the privacy rights of individuals. To obtain information, the Postal Service will disclose only the data elements required for participation in the index system. There will be no subsequent disclosure to the system or to inquiring subcribers—only verification of the limited information already furnished to the index system or supplied by the incurring subscriber. Further, a subscriber only has an interest in information within the index system if that information relates to an individual who is an injury claimant with its company. As an injury claimant, the individual would already have provided to the subscriber the identifying information needed to make inquiry of the Index.

The full text of USPS 120.035 was last published at 54 FR 43681 on October 28, 1989. It is proposed routine use No. 4 be adopted as follows:

USPS 120.035

SYSTEM NAME:

Personnel Records—Employee Accident Records, 120.035.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING:

CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

4. Disclosure may be made to the American Insurance Association Index System and its members, when necessary to obtain information from the System that may be relevant to a reported postal job-related accident, injury or illness. Disclosure will be limited to the name, occupation, home address, date and place of accident, nature of injury and type of claim, if applicable.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93–13020 Filed 6–2–93; 8:45 am]

BILLING CODE 7710–12–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, June 15–16, 1993, at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Hospital Inpatient Care Subcommittee will convene at 8:30 a.m. on Tuesday, June 15, 1993 in Drawing Rooms III and IV, and adjourn at 11:15 a.m. The Hospital Outpatient and Other Facility Services Subcommittee will convene at 9 a.m. the same day in Executive Chambers 1, 2 and 3 and adjourn at 12 noon.

The Full Commission will meet at 1:30 p.m. on June 15, 1993 in Executive Chambers 1, 2 and 3, and on Wednesday, June 16, 1993 the meeting is scheduled for 9 a.m. to 12:15 p.m. in the same room.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 93–12984 Filed 6–2–93; 8:45 am]

BILLING CODE 6820–BW–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application for Reimbursement for Hospital Insurance Services In Canada
(2) *Form(s) submitted:* AA–104
(3) *OMB Number:* 3220–0086
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(6) *Frequency of response:* On occasion
(7) *Respondents:* Individuals or households
(8) *Estimated annual number of respondents:* 80
(9) *Total annual responses:* 80
(10) *Average time per response:* .1625 hours

(11) *Total annual reporting hours:* 13
(12) *Collection description:* The Railroad Retirement Board (RRB) administers the Medicare programs for persons covered by the Railroad Retirement system. The collection obtains the information needed to determine eligibility for and amount due for covered hospital services received in Canada.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–12971 Filed 6–2–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32363; File No. SR-Amex-93-19]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to an Extension of its Pilot After-Hours Trading Facility

May 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On May 11, 1993, the Amex submitted to the Commission Amendment No. 1, requesting that the pilot program be extended for an eight-month period, until January 31, 1994, rather than two months as originally requested.[3] 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 Exchange proposes to extend its pilot After-Hours Trading ("AHT") facility through January 31, 1994. The current pilot program was scheduled to expire on May 24, 1993.

The Exchange requests accelerated approval of the proposed rule change. The Exchange believes that accelerated effectiveness is appropriate since it would permit the Exchange's existing AHT facility to continue operating while the Commission considers permanent approval of the facility. The proposal to extend the AHT pilot, therefore, does not raise any new questions for the Commission's consideration.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In August 1991, the Commission approved the Exchange's AHT facility on a temporary basis.[4] This facility permits the execution of coupled and single-sided closing price orders after the close of the 9:30 a.m. to 4 p.m. trading session. Commencing at 4:15 p.m., single-sided round lot orders for equity securities can be entered through the Exchange's PER system or left with the specialist or the specialist's authorized representative for matching and execution at 5 p.m. at the Exchange's last closing regular way price. Coupled buy and sell round lot, odd lot and partial round lot orders also can be entered through the PER system, or left with the specialist for execution at 5 p.m. against each other at the Exchange's last regular way price. Members are permitted to designate good 'til cancelled ("GTC") limit orders entered during the regular trading session as eligible for execution in the AHT session. Such orders are marked "GTX" and migrate to the AHT facility for possible execution.[5]

The Commission stated in its order approving the AHT facility that it would review the operation of the facility during the 16 month temporary approval period (scheduled to expire May 24, 1993). In this regard, the Commission asked the Exchange to assemble data on the operation of the facility which the Exchange will submit under separate cover. It is the Exchange's opinion that the system has operated well during the temporary approval period and that the operation of the system has not had any adverse effects upon the development of the national market system. The Exchange, therefore, seeks to extend its pilot AHT facility through January 31, 1994, while the Commission considers the Exchange's request for permanent approval of the facility.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, 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, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect of the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from William Floyd-Jones, Jr., Amex, to Diana Luka-Hopson, Esq., Commission, dated May 7, 1993, requesting that the pilot program be extended to January 31, 1994.

[4] See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (approving File No. SR-Amex-91-15) (Amex AHT Approval Order).

[5] The Commission notes that the Amex's AHT facility enables members, not including specialists, to enter both proprietary and agency orders in any Exchange traded equity security, including stocks, rights, warrants, primes and scores, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price.

[6] See File No. SR-Amex-93-15.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–93–19 and should be submitted by June 24, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Amex's proposal to extend its AHT pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the Amex proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communications systems and execution of investors' orders in the best market. For these reasons, and for the reasons set forth below, the Commission finds that approval of the Exchange's proposed rule change, for a temporary period ending on January 31, 1994, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 and 11A of the Act.[7]

In the Commission's release approving the New York Stock Exchange's ("NYSE") Off-Hours Trading ("OHT") facility, the Commission noted the benefits that would accrue to investors through the development of an after-hours trading session.[8] By allowing Amex members to enter single-sided and coupled orders into an after-hours facility, as well as permitting the migration of certain limit orders (GTX orders) from the regular 9:30 a.m. to 4:00 p.m. trading session for possible execution in the AHT facility, the Amex is providing a mechanism for maintaining its own individual marketplace on a competitive level with the NYSE and the regional exchanges.[9] Accordingly, the Commission believes that the proposed rule change which enables members to enter both proprietary and agency orders in Exchange-traded equity securities, including stocks, rights, warrants, primes and scores, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price should be extended until January 31, 1994.

In addition to the Amex AHT pilot program, the Commission is also approving proposals submitted by the NYSE, the Boston Stock Exchange, Inc. ("BSE"), the Midwest Stock Exchange, Inc. ("MSE"), the Philadelphia Stock Exchange, Inc. ("Phlx") and the Pacific Stock Exchange, Inc. ("PSE"), to extend, through January 31, 1994, the respective pilot programs in place on those exchanges which provide for executions of securities during after-hours trading sessions.[10] Each of these pilot programs was scheduled to expire on May 24, 1993.[11]

In its order approving the Amex AHT pilot program, the Commission requested that Amex provide the Commission with specific data and a report regarding the operation of the Amex's AHT pilot. The Commission requested that the Amex submit its report on or before December 13, 1992.[12] Among other things, the Commission requested that the Amex monitor and report on GTX, single-sided and coupled order executions on its trading floor to ensure that Amex specialists are not taking unfair advantage of information derived regarding which orders on their books are designated GTX and the priority among those orders. In addition, the Commission requested that the Amex's report to the Commission describe the Amex's experience with the new rule during the period of August 2, 1991 through December 13, 1992. The Commission requested that the following information (broken down by month) be included in the Amex report:

- Trading volume (trades and number of shares) in after-hours session;
- The number, if any, of (1) single-sided orders; (2) coupled buy and sell orders; and (3) GTX orders executed in the after-hours session;
- The number, if any, of single-sided and coupled orders comprised of primes and scores or comprised of equity derivative products that are executed in the after-hours session;
- The number, if any, of (1) single-sided orders; and (2) single-sided GTX orders that remained unexecuted at the end of the after-hours session;
- The number and percentage of GTC orders on the book that were designated "GTX";
- The number of member firms participating in the after-hours session;
- Whether the Amex marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4: p.m. trading session after the initiation of the after-hours session;
- Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the after-hours session;
- Whether there was a diminution in the number of block transactions during the last hour after the initiation of the after-hours session and
- The degree to which transactions were entered in the after-hours session to avoid the restrictions of the short sale rule in the 9:30 a.m. to 4 p.m. trading session.

The Commission noted that, because the Amex AHT facility is comparable to

---

[7] 15 U.S.C. 78f and 78k–1 (1988). See Amex AHT Approval Order, *supra* note, for a complete description of the AHT procedures and the Commission's rationale for approving the proposal on a pilot basis. The discussion in that order is incorporated by reference into this order.

[8] See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (approving File Nos. SR–NYSE–90-52 and SR–NYSE–90–53).

[9] See *infra* note 11.

[10] See Securities Exchange Act Release Nos. 32362 (May 25, 1993) (order approving File No. SR–NYSE–93–23); 32365 (May 25, 1993) (order approving File No. SR–BSE–93–10); 32368 (May 25, 1993) (order approving File No. SR–MSE–93–06); 32364 (May 25, 1993) (order approving File No. SR–Phlx–93–16); and 32357 (May 25, 1993) (order approving File No. SR–PSE–93–06).

[11] In 1991, the Commission approved proposals submitted by the BSE, MSE, Phlx, and PSE which require their specialists to provide primary market protection to limit orders, designated as executable after the close of the regular trading session, based on volume that prints in the primary market's after-hours session. See Securities Exchange Act Release Nos. 29301 (June 13, 1991) 56 FR 28182 (granting temporary accelerated approval to File No. SR–BSE–91–04; 29297 (June 13, 1991), 56 FR 28191 (granting temporary accelerated approval to File No. MSE–91–11); 29300 (June 13, 1991), 56 FR 28212 (granting temporary partial approval to File No. SR–Phlx–91–26) and 29749 (September 27, 1991), 56 FR 50405 (order granting temporary accelerated approval to File No. SR–Phlx–91–32); 29305 (June 13, 1991), 56 FR 28208 (granting partial temporary accelerated approval to File No. PSE–91–21) and 29543 (August 9, 1991), 56 FR 40929 (order granting accelerated approval to File No. SR–PSE–28). All of the after-hours pilot programs were scheduled to expire May 24, 1993.

[12] See Amex AHT Approval Order, *supra* note 4.

Crossing Session I of the NYSE's OHT facility, the Amex's report should also indicate: (1) How its after-hours facility could link with the NYSE's OHT facility and any other systems approved during the 16-month period; (2) how orders entered on other marketplaces could interact with orders in the Amex's after-hours facility; and (3) how the intermarket issues discussed in the Commission's order approving the AHT pilot would be addressed. In this connection, however, the Commission underscored its strong belief that resolution of intermarket issues would not be solely a responsibility of the Amex, but would fall equally upon all self-regulatory organizations proposing after-hours sessions.

In addition, the Commission stated that it expects the Amex, through use of its surveillance procedures, to monitor for, and report to the Commission any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Specifically, the Commission requested that the Amex monitor closely the trading of primes and scores and equity derivative products in the AHT facility to ensure that trading in these issues is not subject to any patterns of manipulation or trading abuses or unusual trading activity. Finally, the Commission requested that the Amex keep the Commission apprised of any technical problems which may arise regarding the operation of the pilot program, such as difficulties in order execution or order cancellation.

The Amex has reported to the Commission, on a monthly basis, the number of trades and share volume of orders executed after the close pursuant to the pilot procedures. In addition, on May 21, 1993, the Exchange filed with the Commission a report which addresses a substantial portion of the information requested in the Commission's order approving the AHT pilot.[13]

The Commission believes that it is reasonable to extend the pilot program in order to provide the Amex with additional time to complete its study of the pilot program to complete its reporting requirements to the Commission. The pilot extension also will provide the Commission with an opportunity to review the report supplied by the Amex. During the pilot extension, the Commission expects that the Amex will continue to monitor the operation of the AHT pilot program in the manner described above. The Commission requests that the Exchange submit its report, providing the same information described above, on or before October 1, 1993. This report should cover the entire pilot period of August 2, 1991 through September 1, 1993.[14]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the Amex procedures to remain in place on an uninterrupted basis. This will permit the Amex to continue to compete with the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[15] that the proposed rule change is hereby approved on a pilot basis through January 13, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-13070 Filed 6-2-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32365; File No. SR-BSE-93-10]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. ("BSE") Relating to the Facilitation of GTX Orders

May 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 29, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its pilot program for the facilitation of customer GTX orders after the close of the 9:30 a.m. to 4 p.m. trading session until January 31, 1994.[3]

The Exchange requests accelerated approval of its proposed rule change so as to permit the continuation of the current pilot program was scheduled to expire on May 24, 1993.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend until January 31, 1994, the current pilot program was scheduled to expire on May 24, 1993, and which permits Exchange specialists to provide primary market price protection to limit orders through the acceptance of cancellations and issuance of trade reports after the close of the 9:30 a.m. to 4 p.m. trading session in order to accommodate certain member orders designated as GTX orders. The GTX order is an unconditional good til cancelled ("GTC") order designated by the entering broker as executable at 5 p.m. at the primary market closing price.[4]

---

[13] See letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Diana Luka-Hopson, Esq., Branch Chief, Commission, dated May 21, 1993.

[14] The Commission notes that the Amex has filed a new rule filing pursuant to Rule 19b-4 under the Act requesting permanent approval of the AHT facility. See File No. SR-Amex-93-15.

[15] 15 U.S.C. § 78(b)(2) (1988).

[16] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The Exchange has requested that the BSE pilot program be extended through January 31, 1994. Telephone conversation between George Mann, Sr. Vice President and General Counsel, BSE, and Betsy Prout, Staff Attorney, Commission, on May 21, 1993.

[4] On June 13, 1991, the Commission approved, on a pilot basis, File No SR-BSE-91-04, which established BSE procedures for providing primary market protection after regular trading hours for customer limit orders. See Securities Exchange Act Release No. 29301 (June 13, 1993), 56 FR 28182 (order approving File No. SR-BSE-91-04) (BSE Approval Order). At that time, the New York Stock

This pilot does not establish a separate after-hours trading session on the Exchange.

Under the pilot program, pursuant to the BSE's Execution Guarantee Rule, if an issue has traded at the limit price in a primary market's after-hours trading session, the specialist is required to fill GTX orders after the close of the 9:30 a.m. to 4 p.m. trading session based on volume that prints in the primary market's after-hours trading session, unless it can be demonstrated that such orders would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume-related criteria or other criteria requiring a fill.

Procedurally, the Exchange's BEACON system (the BSE automated order routing system) scans each specialist's limit order books for limit orders designated as GTX and priced at the primary market closing price. All such orders become eligible for execution at the primary market closing price up to the amount of the volume that prints in the primary market's after-hours trading session. GTX orders on the specialists' books retain priority among themselves and are entitled to an execution based on that priority. Any eligible GTX orders that are not due a report based on prints in the primary market's after-hours trading session remain on the specialists' books and retain their priority in the next day's regular trading session.

Eligible GTX orders that are due an execution are manually executed and reported to the Consolidated Tape as regular way transactions after the primary market prints its 5 p.m. transactions.

In addition, the pilot procedures define one-sided and two-sided single stock orders in the event that the Exchange chooses to provide for the acceptance, execution and reporting of such orders at a future date.[5]

2. Statutory Basis

The proposed rule change will advance the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. This is accomplished through the ability of the Exchange to compete with the primary markets in protecting limit orders that are sent to the BSE that may have been eligible for an after-hours execution if they had been sent to the primary market, and in effect allows the Exchange to compete with the primary markets in regard to this new order type. The proposed rule gives Exchange specialists the ability to provide additional liquidity to that provided in the primary markets,[6] thus advancing the objective of public order protection. Because of this ability to compete with the primary markets and to protect customer limit orders, the concept of a free and national market system is strengthened.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule 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.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–10 and should be submitted by June 24, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to extend its pilot program to provide price protection for limit orders executable after the BSE close of regular trading hours is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the BSE proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communications systems and the execution of investors' orders in the best market. For these reasons, as discussed in more detail below and in the original BSE Approval Order, the Commission finds that approval of the Exchange's proposed rule change, for a temporary period ending on January 31, 1994, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 and 11A of the Act.[7]

Exchange ("NYSE") had initiated its Off-Hours trading Crossing Session I. The NYSE OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing price orders and crosses of single-stock closing price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (approving File Nos. SR–NYSE–90–52 and NYSE–90–53). On August 2, 1991, the Commission approved a proposed rule change by the American Stock Exchange, Inc. ("Amex") to establish a pilot program extending its trading hours to establish an after-hours trading facility that would permit the execution of: (1) single-sided closing-price orders; and (2) crosses of closing-price buy and sell orders. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (approving File No. SR–Amex–91–15). The BSE procedures provide primary market protection for customer GTX orders in securities listed both on the NYSE and on the Amex.

[5] While the BSE pilot program includes definitions of one-sided and two-sided single stock orders, the BSE currently does not effect such orders after the regular close of business. Under current procedures, the BSE only effects transactions after-hours in order to provide primary market protection to GTX orders held on a BSE specialist's book.

[6] A regional specialist may send a mirror order to the primary market to aid in determining whether an after-hours execution to aid in determining whether an after-hours execution is due. The BSE states that, in such situations, the regional specialist would not be providing additional liquidity, but would be protecting his or her customers' limit orders.

[7] 15 U.S.C. 78f and 78k–1 (1988). See BSE Approval Order, *supra* note 4, for a complete description of the BSE's GTX pilot program and the Commission's rationale for approving the proposal

Continued

In the Commission's release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through the development of an after-hours trading session.[8] Although the BSE proposal did not establish an after-hours session like the NYSE's OHT facility, the Commission believes that it provides a reasonable competitive response. By allowing GTX orders that would be executed on the NYSE to receive a similar fill on the BSE, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market.

In addition to extending the BSE's after-hours GTX pilot program, the Commission is also approving proposals submitted by the NYSE, Amex, the Midwest Stock Exchange, Inc. ("MSE"), the Philadelphia Stock Exchange ("Phlx"), and the Pacific Stock Exchange, Inc. ("PSE"), to extend, through January 31, 1994, their respective pilot programs which provide for executions of securities during after-hours trading sessions.[9] Each of these pilot programs were scheduled to expire on May 24, 1993.[10]

In its order approving the BSE's after-hours pilot program, the Commission requested that the BSE provide the Commission with specific data and report regarding the operation of the BSE's after-hours pilot. The Commission requested that the BSE submit its report on or before December 13, 1992.[11] Among other things, the Commission requested that the BSE monitor and report on GTX executions on its trading floor to ensure that BSE specialists are not taking unfair advantage of information derived regarding which orders on their books are designated GTX and the priority among those orders. In addition, the Commission requested the BSE's report to the Commission describe the BSE's experience with the new rule during the period of June 13, 1991 through December 13, 1992. The Commission requested that the following information (broken down by month) be included in the BSE report:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders;
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders;
- The number, if any, of GTX orders executed after the close of the BSE's regular auction trading session pursuant to the new rule;
- The number, if any, of GTX orders that remain unexecuted after the BSE specialist has fulfilled his or her obligations in connection with the new rule;
- The number and percentage of GTC orders on the book that were designated "GTX" and thus eligible to be filled;
- Whether the BSE marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading sessions after the initiation of the new rule;
- Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the new rule; and
- Whether the Exchange or any specialist has given any special guarantees to execute GTX orders over and above the current requirements of the Execution Guarantee Rule and the requirements of the new rule.

In addition, the Commission stated that it expects the BSE, through use of its surveillance procedures, to monitor for, and report to the Commission any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission requested that the BSE keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

The BSE has reported to the Commission, on a monthly basis, the number of trades and share volume of orders executed after the close pursuant to the new rule. In addition, on April 23, 1993, the BSE submitted a report to the Commission in response to the above questions, which covered data collected by the Exchange through April 16, 1993.[12]

The Commission believes that it is reasonable to extend the pilot program until January 31, 1994 in order to provide the Commission with an opportunity to review the report submitted by the BSE and the other exchanges with after-hours trading programs. During the pilot extension, the Commission expects that the BSE will continue to monitor the operation of the GTX pilot program in the manner described above. The Commission requests that the Exchange submit its report, providing the same information described above, on or before October 1, 1993. This report should cover the extended pilot period of April 24, 1993 through September 1, 1993, with a summary review covering the entire pilot program from June 13, 1991 through September 1, 1993. In addition, any request for another extension of the pilot program or permanent approval of the pilot procedures must be submitted to the Commission, pursuant to Rule 19b–4 under the Act, by October 1, 1993.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the BSE procedures to remain in place on an uninterrupted basis. This will permit the BSE to continue to compete with Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets. Further, the BSE procedures pursuant to the pilot program have been noticed previously in the **Federal Register** and the Commission did not receive any comments on the procedures.[13]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[14] that the proposed rule change is hereby approved on a pilot basis through January 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13069 Filed 6–2–93; 8:45 am]

BILLING CODE 8010–01–M

on a pilot basis. The discussion on that order is incorporated by reference into this order.

[8] See Securities Exchange Act Release No. 29237, *supra* note 4.

[9] See Securities Exchange Act Release Nos. 32362 (May 25, 1993) (order approving File No. SR–NYSE–93–23); 32363 (May 25, 1993) (order approving File No. SR–Amex–93–19); 32368 (May 25, 1993) (order approving File No. SR–MSE–93–06); 32364 (May 25, 1993) (order approving File No. SR–Phlx–93–16); and 32367 (May 25, 1993 (order approving File No. SP–PSE–93–06).

[10] In 1991, the Commission approved proposals submitted by the MSE, Phlx, and PSE which, similar to the BSE proposal, require their specialists to provide primary market protection to limit orders, designated as executable after the close of the regular trading session, based on volume that prints in the primary market's after-hours session. See Securities Exchange Act Release No. 29297 (June 13, 1991), 56 FR 28191 (granting temporary accelerated approval to File No. MSE–91–11); 29300 (June 13, 1991), 56 FR 28212 (granting temporary partial approval to File No. SR–Phlx–91–26); 29305 (June 13, 1991), 56 FR 28208 (granting partial temporary accelerated approval to File No. PSE–91–21); and BSE Approval Order (June 13, 1991).

[11] See BSE Approval Order, *supra* note 4.

[12] See letter from Karen A. Aluise, Staff Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated April 22, 1993.

[13] See Securities Exchange Act Release No. 29301, *supra* note 4.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32368; File No. SR–MSE–93–06]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Midwest Stock Exchange, Inc. ("MSE") Relating to an Extension of the MSE Pilot Program Which Provides Price Protection of Limit Orders Executable After the MSE Close of Regular Trading Hours

May 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 9, 1993, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On May 21, 1993, the Exchange submitted Amendment No. 1 to the Commission, requesting that the MSE Article XX, rule 37 (Guaranteed Execution System) of the Exchange's Rules of the Board of Governors, Interpretation and Policy paragraph .02 ("Rule 37") pilot program be extended through January 31, 1994.[3] 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 MSE proposes to extend its pilot program relating to price protection of limit orders until January 31, 1994.[4] The rule change provides primary market protection to certain limit orders trading at the limit price in a primary market's after-hours trading session. The current pilot period was scheduled to expire on May 24, 1993.

The MSE requests accelerated approval of the proposed rule change so that the price protection of limit orders based on prints in a primary market's after-hours trading session can continue uninterrupted and to allow the Commission sufficient time to review the MSE's report on the pilot program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the temporary approval of the MSE's price protection of limit orders based on after-hours prints in a primary market. The proposed change requires that MSE specialists provide primary market protection for those limit orders entered during the Exchange's primary trading session which are designated as executable after the close of the regular MSE auction market trading session, known as "GTX" orders (good til cancelled, executable in the afternoon session).

The extension is sought in order to provide the Commission with an opportunity to review a report submitted by the MSE, which provides information requested by the Commission in the MSE Approval Order,[5] and which describes the MSE's experience with the pilot program since the inception of its operation. The MSE has provided much of the information requested in monthly reports, and has submitted a report which responds to the questions posed by the Commission in its order approving the MSE pilot program.[6]

2. Statutory Basis

The proposed rule change is consistent with Sections 6(b)(5) and 11A of the Act in that it is designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were received.

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 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

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Daniel Liberti, Associate Counsel, MSE, to Diana Luka-Hopson, Branch Chief, Commission, dated May 21, 1993. In its initial proposed rule change, filed with the Commission on April 9, 1993, the Exchange requested that the pilot program be extended for an additional 60 days period beyond the scheduled termination date on May 24, 1993.

[4] On June 13, 1991, the Commission approved, as a pilot program, File No. SR–MSE–91–11, which amended MSE Rule 37. See Securities Exchange Act Release No. 29297 (June 13, 1991, 56 FR 28191 (order approving File No. SR–MSE–91–11) (MSE Approval Order). See also note 10, *infra* discussing similar proposals of the other exchanges. The MSE pilot procedures provide primary market protection after regular trading hours for customer limit orders. At that time, the New York Stock Exchange ("NYSE") had initiated its Off-Hours Trading ("OHT") Crossing Session I. The NYSE OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing price orders and crosses of single-stock closing/orders price buy and sell. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (approving File Nos. SR–NYSE–90–52 and NYSE–90–53). On August 2, 1991, the Commission approved a proposed rule change by the American Stock Exchange, Inc. ("Amex") to establish a pilot program extending its trading hours to establish an after-hours trading facility that would permit the execution of: (1) single-sided closing-price orders; and (2) crosses of closing-price buy and sell orders. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (approving File No. SR–Amex–91–15). The MSE procedures provide primary market protection for customer GTX orders in securities listed both on the NYSE and on the Amex. The MSE, NYSE, and Amex pilot programs all were scheduled to expire May 24, 1993.

[5] See *infra* text accompanying note 11 for a description of the information requested by the Commission in the MSE Approval Order.

[6] See letter from Daniel J. Liberti, Associate Counsel, MSE, to Diana Luka-Hopson, Branch Chief, Commission, dated April 30, 1993.

office of the MSE. All submissions should refer to File No. SR–MSE–93–06 and should be submitted by June 24, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the MSE's proposal to extend its pilot program, until January 31, 1994, to provide price protection of limit orders executable after the MSE close of regular trading hours is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specificially, the Commission believes that the MSE proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communications systems and the execution of investors' orders in the best market. For these reasons, as discussed in more detail below and in the original MSE Approval Order, the Commission finds that approval of the Exchange's proposed rule change, for a temporary period ending on January 31, 1994, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 and 11A of the Act.[7]

In the Commission's release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through the development of an after-hours trading session.[8] Although the MSE proposal did not establish an after-hours session like the NYSE's OHT facility, the Commission believes that it provides a reasonable competitive response. By allowing GTX orders that would be executed on the NYSE to receive a similar fill on the MSE, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market.

In addition to extending the MSE's after-hours GTX pilot program, the Commission is also approving proposals submitted by the NYSE, Amex, the Boston Stock Exchange, Inc. ("BSE"), the Philadelphia Stock Exchange ("Phlx"), and the Pacific Stock Exchange, Inc. ("PSE"), to extend, through January 31, 1994, their respective pilot programs which provide for executions of securities during after-hours trading sessions.[9] Each of these pilot programs were scheduled to expire on May 24, 1993.[10]

In its order approving the MSE's after-hours pilot program, the Commission requested that the MSE provide the Commission with specific data regarding the operation of the MSE's after-hours pilot. The Commission requested that the MSE submit its report on or before December 13, 1992.[11] Among other things, the Commission requested that the MSE monitor and report on GTX executions on its trading floor to ensure that MSE specialists are not taking unfair advantage of information derived regarding which orders on their books are designated GTX and the priority among those others. In addition, the Commission requested that the MSE submit a report to the Commission describing the MSE's experience with the new rule during the period of June 13, 1991 through December 13, 1992. The Commission requested that the following information (broken down by month) be included in the MSE report:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders;
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders;
- The number, if any, of GTX orders executed after the close of the MSE's regular auction trading session pursuant to the new rule;
- The number, if any, of GTX orders that remain unexecuted after the MSE specialist has fulfilled his or her obligations in connection with the new rule;
- The number and percentage of good til cancelled ("GTC") orders on the book that were designated "GTX" and thus eligible to be filled;
- Whether the MSE marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading sessions after the initiation of the new rule;
- Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the new rule; and
- Whether the Exchange or any specialist has given any special guarantees to execute GTX orders over and above the requirements of the new rule.

In addition, the Commission stated that it expects the MSE, through use of its surveillance procedures, to monitor for, and report to the Commission any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission requested that the MSE keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

The MSE has reported to the Commission, on a monthly basis, the number of trades and share volume of orders executed after the close pursuant to the new rule. In addition, on April 30, 1993, the MSE submitted a report to the Commission in response to the above questions, which covered data collected by the Exchange through January 1, 1993.[12]

The Commission believes that it is reasonable to extend the pilot program until January 31, 1994 in order to provide the Commission with an opportunity to review the report submitted by the MSE and the other exchanges with after-hours trading programs. During the pilot extension, the Commission expects that the MSE will continue to monitor the operation of the GTX pilot program in the manner described above. The Commission requests that the Exchange submit its report, providing the same information described above, on or before October 1, 1993. This report should cover the extended pilot period of January 1, 1993 through September 1, 1993, with a summary review covering the entire

[7] 15 U.S.C. 78f and 78k–1 (1988). *See* MSE Approval Order, *supra* note 4, for a complete description of MSE Rule 37 and the Commission's rationale for approving the proposal on a pilot basis. The discussion in that order is incorporated by reference into this order.

[8] See Securities Exchange Act Release No. 29237, *supra* note 4.

[9] See Securities Exchange Act Release Nos. 32362 (May 25, 1993) (order approving File No. SR–NYSE–93–23); 32363 (May 25, 1993) (order approving File No. SR–Amex–93–19); 32365 (May 25, 1993) (order approving File No. SR–BSE–93–10); 32364 (May 25, 1993) (order approving File No. SR–Phlx–93–16); and 32367 (May 25, 1993) (order approving File No. SR–PSE–93–06).

[10] In 1991, the Commission approved proposals submitted by the BSE, Phlx, and PSE which, similar to the MSE proposal, require their specialists to provide primary market protection to limit orders, designated as executable after the close of the regular trading session, based on volume that prints in the primary market's after-hours session. See Securities Exchange Act Release No. 29301 (June 13, 1991), 56 FR 28182 (order approving File No. SR–BSE–91–04); 29300 (June 13, 1991), 56 FR 28212 (granting temporary partial approval to File No. SR–Phlx–91–26); 29305 (June 13, 1991), 56 FR 28208 (granting partial temporary accelerated approval to File No. PSE–91–21); and MSE Approval Order.

[11] See MSE Approval Order, *supra* note 4.

[12] *See supra* note 6.

pilot program from June 13, 1991 through September 1, 1993. In addition, any request for another extension of the pilot program or permanent approval of the pilot procedures must be submitted to the Commission, pursuant to Rule 19b–4 under the Act, by October 1, 1993.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the MSE procedures to remain in place on an uninterrupted basis. This will permit the MSE to continue to compete with Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [13] that the proposed rule change is hereby approved on a pilot basis through January 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13072 Filed 6–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32362; File No. SR–NYSE–93–23]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Off-Hours Trading Facility and Matched MOC Order Procedures

May 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 73s(b)(1) (1988).

[2] 17 U.S.C. 240.19b– (1991).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Commission's order approving the Exchange's Off-Hours Trading ("OHT") facility contained a two-year "sunset" provision expiring on May 24, 1993.[3] The proposed rule change seeks to extend (i) that "sunset," and (ii) the concurrent end of the pilot program for procedures regulating matched market-on-close ("MOC") orders, to January 31, 1994.[4]

The Exchange requests accelerated approval of the proposed rule change. Accelerated approval would enable the Exchange to continue Crossing Session I and Crossing Session II, and the matched MOC pilot program, as described below, on an uninterrupted basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) *OHT facility.* By order dated May 24, 1991,[5] the Commission approved for a two-year temporary period the OHT facility by which the Exchange offers its two off-hours trading sessions. "Crossing Session I" permits the execution of single-stock, single-sided closing-price orders and crosses of single-stock, closing-price buy and sell orders. "Crossing Session II" allows the execution of crosses of multiple-stock (portfolios of 15 or more securities) aggregate price buy and sell orders.

The Exchange began offering the two sessions on June 13, 1991. The proposed rule change seeks to extend the two-year "sunset" provision set forth in the Commission's OHT Approval Order until January 31, 1994.

(b) *Matched MOC Orders.* In file No. SR–NYSE–91–35, the Exchange requested that procedures for using matched MOC orders and the exemption from SEC Rule 10a–1 (relating to short sales of securities) [6] for such orders (which had originally been filed as part of the pilot extending expiration Friday pricing procedures for MOC orders for every trading day) run concurrently with the temporary period for the Exchange's OHT facility.[7] In its order dated November 27, 1991, the Commission approved this concurrence, stating that "it is appropriate to allow the Exchange additional time to compare and contrast the matched MOC procedures with Crossing Session II."[8]

The Exchange has reviewed program trading activity by its member firms entering matched MOC orders during that period. However, the Exchange believes that it would be appropriate to extend the pilot for matched MOC procedures until January 31, 1994, so as to continue to run concurrently with the Exchange's OHT initiative. In this way, the Exchange can continue to "compare and contrast the matched MOC procedures with Crossing Session II."

[3] See Securities Exchange Act Release No. 29237 (May 31, 1991), 56 FR 24853 (June 3, 1991) (File Nos. SR–NYSE–90–52 and SR–NYSE–90–53) ("OHT Approval Order").

[4] The Commission initially approved the matched MOC order procedures on a pilot basis in June, 1990. In that order, the Commission also granted an exemption from its short sale rule, Rule 10a–1, for matched MOC orders that are part of a program trading strategy. See Securities Exchange Act Release No. 28167 (June 29, 1990), 55 FR 28117 (order granting temporary approval to File No. SR–NYSE–89–10) and letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President and Secretary, NYSE, dated July 2, 1990. The original one-year pilot program was temporarily extended by the Commission for an additional six months, until September 30, 1991, in order to give the Exchange the opportunity to contrast the use of matched MOC orders with certain program trading transactions effected in the Exchange's then recently implemented Crossing Session II. See Securities Exchange Act Release No. 29393 (July 1, 1991), 56 FR 30954 (order granting temporary accelerated approval to File No. SR–NYSE–91–22). Subsequently, the Commission granted accelerated approval to an Exchange proposal to extend the pilot period until November 30, 1991. See Securities Exchange Act Release No. 29761 (September 30, 1991), 56 FR 50743 (order granting temporary accelerated approval to File No. SR–NYSE–91–34). Thereafter, the Commission extended the matched MOC order pilot program through May 24, 1993. See Securities Exchange Act Release No. 30004 (November 27, 1991), 56 FR 63533 (order granting temporary approval to File No. SR–NYSE–91–35).

[5] See OHT Approval Order, *supra* note 3.

[6] Pursuant to Rule 10a–1 under the Act, 17 CFR 240.10a–1 (1991), and Exchange Rule 440B, a short sale on the Exchange may not be effected at a price either (1) below the last reported price or (2) at the last reported price unless that price is higher than the last reported price.

[7] See *supra* note 4.

[8] See Securities Exchange Act Release No. 30004, *supra* note 4.

2. Statutory Basis

The basis under the Act for the Exchange's OHT facility and the matched MOC order procedures, and this proposed time extension for the facility and those procedures, is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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 not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–23 and should be submitted by June 24, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to extend, through January 31, 1994, the pilot program providing for the Exchange's OHT facility and the pilot program for procedures regulating matched MOC orders is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission believes that the NYSE proposal to extend the OHT facility pilot, comprised of Crossing Sessions I and II, along with the pilot for matched MOC orders, is reasonably designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and remove impediments to and perfect the mechanism of a free and open market and a national market system. For these reasons and for the additional reasons set forth below, the Commission finds that approval, through January 31, 1994, of the Exchange's proposed rule change to extend the OHT pilot program and matched MOC pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(5) and 11A.[10]

(1) *OHT Procedures for Crossing Sessions I and II.* In the Commission's order approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through the development of an after-hours trading session.[11] The Commission stated its belief that Crossing Session I would provide investors whose orders were not executed during the 9:30 a.m. to 4 p.m. session with another opportunity to have their orders executed at the NYSE closing price. Crossing Session I also would provide investors the flexibility to decide whether they want to particular order to participate in this Session. With respect to good til cancelled ("GTC") orders entered for execution during the 9:30 a.m. to 4 p.m. trading session, a customer would have the option of deciding whether to designate that order as a GTX (good til cancelled, executable through crossing session) order, thus allowing the order to migrate to Crossing Session I for possible execution. In addition, a customer would have the option of cancelling any order entered into Crossing Session I at any time prior to its execution at 5 p.m. These benefits would accrue to both individual and institutional investors. Moreover, the Commission stated its belief that Crossing Session I may help recapture overseas order flow by enabling firms to facilitate a number of portfolio trading strategies involving small programs of stocks to achieve executions at the NYSE closing price.

Similarly, the Commission stated its belief that Crossing Session II would benefit the investing public by offering members the opportunity to enter aggregate-price crossing portfolio orders with their customers after-hours to be executed against each other. The Commission recognized that Crossing Session II could help to recapture overseas trades of U.S. stocks by providing a mechanism by which portfolio trades arranged off the floor can be effected in an exchange trading system. While the Commission recognizes that Crossing Session II does not provide an auction market for portfolio trades, the reality of the marketplace, is that these portfolio trades currently are being effected off-exchange and, frequently, overseas. Bringing institutional trades that currently are being exported overseas for execution within the purview of U.S. regulatory bodies should benefit the marketplace overall, as well as help to protect the investing public.

Although the Commission discussed these prospective benefits of the OHT program in its order approving the pilot program procedures, the Commission also voiced concern regarding certain issues concerning the NYSE OHT facility, particularly with regard to Crossing Session II and certain National Market System ("NMS") concerns. In order to address these concerns, the Commission approved the OHT facility on a pilot basis, and requested that the Exchange submit a proposal requesting permanent approval of the OHT facility 18 months after its initiation, along with a report concerning various aspects of the pilot, including information regarding the ability of customers to cancel orders entered into the OHT facility. Specifically, the Commission requested that the Exchange provide the following information, broken down by month:

[9] See OHT Approval Order, *supra* note 3, and Securities Exchange Act Release Nos. 28167, 29393, 29761, and 3004, *supra* note 4, for a complete description of the NYSE OHT facility, the NYSE matched MOC order procedures, and the Commission's rationale for approving the proposals on a pilot basis. The discussions in those orders are incorporated by reference into this order.

[10] 15 U.S.C. 78f(b)(5) and 78k–1 (1988).

[11] See OHT Approval Order, *supra* note 3.

• Trading volume (trade, share and dollar value) in both Crossing Session I and Crossing Session II);

• The number, if any, of: (1) Single-stock single-sided orders; (2) single-stock paired buy and sell orders; and (3) GTX orders executed in Crossing Session I;

• The number, if any, of: (1) Single-sided orders; and (2) single-sided GTX orders that remained unexecuted at the end of Crossing Session I;

• The number and percentage of GTC orders on the book that were designated "GTX" and thus migrated to Crossing Session I;

• The number of member firms participating in Crossing Session I and those participating in Crossing Session II;

• Whether the NYSE marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the OHT facility; and

• Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the OHT facility;

• Whether there was a diminution in the number of block transactions during the last hour after the initiation of the OHT facility;

• The degree to which transactions were entered in Crossing Session II to avoid the restrictions of the short sale rule in the 9:30 a.m. to 4 p.m. trading session.

The Commission also requested that, because at the time of the Commission's approval of the OHT facility, at least one other marketplace had proposed a system comparable to the NYSE's OHT facility, the NYSE's report should indicate: (1) How its OHT facility could link with any other systems approved during the 18-month pilot period; (2) how orders entered on the other marketplaces could interact with orders in the OHT; and (3) how the intermarket issues discussed in the Commission's order approving the OHT pilot [12] would be addressed.[13]

In addition to the above information, the Commission further expected the NYSE to monitor carefully the composition of aggregate-price orders in Crossing Session II to ensure that firms do not enter aggregate-price orders where one stock dominates the basket. In addition, the Commission expected the NYSE, through use of its surveillance procedures, to monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity in the two crossing sessions. Finally, the Commission expected the NYSE to keep the Commission apprised of any technical problems which may arise regarding the operation of the OHT, such as difficulties in order execution or order cancellation.

Rather than submitting a proposed rule change requesting permanent approval of the OHT facility, the Exchange is now requesting an extension of the pilot program through January 31, 1994. Meanwhile, the Exchange has been submitting trade and share volume of OHT activity to the Commission on an on-going, weekly basis. The Exchange also submitted a report to the Commission, in January, 1992, concerning certain NMS issues which examined data from the first six months of the pilot program.[14] In order to evaluate the pilot program in its entirety, the Commission is now requesting that the Exchange submit a complete report which discusses all those elements described above, with total figures concerning volume and trade data and analysis thereof, for the pilot of June 13, 1991 through September 1, 1993. The Commission requests that the Exchange submit this report to the Commission on or before October 1, 1993.

(2) *Matched MOC Orders.* In its original order approving the matched MOC pilot program, and in the subsequent orders which have extended the pilot program through May 24, 1993, the Commission voiced concern that, under the pilot procedures, matched MOC orders would be executed without the opportunity for order exposure or interaction with the trading crowd.[15] Because these procedures were in contravention of traditional auction market procedures, the Commission was concerned that customer orders on the limit order book or in the trading crowd could be by-passed. The Commission, however, initially approved these procedures for a pilot period, because these procedures could aid in attracting order flow being executed overseas back to the NYSE which has the advantage of Commission and Exchange oversight pursuant to the Act, trade reporting, and consolidated surveillance.

The Commission has extended the pilot program three times since its inception primarily to give the Exchange the opportunity to contrast the use of matched MOC orders with certain program trading transactions effected in the Exchange's Crossing Session II. In the most recent order extending the matched MOC pilot program through May 24, 1993, the Commission stated that it was extending the pilot program, not because its original concerns regarding the possible displacement of customer orders had been alleviated, but because the Commission found it reasonable to extend the pilot period in light of the NYSE's recently instituted after-hours trading system.[16]

The stock exchanges continually are developing new trading procedures and products in an attempt to facilitate the trading of portfolios of securities. The matched MOC order pilot procedures and the NYSE's OHT facility are but two examples of such developments. Thus, due to the NYSE's ongoing attempt to understand how trades of member firms and their customers could be most efficiently facilitated, the Commission believes that it is appropriate to allow the Exchange additional time to compare and contrast the matched MOC procedures with Crossing Session II.

As of the Commission's November 1991 order extending the matched MOC pilot, no transactions had been effected on the Exchange using the matched MOC procedures. Since then, and in its present proposal, the Exchange has not reported any use of the matched MOC order procedures. The Commission finds it reasonable to extend the pilot program for matched MOC orders in order to give the Exchange the necessary time to evaluate and report to the Commission in its October 1, 1993 report why its members have not used the matched MOC order procedures, whether they have used Crossing

[12] See OHT Approval Order, *supra* note 3.

[13] The Commission emphasized, however, that the resolution of intermarket issues would not be solely a responsibility of the NYSE, but would fall equally upon the regional exchanges (or the National Association of Securities Dealers) proposing an after-hours system and the NYSE.

[14] See letter from James K.C. Doran, Managing Director Intermarket Relations, NYSE, to Kathryn Natale, Assistant Director, Commission, dated January 13, 1992.

[15] See *supra* note 4.

[16] See Securities Exchange Act Release No. 30004, *supra* note 4. As previously noted, the Commission granted a limited exemption from Rule 10a–1 under the Act for a MOC order entered as part of a paired MOC order. [See note 4, *supra* and note 6 in Securities Exchange Act Release No. 29393 (July 1, 1991), 56 FR 30954.] The effectiveness of this exemption was scheduled to terminate on May 24, 1993, concurrent with the expiration of the MOC pilot period. Pursuant to this order, the Commission is granting, until January 31, 1994, an extension of the relief from Rule 10a–1 regarding a MOC order to sell short that is entered by a member firm where (1) the member firm also has entered an MOC order to buy the same amount of stock, and (2) the MOC order is part of a program trading strategy by the member firm, and the orders are identified as such. As indicated in the order approving the MOC procedures for a one-year pilot period (see note 4, *supra*), the Commission believes that matched MOC orders that are part of a program trading strategy do not raise the same concerns that are applicable to transactions in individual stocks, and that it is appropriate to exempt such transactions from the operation of the short sale rule.

Session II instead, and whether there is a market need to justify continuance of the pilot.[17]

In addition, the Commission continues to emphasize that, during the course of the pilot program, the Exchange is under a continued obligation to inform the Commission of its members' use, if any, of the matched MOC procedures and to assess the impact of matched MOC orders on overall market quality and on any possible displacement of orders on the specialist's book or in the trading crowd.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the OHT and MOC procedures to remain in place on an uninterrupted basis, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[18] that the proposed rule change is hereby approved on a pilot basis through January 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13071 Filed 6–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32377; File No. SR–NYSE–93–08]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Permanent Approval to Proposed Rule Change Relating to a Limitation on Additional System Credit

May 27, 1993.

I. Introduction

On January 29, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the limitation affecting the additional system credit to the NYSE's transaction charges, as described in detail below.

Notice of the proposal appeared in the **Federal Register** on February 5, 1993.[3] The Commission received one comment letter.[4] This order approves the proposed rule change.

II. Background

On January 29, 1993, the NYSE proposed revisions to its fee schedule that were, for the most part, effective on February 1, 1993.[5] Specifically, the proposal revised the NYSE's current system processing charges, including the specialist odd-lot charge, and imposed a new specialist charge for each order routed to the specialist through SuperDot.[6] The NYSE reduced the charge to floor brokers for floor brokerage commissions earned, revised the credit to floor brokers for floor brokerage and, most notably, supplemented the existing system credit to members and member organizations for all orders from 100 to 2,099 shares routed through SuperDot and executed by the NYSE specialist. The proposal established a new additional system credit to NYSE members and member organizations for all Individual[7] or Agency[8] market orders from 100 to 2,099 shares routed through the NYSE's SuperDot system for execution. This additional system credit is applied, on a monthly basis, against the member or member organization's total transaction charges. The proposal further excluded from the credit orders executed by members and member organizations for the account of a non-member competing market maker. The proposal defined a "competing market maker" as a specialist or market maker registered as such on a registered stock exchange (other than the NYSE) or as a market maker bidding and offering over-the-counter in an NYSE-traded security. This exclusion was implemented on a temporary basis through May 31, 1993.[9]

III. Description of the Proposal

The Exchange proposes to adopt on a permanent basis the limitation that excludes members and member organizations representing order on behalf of certain market participants from receiving the additional system credit. The practical effect would be to maintain the current fee structure (*i.e,* the exclusion from the additional system credit) for Agency orders for the account of a non-member competing market maker.

The NYSE believes that the proposal is consistent with section 6(b)(4) of the Act, which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its services. The NYSE believes that permanent approval of this proposed fee change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. According to the NYSE, the fee change is intended to respond to competitive market conditions and to enhance the Exchange's competitive posture, thus furthering competition in the securities market. The NYSE states that the additional system credit is specifically targeted at increasing the number of Individual and certain Agency orders sent to the Exchange. The NYSE believes that the proposed fee change also is structured to maintain the current relationship between member proprietary and non-member dealer activities in Exchange-listed securities. In this regard, the Exchange believes that giving a credit to non-member competing market maker trades would be tantamount to subsidizing competitors' trading activity.

IV. Comments Received and NYSE Response

The Commission received one comment letter on the proposed rule change, from the Midwest Stock

---

[17] At the same time the NYSE submits the report, if the Exchange decides it wants to seek either permanent approval of the matched MOC procedures or a further extension of the pilot program, then it should file a proposed rule change with the Commission at that time.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See Securities Exchange Act Release No. 31796 (January 29, 1993), 58 FR 7282 (February 5, 1993).

[4] See letter from Daniel J. Liberti, Associate Counsel, MSE, to Jonathan G. Katz, Secretary, SEC, dated March 4, 1993 ("MSE Comment Letter").

[5] See Securities Exchange Act Release No. 31795 (January 29, 1993), 58 FR 7281 (February 5, 1993) (File No. SR–NYSE–93–07), The revised charges went into effect on February 1, 1993. *Id.*

[6] The orders subject to this new specialist system charge include the orders eligible for the additional system credit, as discussed below. See, *infra,* text accompanying notes 7–8.

[7] An Individual order is an order for the account of any customer who is an individual as defined by NYSE Rule 80A. See Securities Exchange Act Release No. 29866 (October 28, 1991), 56 FR 56432 (November 4, 1991) (File No. SR–NYSE–91–27) ("NYSE Audit Trail Release"). That rule, in turn, cites Section 11(a)(1)(E) of the Act, which defines an individual investor as a natural person. These orders are identified with an "I" for audit trail purposes. See NYSE Audit Trail Release.

[8] For audit trail purposes, an Agency order is an order for the account of any customer, other than a natural person, who is a non-member or non-member organization. These orders are identified with an "A". See NYSE Audit Trail Release, *supra* note 7.

[9] See. *supra,* note 5. In the event that the limitation on the additional system credit did not become permanent, the Exchange set up a reserve so that the amounts withheld thereunder could then be distributed to the appropriate members and member organizations.

Exchange ("MSE").[10] In its letter, the MSE recommends that the Commission disapprove the NYSE proposal and raises several arguments, as discussed below, in support of its position.

First, the MSE argues that the proposal sets a precedent in permitting a primary market to make distinctions in the treatment of orders on its floor as a means to discriminate unfairly against its competitors in violation of sections 6(b)(5) and 11A of the Act. The MSE states that its does not believe that the limitation on the additional system credit poses an immediate threat to competitors' access to the NYSE market. Nevertheless, the MSE believes that it establishes a precedent by which a primary exchange can use "competitor status" as a justification for different application of many exchange rules, not just transaction fees. According to the MSE, the NYSE proposal thereby creates a framework which potentially could threaten access to the primary market by regional exchange specialists.

Second, the MSE argues that, because the NYSE has carved out an exception to its additional system credit based on underlying customers' status as a competitor (rather than the status of their order type), the proposal is unfairly discriminatory as applied. The MSE believes, furthermore, that such an exclusion for competing market makers is unnecessary as a competitive response; according to the MSE, the NYSE's purpose of encouraging order-routing firms to route more Individual and Agency orders to its floor would not be hampered by applying the credit evenly to all such orders. Given this, the MSE states that the NYSE should be required to justify why competing market makers' orders are neither Individual nor Agency orders. Without such a justification, the MSE again urges the Commission to examine the propriety of allowing a primary exchange to establish a framework by which it may single out its competitors regarding access to, or treatment within, its market.

Finally, the MSE argues that, if a primary exchange is permitted to use fees as an indirect way to place a burden on access to its marketplace, then orders eventually will be prohibited from freely interacting with each other. The MSE questions whether, if it is now permissible to exclude only competing market makers' orders from receiving a credit, it will later be permissible to include only these orders for additional fees. The MSE believes that, either way, it becomes more expensive to execute an Agency market order for a competing market maker on the NYSE, than to execute such an order for any other customer. In conclusion, the MSE states that arbitrary application of an NYSE fee hinders access to the primary market and that this proposal places a burden on competition not necessary for the public interest.

The NYSE responded to the issues raised by the MSE.[11] In its response, the NYSE states that the MSE does not claim that the limitation on the NYSE's additional system credit is contrary to the Act or threatens access to the NYSE market. Rather, the NYSE contends that the MSE's sole objection is the precedent the proposal would set, which is not a basis for disapproving a rule filing and is an argument to be made if any exchange were to propose denying competitors access to any exchange market.

The NYSE also disputes the MSE's assertion that the NYSE proposal draws distinctions based on "competitor status" rather than "order type." The NYSE notes that, while the additional system credit is generally available to members and member organizations representing Individual and Agency orders, the credit is not available to them for orders they handle for the account of any market maker, including a market maker who is a member of the NYSE. In the NYSE's view, because the NYSE did not grant the credit to its own members' proprietary orders, denying the credit to its competitors' orders merely maintains parity between member and non-member market makers.

Moreover, the NYSE states that the goal of the fee change is to encourage public order flow, not dealer or market maker order flow. According to the NYSE, such encouragement (*i.e.*, granting the credit) would inappropriately promote the direct competitive activities of these non-member market makers and would subsidize the handling of their proprietary orders. The NYSE does not believe that the Act requires it to grant such a "subsidy." In conclusion, the NYSE states that excluding members and member organizations from receiving the additional system credit for representing orders of competing market makers not only maintains parity among market makers, but also avoids the inappropriate promotion of the competitive activities of non-member market makers.

V. Discussion

After careful consideration of the comments received as well as the applicable statutory provisions, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) and 11A of the Act.[12] In particular, the Commission believes that the proposal is consistent with the requirements under section 6(b)(4) of the Act that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities. The Commission also finds that the proposed rule change is consistent with the section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and the Section 11A mandate that there be fair competition among brokers and dealers and among exchange markets.

The Commission has, on many occasions, approved changes to exchange fee schedules that were designed to encourage members to route public order flow to that exchange,[13] and the cost of execution, like the quality and speed of execution, is a basis on which exchanges compete for member order flow. An exchange's discretion in this regard, however, is circumscribed by the requirements under section 6(b) of the Act that it not unfairly discriminate between

[10] See MSE Comment Letter, *supra*, note 4.

[11] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated March 18, 1993 ("NYSE Response Letter").

[12] 15 U.S.C. 78f(b) and § 78k–1 (1988).

[13] See, *e.g.*, Securities Exchange Act Release Nos. 28794 (January 17, 1991), 56 FR 2964 (January 25, 1991) (File No. SR–Amex–90–36) (revising the American Stock Exchange's ("Amex's") equity transaction charges; granting order-entering firms a credit for each round-lot order entered through the Amex's automated Post Execution Reporting System); 29769 (September 30, 1991), 56 FR 50742 (October 8, 1991) (File No. SR–MSE–91–13) (revising the Midwest Stock Exchange's ("MSE's") transaction fee schedule; adding an additional volume credit for agency round-lot market orders executed electronically on the MSE); and 28212 (July 24, 1990), 55 FR 30065 (July 24, 1990) (File No. SR–Phlx–90–15) (revising the Philadelphia Stock Exchange's ("Phlx's") equity transaction fees; creating a new credit for each trade executed through Phlx's Automated Communication and Execution System and changing the schedule of volume discounts).

See also Securities Exchange Act Release Nos. 31636 (December 22, 1992) 57 FR 62406 (December 30, 1992) (File No. SR–MSE–92–15) (extending MSE's waiver of transaction fees for trades in Tape B eligible issues); 31846 (February 10, 1993), 58 FR 8801 (February 17, 1993) (File No. SR–PSE–93–02) (revising the Pacific Stock Exchange's ("PSE's") equity transaction charges; modifying discounts for automated trades); 31515 (November 24, 1992), 57 FR 56937 (December 1, 1992) (File No. SR–BSE–92–09) (revising the Boston Stock Exchange's ("BSE's") fee schedule; including volume discounts).

customers, brokers or dealers, that it not impose an unnecessary burden on competition, and that its rules provide for the equitable allocation of reasonable fees, dues and other charges among exchange members, issuers and persons using its facilities.

The Commission believes that the NYSE proposal is consistent with those requirements and limitations and that it does not result in a denial of access to NYSE facilities by imposing a burden on competition in violation of Section 6(b)(8) of the Act.[14] In reaching these conclusions, the Commission finds it significant that the NYSE does not grant the additional system credit to members or member organizations [15] representing orders for the account of *any* market maker. Thus, under this proposal, non-member competing market makers would be treated no differently than market makers who are members of the NYSE (*e.g.*, NYSE specialists, member competing market makers). In terms of market makers who are members of the NYSE, neither their proprietary orders,[16] nor orders they place with another Exchange member or member organization [17] are eligible for the credit.[18]

Thus, the limitation has the effect of maintaining parity between all market making activities. This parity could be especially important from the perspective of the NYSE's specialists who, as part of the rule change that instituted this credit,[19] were subjected to a new system processing charge. Specialists are required to pay this new charge whenever they execute a system order eligible for the additional system credit.[20]

Given the NYSE's intention of redistributing its fees more equitably and the fact that, in essence, NYSE specialists are partially funding the additional system credit,[21] the Commission believes that, without the proposed credit limitation, the NYSE's revised transaction charges might favor its competitors over NYSE members or member organizations. In these specific circumstances, the Commission is satisfied with the NYSE's justification for the exclusion of orders on behalf of competing market makers from the incentives the NYSE is offering to attract order flow. The Commission cannot conclude that this particular proposal is such an unreasonable competitive response that it violates, or is inconsistent with, the Act.

The Commission also does not believe that the proposal will establish a precedent in permitting a primary market to make distinctions in the treatment of orders on its floor as a means to discriminate unfairly against its competitors.[22] Orders for the account of a non/member competing market maker will continue to be treated in the same way as other Agency orders. For instance, the limitation would not effect any change in routing to the NYSE market; in the priority such orders receive on the floor; or in how they would be surveilled by the NYSE.[23] Similarly, the Commission does not believe that the NYSE should be required to apply the additional system credit evenly to all Individual and Agency market orders.[24]

Finally, the Commission does not believe that this proposal places an indirect burden on access to a marketplace that will prohibit or inhibit order interaction. Market makers continue to have access through the Intermarket Trading System ("ITS"). The Commission will continue to review carefully all proposed rule changes, including those governing fees, for consistency with, among other things, the requirements of sections 6(b)(4), 6(b)(5), 6(b)(8) and 11A of the Act, in order to ensure that transaction charges neither hamper access to markets nor interfere with order interaction.

VI. Conclusion

For the reasons stated above, the Commission believes that the proposed rule change is not inconsistent with sections 6(b)(4), 6(b)(5), 6(b)(8) and 11A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NYSE–93–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13074 Filed 6–2–93; 8:45 am]

BILLING CODE 8010–01–M

---

[14] The only commentator opposing the proposal, the MSE, even concedes that the limitation does not pose an immediate threat to primary market access. See MSE Comment Letter, *supra*, note 4.

[15] The additional system credit is a rebate granted to NYSE members and member organizations, not their customers. The credit merely reduces the amount that the member or member organization owes the NYSE in total transaction charges, and may not exceed the total transaction charges to be paid by the member or member organization.

[16] For audit trail purposes, these orders are identified with a "P". See NYSE Audit Trail Release, *supra*, note 7.

[17] For audit trail purposes, these orders are identified with a "W". See NYSE Audit Trail Release, *supra*, note 7.

[18] As described below, the credit is only available to "I" and certain "A" orders. See, *supra*, text accompanying notes 7–8. In other words, "P" and "W" orders would be excluded without reference to the limitation proposed here.

[19] See, *supra*, note 5.

[20] *Id.*

[21] See Memorandum from William H. Donaldson, Chairman and Chief Executive Officer, NYSE, and Richard A. Grasso, Executive Vice Chairman and President, NYSE, to Members, dated January 13, 1993.

[22] Indeed, the Commission would disagree strongly with any market that tried to use this proposal as such a precedent.

[23] Although the Commission has pending a separate proposal to require members and member organizations to identify orders for competing dealers for surveillance purposes, see File No. SR–NYSE–91–46, the NYSE has assured the Commission that there would be no change made by this filing in how orders for the account of a non-member competing market maker are identified for audit trail purposes. According to the NYSE, members and member organizations will be responsible for monitoring and reporting, on a monthly basis on NYSE Form 600–TC, how many of their orders were not eligible for the additional system credit. Telephone conversation between Keith R. Helsby, Vice President, Finance, NYSE, and Beth Stekler, Attorney, Branch of Exchange Regulation, Office of Self Regulatory Oversight, Division of Market Regulation, SEC, on May 24, 1993.

[24] As noted above, the Commission is satisfied with the NYSE's justification for the exclusion of orders on behalf of competing market makers. As discussed above, the NYSE does not grant the credit to members or member organizations representing orders for the account of *any* market maker. In this way, the proposed limitation maintains parity among all market making activities. See, *supra*, text accompanying notes 15–21. For that reason, the Commission does not believe that this proposal establishes a framework by which a primary exchange would be able to single out its competitors regarding access to, or treatment within, its market.

[25] 15 U.S.C. 78s(b)(2) (1988).

[26] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32367; File No. SR–PSE–93–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to an Extension of its Crossing Session Pilot Program

May 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 1993, 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 and II below, which Items have 0been prepared by the self-regulatory organization. On May 2, 1993, the PSE submitted to the Commission Amendment No. 1, requesting that the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

pilot program described below be extended for an eight-month period, until January 31, 1994, rather than two months as originally requested.[3] 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 requests an extension to its Crossing Session pilot program, under which certain designated limit orders on the PSE specialists' books are afforded price protection based on the primary market. The current pilot program was scheduled to expire on May 24, 1993.

The Exchange requests accelerated approval of the proposed rule change because of the importance that the PSE's Crossing Session program continue uninterrupted and because the extension will provide the PSE with additional time to study the program. The Exchange believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 13, 1991, the Commission approved, on a temporary basis, a proposal to allow the Exchange to provide primary market protection to orders that have been entered with the PSE but designated to receive the execution price established on the primary market's after-hours session.[4] The Exchange submitted the proposal as a competitive response to the Off-Hours Trading Facility on the New York Stock Exchange ("NYSE") that had recently been approved by the Commission.[5] The Commission also approved on June 13, 1991 substantially similar proposals by the Boston, Philadelphia and Midwest Stock Exchanges.[6]

Under the Crossing Session program, PSE specialists are required to provide primary market protection for orders designated "GTX," *i.e.*, orders on the PSE specialists' limit order books that are good til cancelled ("GTC") and executable through the Crossing Session. Orders so designated become eligible for migration to the PSE's 1 to 1:30 p.m. (PT) auction market trading session[7] and to the Crossing Session for possible execution at the primary market's closing price. The Crossing Session, which serves as an order protection environment vis-a-vis NYSE Crossing Session I, occurs from 1:50 to 2 p.m. (PT). Orders that are designated as GTX but that are not filled remain on the PSE specialists' limit order books and retain their priority.

The Commission approved the Crossing Session program for a temporary period ending on May 24, 1993.[8] The Commission requested the PSE to submit a report to the Commission describing the PSE's experience with regard to certain questions designated in the PSE Approval Order.[9] The PSE is requesting an extension of the pilot program procedures in order to complete its study of the Crossing Session program.

2. Statutory Basis

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 promotes just and equitable principles of trade and protects investors and the public interest.

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.

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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–06 and should be submitted by June 24, 1993.

---

[3] See letter from Michael D. Pearson, Senior Attorney, PSE, to Elizabeth L. Prout, Esq., Commission, dated May 2, 1993, requesting that the pilot program be extended to January 31, 1994.

[4] See Securities Exchange Act Release No 29305 (June 13, 1991), 56 FR 28208 (granting partial temporary accelerated approval to File No. SR–PSE–91–21) ("PSE Approval Order"). On August 30, 1991, the Commission approved the portion of File No. SR–PSE–91–21 relating to the extension of the hours of the PSE's auction market trading session for an additional twenty minutes to 1:50 p.m. (PT). See Securities Exchange Act Release No. 29631 (August 30, 1991), 56 FR 46025. Finally, the portion of File No. SR–PSE–91–21 relating to the creation and trading on the Exchange of a new type of order, one-sided ("OS") closing price orders, is currently under review by the Commission.

[5] The NYSE Off-Hours Trading ("OHT") facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing price orders and crosses of single-stock closing price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (approving File Nos. SR–NYSE–90–52 and NYSE–90–53). On August 2, 1991, the Commission approved a proposed rule change by the American Stock Exchange, Inc. ("Amex") to establish a pilot program extending its trading hours to establish an after-hours trading facility that would permit the execution of: (1) single-sided closing-price orders; and (2) crosses of closing-price buy and sell orders. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (approving File No. SR-Amex-91–15). Thereafter, the Commission approved a proposed rule change to amend the PSE Crossing Session Program to include Amex-listed securities in its after-hours primary market protection procedures. See Securities Exchange Act Release No. 29543 (August 9, 1991), 56 FR 40929 (granting accelerated approval of File No. SR–PSE–91–28). The Commission approved the NYSE OHT facility and the Amex after-hours facility on a pilot basis expiring on may 24, 1993.

[6] See *infra* note 13.

[7] This session was later extended to 1:50 p.m. (PT). See PSE Approval Order *supra* note 4.

[8] See Securities Exchange Act Release No. 29631, *supra* note 4.

[9] See *infra* text accompanying note 14.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the PSE's proposal to extend its Crossing Session pilot program until January 31, 1994, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the PSE proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communications systems and the execution of investors' orders in the best market. For these reasons, as discussed in more detail below and in the original PSE Approval Order, the Commission finds that approval of the Exchange's proposed rule change, for a temporary period ending on January 31, 1994, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 and 11A of the Act.[10]

In the Commission's release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue the investors through the development of an after-hours trading session.[11] Although the PSE proposal did not copy the NYSE's OHT facility, the Commission believes that it provides a reasonable competitive response. By allowing GTX orders that would be executed on the NYSE to receive a similar fill on the PSE, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market.

In addition to extending the PSE's Crossing Session pilot program, the Commission is also approving proposals submitted by the NYSE, Amex, the Boston Stock Exchange, Inc., the Midwest Stock Exchange, Inc. ("MSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx"), to extend, through January 31, 1994, their respective pilot programs which provide for executions of securities during after-hours trading session.[12] Each of these pilot programs was scheduled to expire on May 24, 1993.[13]

In its order approving the PSE Crossing Session pilot program, the Commission requested that the PSE provide the Commission with specific data and a report regarding the operation of the PSE's after-hours pilot. The Commission requested that the PSE submit its report on or before December 13, 1992.[14] Among other things, the Commission requested that the PSE monitor and report on GTX executions on its trading floor to ensure that PSE specialists are not taking unfair advantage of information derived regarding which orders on their books are designated GTX and the priority among those orders. In addition, the Commission requested that the PSE submit a report to the Commission describing the PSE's experience with the new rule during the period of June 13, 1991 through December 13, 1992. The Commission requested that the following information (broken down by month) be included in the PSE report:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders;
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders;
- The number, if any, of GTX orders executed after the 1:00 to 1:30 p.m. (PT) trading session and after 2:00 p.m. (PT);
- The number, if any, of GTX orders that remain unexecuted after the PSE specialist has fulfilled his or her obligations in connection with the new rule;
- The number and percentage of GTC orders on the book that were designated "GTX" and thus eligible to be filled;
- Whether the PSE marketplace has experienced any increased volatility during the last hour of the 6:30 a.m. to 1:00 p.m. (PT) trading sessions after the initiation of the new rule;
- Whether there were greater (wider) quote spreads during the last hour of the 6:30 a.m. to 1:00 p.m. (PT) trading session after the initiation of the new rule; and
- Whether the Exchange or any specialist has given any special guarantees to execute GTX orders over and above the requirements of the new rule.

In addition, the Commission stated that it expects the PSE, through use of its surveillance procedures, to monitor for, and report to the Commission any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission requested that the PSE keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

The PSE has reported to the Commission, on a monthly basis, the number of trades and share volume of orders executed after the close pursuant to the pilot procedures. In addition, on May 4, 1993, the Exchange filed with the Commission a report in response to the above questions. While the PSE has supplied to the Commission a substantial portion of the data requested in the PSE Approval Order, the present PSE proposal requests that the Commission extend the pilot program in order to complete the Exchange's study of the pilot program.

The Commission believes that it is reasonable to extend the pilot program in order to provide the PSE with additional time to complete its study of the pilot program. The pilot extension also will provide the Commission with an opportunity to review the data supplied by the PSE and the other exchanges with after-hours trading programs. During the pilot extension, the Commission expects that the PSE will continue to monitor the operation of the GTX pilot program in the manner described above. The Commission requests that the Exchange submit its report, providing the same information described above, on or before October 1, 1993. This report should cover the period of June 13, 1991 through September 1, 1993. In addition, any request for another extension of the pilot program or permanent approval of the pilot procedures must be submitted to the Commission, pursuant to Rule 19b–4 under the Act, by October 1, 1993.

[10] 15 U.S.C. 78f and 78k–1 (1988). See PSE Approval Order, *supra* note 4, for a complete description of the PSE procedures and the Commission's rationale for approving the proposal on a pilot basis. The discussion in that order is incorporated by reference into this order.

[11] See Securities Exchange Act Release No. 29237, *supra* note 5.

[12] See Securities Exchange Act Release Nos. 32362 (May 25, 1993) (order approving File No. SR–NYSE–93–23); 32363 (May 25, 1993) (order approving File No. SR–Amex–93–19); 32365 (May 25, 1993) (order approving File No. SR–BSE–93–10); 32368 (May 25, 1993) (ordering approving File No. SR–MSE–93–06); 32364 (May 25, 1993) (order approving File No. SR–Phlx–93–04).

[13] In 1991, the Commission approved proposals submitted by the BSE, MSE, and Phlx which, similar to the PSE proposal, require their specialists to provide primary market protection to limit orders, designated as executable after the close of the regular trading session, based on volume that prints in the primary market's after-hours session. See Securities Exchange Act Release No. 29301 (June 13, 1991), 56 FR 28182 (granting temporary accelerated approval to File No. BSE–91–04); 29297 (June 13, 1991), 56 FR 28191 (granting temporary accelerated approval to File No. MSE–91–11); 29300 (June 13, 1991), 56 FR 28212 (granting temporary accelerated approval to File No. SR–Phlx–91–26); and PSE Approval Order *supra* note 4.

[14] See PSE Approval Order, *supra* note 4.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the PSE procedures to remain in place on an uninterrupted basis. This will permit the PSE to continue to compete with Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [15] that the proposed rule change is hereby approved on a pilot basis through January 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13068 Filed 6–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32379; File No. SR–Phlx–93–11]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Extension of Trading Hours for Narrow-based Index Options

May 27, 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 11, 1993, the Philadelphia Stock Exchange (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 proposes to amend Exchange Rule 101 and 1101A to extend trading hours in industry or narrow-based index options from 4:10 p.m. to 4:15 p.m. (ET).

The text of the proposal is available at the Office of the Secretary, Phlx, and at the Commission.

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30–3(a)(12) (1991).

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 Phlx proposes to extend trading in its industry index options from 4:10 p.m. to 4:15 p.m. (ET). In this regard, the Phlx is proposing to amend its Rule 101, Hours of Business, and Rule 1101A, Terms of Options Contracts. Approval of the proposed rule change will result in the following three narrow-based index options, currently listed on the Phlx, trading until 4:15 p.m.: The KBW/Bank Index options ("BKX"), the Gold/Silver Index option ("XAU") and the Utility Index option ("UTY").

The Phlx also notes that it currently has pending before the Commission a proposed rule change that would extend the exercise advice cut-off time until 4:20 p.m. (ET) for all index options traded on the Phlx.[1] This proposal provides that industry index options exercise advice forms will be due at 4:20 p.m. (ET), which is ten minutes after the current 4:10 p.m. close of trading for these options, but five minutes after the 4:15 p.m. close of trading currently being proposed.

The Exchange believes that an additional five minutes of trading for industry index options is appropriate for several reasons. First, the Exchange seeks to remain competitively in line with other exchanges. For example, the American Stock Exchange ("Amex") and the Chicago Board Options Exchange ("CBOE") recently began trading options on a biotechnology index, which is an industry or narrow-based index that trades until 4:15 p.m. (ET).[2]

[1] See File No. SR–Phlx–92–31.

[2] See Securities Exchange Act Release Nos. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (order approving SR–CBOE–91–51) and 31468 (November 16, 1992), 57 FR 55604 (November 25, 1992) (notice of immediate effectiveness of SR–Amex–92–37).

In addition, the Phlx believes that establishing a uniform close of trading for all index options should prevent confusion among investors and traders of index options. Specifically, under this proposal, all index options would trade until 4:15 p.m., regardless of classification as a narrow or broad-based index.

For the above reasons, the Phlx believes that the proposal to extend industry or narrow based index options trading until 4:15 p.m. (ET) is consistent with section 6(b) of the Act, in general, and section 6(b)(5) in particular, in that it is designed to protect investors and the public interest, as well as to facilitate transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer 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 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 24, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13067 Filed 6–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32364; File No. SR–Phlx–93–16]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc.

May 25, 1993.

In the matter of Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. ("Phlx") Relating to an Extension of the Phlx Pilot Program under Phlx Rule 232 which Provides Price Protection of Limit Orders Executable after the Phlx Close of Regular Trading Hours.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 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 and II below, which Items have been prepared by the self-regulatory organization. On May 17, 1993, the Exchange submitted Amendment No. 1 to the Commission requesting that the Phlx Rule 232 pilot program be extended through January 31, 1994.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[3] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Murray Ross, Secretary, Phlx, to Diana Luka-Hopson, Branch Chief, Commission, dated May 17, 1993. In its initial proposed rule change, filed with the Commission on April 30, 1993, the Exchange requested that the pilot program be extended for an additional 60 days period beyond the scheduled termination date of May 24, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx hereby submits a proposed rule change to extend through January 31, 1994, its pilot program under Phlx Rule 232 relating to price protection of limit orders executable after the Phlx close of regular trading hours. The current pilot program was scheduled to expire on May 24, 1993.

The Exchange requests accelerated approval of its proposed rule change so that the Phlx may be in a position to commence an orderly continuation of the pilot program without disruption.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 13, 1991, the Commission granted accelerated approval to File No. SR–Phlx–91–26,[4] a proposed rule change establishing, on a pilot basis until May 24, 1993, Phlx rule 232[5] requiring Phlx specialists to provide primary market protection for limit orders entered during the Exchange's regular 9:30 a.m. to 4 p.m. trading session, that are designated as executable after the Phlx close ("GTX" orders), based upon the volume that prints in the primary markets during their after-hours trading sessions. To date, volume executed through the GTX pilot program under Phlx rule 232 has been *de minimis*.[6]

The Phlx is in the process of evaluating the efficacy of continuing the GTX limit order price protection guarantee program. Accordingly, to allow the Exchange's standing committees and its Board of Governors further time to evaluate the data respecting the pilot program and to assess the GTX program as a permanent enhancement to the Exchange's trading environment, the Phlx respectfully requests the Commission to authorize an extension of the pilot program through January 31, 1994. In all other respects, the Phlx commits to operate the GTX pilot program as represented in its original proposal to establish this pilot.[7]

[4] On June 13, 1991, the Commission approved, on a pilot basis, File No. SR–Phlx–91–26, which established Phlx Rule 232. See Securities Exchange Act Release No. 29300 (June 13, 1993), 56 FR 28212 (order approving File No. SR–Phlx–91–26) (Phlx Approval Order), and note 11, *infra*. At that time, Phlx Rule 232 provided for primary market protection, when applicable, of customer orders entered on the Phlx when transactions occur in the same security on the New York Stock Exchange ("NYSE") during its Off-Hours Trading ("OHT") Crossing Session I. The NYSE OHT facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I permits the execution of single-stock single-sided closing price orders and crosses of single-stock closing price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (approving File Nos. SR–NYSE–90–52 and NYSE–90–53). On August 2, 1991, the Commission approved a proposed rule change by the American Stock Exchange, Inc. ("Amex") to establish a pilot program extending its trading hours to establish an after-hours trading facility that would permit the execution of: (1) Single-sided closing-price orders; and (2) crosses of closing-price buy and sell orders. See Securities Exchange Act Release No. 29525 (August 2, 1991), 56 FR 37736 (approving File No. SR–Amex–91–15). Thereafter, the Commission approved a proposed rule change to amend its Rule 232 to include Amex-listed securities in its after-hours primary market protection procedures. See Securities Exchange Act Release No. 29749 (September 27, 1991), 56 FR 50405. The Commission approved the NYSE OHT facility and the Amex after-hours facility on a pilot basis expiring on May 24, 1993.

[5] PHLX Rule 232 provides:

GTX Order Guarantee

Agency limit orders in New York Stock Exchange, Inc. ("NYSE") or American Stock Exchange, Inc. ("AMEX") listed securities traded on the Philadelphia Stock Exchange, Inc. ("PHLX") may be designated as "GTX" orders and entered during regular PHLX trading hours. A "GTX" order is an order that is good until cancelled, eligible for primary market protection based on volume that prints on the NYSE or AMEX after-hours trading session. During regular trading hours, GTX orders may be executed as any other limit orders, but if not executed by the close of regular PHLX trading hours, GTX Orders are executable after the PHLX close. In this regard, PHLX specialists will execute unfilled GTX orders in whole or in part based on priority and precedence of those orders and on a share for share basis as measured by volume that prints in the NYSE's or AMEX's after ours trading session at the limit price unless it can be demonstrated that the PHLX GTX orders would not have been executed had they been transmitted to the NYSE or to the AMEX or unless the broker and PHLX specialist agree upon a specific volume related to other criteria for requiring a fill.

[6] The Phlx is presently in the process of compiling data respecting the GTX pilot program as requested pursuant to the Commission order. See infra text accompanying note 12, for a description of the information requested in the Phlx Approval Order.

[7] See supra note 5.

pilot program as represented in its original proposal to establish this pilot.[7]

The purpose of the development and implementation of the GTX pilot program respecting primary market price protection of certain limit orders is to improve the efficiency of execution of transactions in equities on the Phlx and as a competitive response to after-hours trading initiatives of other market centers.

2. Statutory Basis

The proposal is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system.

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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–16 and should be submitted by June 24, 1993.

[7] See supra note 5.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Phlx's proposal to extend its pilot program until January 31, 1994, to provide price protection for limit orders executable after the Phlx close of regular trading hours is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the Phlx proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communications systems and the execution of investors' orders in the best market. For these reasons, as discussed in more detail below and in the original Phlx Approval Order, the Commission finds that approval of the Exchange's proposed rule change, for a temporary period ending on January 31, 1994, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6 and 11A of the Act.[8]

In the Commission's release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through the development of an after-hours trading session.[9] Although the Phlx proposal did not establish an after-hours trading session like the NYSE's OHT facility, the Commission believes that it provides a reasonable competitive response. By allowing GTX orders that would be executed on the NYSE to receive a similar fill on the Phlx, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the primary market.

In addition to extending the Phlx's after-hours GTX pilot program, the Commission is also approving proposals submitted by the NYSE, Amex, the Boston Stock Exchange, Inc. ("BSE"), the Midwest Stock Exchange, Inc. ("MSE"), and the Pacific Stock Exchange, Inc. ("PSE"), to extend, through January 31, 1994, their respective pilot programs which provide for executions of securities during after-hours trading sessions.[10] Each of these pilot programs were scheduled to expire on May 24, 1993.[11]

In its order approving the Phlx's after-hours pilot program, the Commission requested that the Phlx provide the Commission with specific data and a report regarding the operation of the Phlx's after-hours pilot. The Commission requested that the Phlx submit its report on or before December 13, 1992.[12] Among other things, the Commission requested that the Phlx monitor and report on GTX executions on its trading floor to ensure that Phlx specialists are not taking unfair advantage of information derived regarding which orders on their books are designated GTX and the priority among those orders. In addition, the Commission requested that the Phlx's report to the Commission describe the Phlx's experience with the new rule during the period of June 13, 1991 through December 13, 1992. The Commission requested that the following information (broken down by month) be included in the Phlx report:

- Whether customers who have entered GTX orders experienced any problems when they attempted to cancel such orders;
- Whether the Exchange has experienced any difficulties in monitoring the activities of specialists with regard to determining their particular obligations to fill GTX orders;
- The number, if any, of GTX orders executed after the close of the Phlx's regular auction trading session pursuant to the new rule;
- The number, if any, of GTX orders that remain unexecuted after the Phlx

[8] 15 U.S.C. 78f and 78k–1 (1988). See Phlx Approval Order, *supra* note 4, for a complete description of Phlx Rule 232 and the Commission's rationale for approving the proposal on a pilot basis. The discussion in that order is incorporated by reference into this order.

[9] See Securities Exchange Act Release No. 29237, *supra* note 4.

[10] See Securities Exchange Act Release Nos. 32362 (May 25, 1993) (order approving File No. SR–NYSE–93–23); 32363 (May 25, 1993) (order approving File No. SR–Amex–93–19); 32365 (May 24, 1993) (order approving File No. SR–BSE–93–10); 32368 (May 25, 1993) (order approving File No. SR–MSE–93–06); 32367 (May 25, 1993) (order approving File No. SR–PSE–93–06).

[11] In 1991, the Commission approved proposals submitted by the BSE, MSE, and PSE which, similar to the PHLX proposal, require their specialists to provide primary market protection to limit orders, designated as executable after the close of the regular trading session, based on volume that prints in the primary market's after-hours session. See Securities Exchange Act Release Nos. 29301 (June 13, 1991), 56 FR 28182 (granting temporary accelerated approval to File No. BSE–91–04); 29297 (June 13, 1991), 56 FR 28191 (granting temporary accelerated approval to File No. MSE–91–11); 29305 (June 13, 1991), 56 FR 28208 (granting partial temporary accelerated approval to File No. PSE–91–21) and 29543 (August 9, 1991), 56 FR 40929 (granting accelerated approval to File No. SR–PSE–91–28); and Phlx Approval Order (June 13, 1991).

[12] See Phlx Approval Order, *supra* note 4.

specialist has fulfilled his or her obligations in connection with the new rule;

- The number and percentage of good til cancelled ("GTC") orders on the book that were designated "GTX" and thus eligible to be filled;
- Whether the Phlx marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading sessions after the initiation of the new rule;
- Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the new rule; and
- Whether the Exchange or any specialist has given any special guarantees to execute GTX orders over and above the requirements of the new rule.

In addition, the Commission stated that it expects the Phlx, through use of its surveillance procedures, to monitor for, and report to the Commission any patterns of manipulation or trading abuses or unusual trading activity resulting from the new rule. Finally, the Commission requested that the Phlx keep the Commission apprised of any technical problems which may arise regarding the operation of the new rule, such as difficulties in order execution or order cancellation.

The Phlx has reported to the Commission, on a monthly basis, the number of trades and share volume of orders executed after the close pursuant to the new rule. The Exchange has assured the Commission staff that it is working diligently to complete its report and submit the requested information to the Commission as soon as possible.[13]

Although the Commission has not yet received a complete report from the Phlx, the Commission believes that it is reasonable to extend the pilot program until January 31, 1994 in order to provide the Phlx with additional time to prepare its report. The Pilot extension also will provide the Commission with an opportunity to review the report submitted by the Phlx and the other exchanges with after-hours trading programs. During the pilot extension, the Commission expects that the Phlx will continue to monitor the operation of the GTX pilot program in the manner described above. The Commission requests that the Exchange submit its report, providing the same information described above, on or before October 1, 1993. This report should cover the entire pilot program period from June 13, 1991 through September 1, 1993. In addition, any request for another extension of the pilot program or permanent approval of the pilot procedures must be submitted to the Commission, pursuant to Rule 19b–4 under the Act, by October 1, 1993.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.**

The Commission believes that accelerated approval of the proposal is appropriate in order to allow the Phlx procedures to remain in place on an uninterrupted basis. This will permit the Phlx to continue to compete with Crossing Session I of the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change is hereby approved on a pilot basis through January 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13073 Filed 6–2–93; 8:45 am]

BILLING CODE 8010–01–M

[13] Telephone conversation between Murray Ross, Secretary, Phlx, and Betsy Prout, Staff Attorney, Commission, on May 18, 1993, clarifying that, as of that date, the Exchange was in the process of compiling the information requested by the Commission in its Phlx Approval Order.

[14] 17 CFR 200.30–3(a)(12) (1991).

SMALL BUSINESS ADMINISTRATION

Administration

AGENCY: Small Business Administration.

ACTION: Notice Delegating Authority to Establish a Branch Claims Review Committee.

SUMMARY: This notice delegates authority to a specific Small Business Administration (SBA) branch office to establish a Branch Claims Review Committee. The authority to constitute a claims review committee in the enumerated branch offices is based upon the education, training, and experience of such office's personnel as well as its staffing level and loan volume.

EFFECTIVE DATE: This notice is effective on June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Earl L. Chambers; Director, Office of Portfolio Management, U.S. Small Business Administration; 409 Third Street, SW.; Washington, DC 20416; Tel. (202) 205–6481.

SUPPLEMENTARY INFORMATION: On January 7, 1993, SBA published, in the **Federal Register,** a final rule amending Section 101.3–2 of part 101, Title 13, Code of Federal Regulations, to set forth a standard delegation of authority to SBA branch offices for the establishment of a Branch Claims Review Committee. (58 FR 2967) This regulation stated that Branch Claims Review Committees will not be organized in each SBA Branch Office. Rather, the rule provided that, in order to create a Branch Claims Review Committee in a particular SBA Branch Office, a notice must be published in the **Federal Register** specifically designating such office. This system ensures that only those SBA Branch Offices with sufficient staff and portfolio volume have the authority to undertake compromise activities.

The Agency believes that, when appropriate, delegating increased levels of authority to field office personnel yields increased benefits for program participants and SBA. SBA claims review committees are established for the purpose of determining the action SBA will take with respect to debts owed the Agency. Specifically, the various claims review committees have authority, at differing amounts depending upon their organizational level, to reach settlement on primary obligations or other evidence of an indebtedness owed the SBA for an amount less than the total amount due thereon. It is essential that the Agency have qualified field personnel process expeditiously and accurately the matters submitted to the various claims review committees. Only certain designated Agency branch offices are authorized to establish Branch Claims Review Committees in light of its personnel and the large size of its portfolio. This system allows for loan debt and compromise cases being processed by the offices servicing the account. In this fashion, the borrower is provided quicker and more accurate claims processing, while the Agency is benefitted by maximizing its recovery on defaulted loans.

This notice delegates authority to the SBA branch office located in Springfield, Missouri. The Springfield, MO Branch Office has sufficient loan volume and personnel. Thus, SBA is delegating authority to establish a Branch Claims Review Committee to this office pursuant to the authority set forth at paragraph (a) of Part V of 13 CFR 101.3–2.

This delegation of authority to establish a Branch Claims Review Committee is contingent upon the above named branch offices maintaining their current level of loan approval authority.

Dated: May 27, 1993.

Charles R. Hertzberg,

Assistant Administrator, for Financial Assistance.

[FR Doc. 93–13084 Filed 6–2–93; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/09–5396]

Opportunity Capital Partners II, L.P.; Issuance of a Small Business Investment Company License

On December 15, 1992, a notice was published in the **Federal Register** (57 FR 59375) stating that an application had been filed by Opportunity Capital Partners II, L.P. with the Small Business Administration (SBA) pursuant to §107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1992)) for a license as a small business investment company.

Interested parties were given until close of business January 14, 1993, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09–5396 on May 7, 1993, to Opportunity Capital Partners II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 25, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–13085 Filed 6–2–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1816]

Secretary of State's Advisory Committee on Private International Law, Study Group on International Electronic Commerce; Meeting

The Study Group on International Electronic Commerce of the Secretary of State's Advisory Committee on Private International Law will hold a meeting on Monday, June 21, 1993 at the Department of State in Washington, DC. The Study Group provides technical advice and recommendations on developments in law relating to electronic and computer-assisted commerce, on whether such developments would be facilitated internationally by formulation of new commercial laws, rules or regulations; and the degree of U.S. interest in seeking harmonization or unification of laws in this field at the international level.

The Study Group will have before it two Reports of the United Nations Commission on International Trade Law (UNCITRAL) Working Group on Electronic Commerce (U.N. Docs. A/CN.9/360 and 373) and a Secretariat Note on possible uniform rules on legal aspects of electronic data interchange (U.N. Doc. A/CN.9/WG.1V/WP.55). The UNCITRAL Working Group will continue to explore whether uniform rules are feasible in this area at its next meeting in October 1993.The State Department's Study Group will develop recommendations for U.S. positions for that meeting.

Subjects to be considered include whether basic legal principles applied to commercial and trade uses of electronic data interchange (EDI) need to be reconsidered, and possibly restated in international rules form. This may include formation and execution of contracts utilizing EDI, authorization, offer and acceptance, transfer of rights, evidence and applicable legal standards for rights and liabilities of commercial parties in electronic and computer-assisted transactions. The legal implications of standardized messaging, trading partner agreements, central data managers, rights in data and other issues may also be considered.

Copies of United Nations documents relevant to the meeting or information on the Department of State's program on private international law can be obtained from the Legal Adviser's Office indicated below.

The meeting will be held from 10 a.m. until 4:30 p.m. in the Bureau of International Organization Affairs, room 1517 conference room, at the Department of State at 22d and C Streets, NW., Washington, DC. The public may participate in the meeting up to the capacity of the conference room and subject to the instructions of the Chair. As access to the Department is controlled, members of the public wishing to attend should notify Ms. Rosalia Gonzales of the office indicated below not later than June 18 of their name, affiliation, social security number, date of birth, address and telephone number. Persons interested but unable to attend the meeting may submit comments or proposals by telefax to (202) 653–9854 or by writing to the Office of the Assistant Legal Adviser for Private International Law (L/PIL), 2100 "K" Street, NW., suite 501, Washington, DC 20037–7180.

Dated: May 26, 1993.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 93–12986 Filed 6–2–93; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Midland International Airport, Midland, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by The city of Midland, Texas, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and CFR part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On September 17, 1992, the FAA determined that the noise exposure maps submitted by the city of Midland, Texas, under part 150 were in compliance with applicable requirements. On March 16, 1993, the Administrator approved the noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Midland International Airport noise compatibility program is March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Donald P. Thomas, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76193–0650, (817) 624–5660. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Midland International Airport, effective March 16, 1993.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport

operator for the reduction of existing incompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing incompatible land uses around the airport and preventing the introduction of additional incompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law. Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The city of Midland, Texas, submitted to the FAA on May 18, 1992, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from April 1, 1991, through May 18, 1992. The Midland International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on September 17, 1992. Notice of this determination was published in the **Federal Register** on September 29, 1992.

The Midland International Airport Part 150 Noise Study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1997. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on September 17, 1992, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained five proposed actions for noise mitigation (on and/or off) the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective March 16, 1993.

Outright approval was granted for most of the specific program elements. Items not approved, or which are partially approved include:

Element No. 3, Extend Runway 10/28: This element calls for extending Runway 10/28 1,195 feet to the northwest, and is disapproved for part 150 purposes. This does not mean that the proposed extension should not be evaluated as an operational and/or capacity benefit to the airport.

Element No. 4, Implement Height Hazard and Airport Zoning: This element is partially approved to apply only to noise sensitive land uses within the DNL 65 contour for Part 150 purposes. This does not mean that the FAA disapproves of the concept of FAR Part 77 Height Zoning for safety purposes.

Elements approved in total include:

Element No. 1, Establish Noise Complaint and Investigation Program: This element calls for implementation of comprehensive recordkeeping and follow-up of all noise complaints received from the public, and is approved as submitted.

Element No. 2, Update and Review of the FAR Part 150 Program: This element calls for the reevaluation of the FAR part 150 program in 5 years and is approved as submitted.

Element No. 5, Acquire Land for Reduction of Noise Sensitive Land Uses: The airport will acquire approximately 22 acres of property and 45 homes within the DNL 65 and 70 contours to ensure noise compatibility. The majority of this land consists of a mobile home park. This element will reduce the number of people within the DNL 65 by 101, and will cost approximately $2 million.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on March 16, 1993. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Midland International Airport, P.O. Box 60305, Midland, Texas 79711-0305.

Issued in Fort Worth, Texas, May 4, 1993.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 93-13038 Filed 6-2-93; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program and Request for Review; Palo Alto Airport (PAO), Santa Clara County, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program that was submitted by the county of Santa Clara, San Jose, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150. A determination by the FAA that the associated Noise Exposure Maps submitted under 14 CFR part 150 for Palo Alto Airport were in compliance with applicable requirements effective March 10, 1993. The proposed Noise

Compatibility Program will be approved or disapproved on or before November 14, 1993.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is May 18, 1993. The public comment period ends July 17, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, FAA San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone: (415) 876–2805. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Palo Alto Airport which will be approved or disapproved on or before November 14, 1993. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for the FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Palo Alto Airport, effective on May 18, 1993. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 14, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303

Mr. Donald C. Flynn, Director of Aviation, county of Santa Clara, P.O. Box 611900, San Jose, California 95161–1900

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on May 18, 1993.

Herman C. Bliss,

Manager, Airports Division.

[FR Doc. 93–13039 Filed 6–2–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications; Cancellation of Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: The FAA is issuing this notice to advise the public that the June 3, 1993, meeting on Training and Qualifications Issues (58 FR 28647, May 14, 1993) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

Issued in Washington, DC, on May 25, 1993.

Thomas Toula,

Assistant Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–13043 Filed 6–2–93; 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 Springfield Regional Airport, Springfield, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Springfield 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 July 6, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert D. Hancik, A.A.E., Director of Aviation, Springfield Regional Airport, at the following address: Springfield Regional Airport, Route 6, Box 384, Springfield, Missouri 65803.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Springfield Regional Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, PFC Coordinator, FAA, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–7425. 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 Springfield 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) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 21, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Springfield Regional Airport was not substantially complete

within the requirements of § 158.25 on part 158. The city of Springfield submitted supplemental information on May 21, 1993, to complete the application. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than September 18, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1993.

Proposed charge expiration date: August 31, 1997.

Total estimated PFC revenue: $2,736,000.

Brief description of proposed projects: Acquire ARFF vehicles, ADA Passenger Lift and Interactive Training Equipment; construct GA Apron, Taxiways, Intermodal Facility, Equipment Storage Building, Partial Parallel Taxiway to Runway 2/20 and Perimeter Road; expand Air Cargo Apron, and Apron North of ARFF Building and remove Hangars; rehabilitate Air Carrier Apron, rehabilitate and light Runway 14/32 and Parallel Taxiway; relocate Taxiway T and widen Taxiway S; install Perimeter Fence and provide local match for Projects 09, 10, 11, 12, and 13, which are already under grant.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: On-Demand Air Taxi/commercial Operators, operating exclusively under 14 CFR part 135 certification.

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 Springfield Regional Airport, Springfield, Missouri.

Issued in Kansas City, Missouri, on May 21, 1993.

Michael J. Faltermeier,

Acting Manager, Airports Division, Central Region.

[FR Doc. 93–13036 Filed 6–2–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. PDA–4(F)]

Preemption Determination Concerning State of Washington Port of Entry Restrictions and Their Effect on the Highway Routing of Radioactive Materials; Preemption Determination No. PD–3(F)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Administrative determination of preemption issued pursuant to the Hazardous Materials Transportation Act (HMTA) concerning the State of Washington's port of entry restrictions applicable to motor carriers transporting radioactive materials.

Applicant: Department of Energy, State of Oregon. *State laws affected:* Washington Administrative Code (WAC) 446–50–040; Revised Code of Washington (RCW) 46.48.200.

Applicable Federal requirements: Hazardous Materials Transportation Act, 49 U.S.C. app. 1801 *et seq.*, and the Hazardous Materials Regulations (HMR) issued thereunder, 49 CFR parts 171–180, and part 397.

Mode affected: Highway.

SUMMARY: The FHWA has determined that the statutory and regulatory requirements contained in WAC 446–50–040 and RCW 46.48.200 are preempted pursuant to section 112(a) of the HMTA (49 U.S.C. app. 1811(a)). These port of entry requirements established by the State of Washington make compliance with both these State requirements and applicable Federal regulations governing the highway routing of radioactive materials impossible, and create an obstacle to the accomplishment and execution of the HMTA and the HMR.

FOR FURTHER INFORMATION CONTACT: Henry Sandhusen, Traffic Control Division (HHS–32) Office of Highway Safety, 202–366–2218; or Raymond W. Cuprill, Office of the Chief Counsel (HCC–20), 202–366–0834; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 24, 1991, the State of Oregon's Department of Energy submitted to the Research and Special Programs Administration (RSPA) an application for a preemption determination in accordance with 49 CFR 107.201–107.209. The applicant (referred to as "Oregon" in the balance of this decision) seeks an administrative determination that the State of Washington's port of entry requirements for trucks hauling radioactive waste are preempted under the HMTA, as amended, and the regulations issued thereunder. The Washington statutes and rules in question, WAC 446–50–040 and RCW 46.48.200, require motor carriers transporting radioactive waste into the State to enter at two designated ports of entry in the eastern part of the State. No additional ports of entry have been established because the State law provides that these can only be authorized by the State legislature. Oregon claims that a motor carrier of radioactive materials cannot comply with both these requirements and the Federal routing requirements in 49 CFR 177.825, and that Washington's requirements present an obstacle to compliance with the intent and requirements of this Federal routing regulation. The applicant alleges that the Washington requirements are essentially a routing designation which prohibit the use of preferred routes in that State and shift radioactive waste shipments to routes in Oregon.

At issue here are highway shipments of radioactive waste materials from the Trojan Nuclear Power Plant, near Rainier, Oregon, to the waste disposal site at Hanford, Washington. Depending on the route taken, the total length of this trip varies from approximately 223 miles (on the currently used route) to 229 miles (on the alternate route). Three-fourths of this distance is travelled on Interstate 84 in Oregon, a common leg to both routes. The two practicable routes to transport radioactive waste from the Trojan Plant to the waste disposal site at Hanford are:

(1) The currently used route, referred to as the *Oregon route*, consisting of US Route 30 South from the Trojan Plant to Interstate 405 in the City of Portland, through the City of Portland on Interstate 405 and Interstate 5, east on Interstate 84 in Oregon to Interstate 82; north on Interstate 82 to Interstate 182; west on Interstate 182 to Washington State Highway (WA) 240; and thence north on WA 240 to Hanford.

(2) the currently prohibited route, referred to as the Washington route, consisting of US Route 30 North from the Trojan plant over the Lewis and Clark bridge (Longview Bridge) to Longview, Washington; WA 432 and WA 433 from Longview to Interstate 5; south on Interstate 5 to Interstate 205; south on Interstate 205, into Oregon, to Interstate 84; east on Interstate 84 in Oregon to Interstate 82; north on Interstate 82 to Interstate 182; west on Interstate 182 to WA 240; and thence north on WA 240 to Hanford.

Oregon claims that the Federal regulation at 49 CFR 177.825 requires motor carriers transporting radioactive materials from the Trojan plant to disposal facilities in Hanford to use the Washington route. It claims that this Washington route is safer, minimizes radiological risk, and is the shortest route to a preferred route, Interstate I–5 in Washington.

Oregon's application for a preemption determination was referred to the FHWA because the Secretary of Transportation has delegated to the FHWA the authority and responsibility for the highway routing of hazardous

materials, including related preemption determinations. 49 CFR 1.53(b), 56 FR 31343 (July 10, 1991). On April 30, 1992, the FHWA published a notice and invitation to public comment on Oregon's petition. 57 FR 18537 (April 30, 1992). In response to that notice, five Oregon State governmental units, one fire department, and one county organization submitted comments in support of Oregon's application. The Washington State Patrol, the Attorney General of Washington, and a Washington State Senator opposed Oregon's application. Two private companies submitted comments expressing interest in the outcome. The Washington State Patrol and Oregon submitted comments in rebuttal to earlier comments. All of these comments are summarized in Part II, below.

II. Public Comments

A. Comments Supporting Preemption

Seven commenters to the docket supported Oregon's application for preemption. These included the Oregon Energy Facility Siting Council, the Oregon Senate Interim Committee on Transportation, the Chairman of the Columbia County Board of Commissioners, the Motor Vehicles Division of the Oregon Department of Transportation, the Fire Chief of the Rainier Rural Fire District, and the Natural Resources Section, General Counsel Division, of the Oregon Department of Justice.

The Oregon Energy Facility Siting Council contends the Washington port of entry restrictions are inconsistent with Federal rules and policy on safe route selection because trucks are denied access to the Interstate highway in Washington and the shortest-distance route to the Interstate. The Council asserts that no evidence has been presented that the Washington port of entry restrictions consider the overall safety of the entire region. It claims that because Washington established a routing rule, it carries the burden of comparing the safety of the routes involved. The Council also submits an analysis of the two routes involved, which it claims shows that the use of the Interstate System in Washington would reduce the chance of accidents. Finally, it asserts that the State of Washington allows shipments of other hazardous materials to use the route that links the Trojan Plant to I–5.

The Oregon Senate Interim Committee on Transportation and the Columbia County Board of Commissioners ask the FHWA to make the necessary safety comparisons between the two routes involved because they claim that the Oregon route, a mostly two-lane highway, is not the safest route available. The Interim Committee alleges that the evidence available suggests a higher accident rate on the Oregon route. The Columbia County Board of Commissioners, the Oregon Department of Justice, and the Oregon Motor Vehicles Division assert that an examination of the routes involved would show that the Washington route is the safest. In response to Washington's claim that the port of entry requirements are needed to perform inspections of vehicles hauling radioactive waste, the Interim Committee indicates that this issue can be resolved between the two States due to the limited number of shipments involved and the ability to schedule shipments according to weather and route conditions. The Motor Vehicle Division adds that the States could agree to a reciprocal inspection program through the Commercial Vehicle Safety Alliance (CVSA).

The Oregon Motor Vehicles Division alleges that it is impossible for motor carriers to comply with both the Federal rules and the Washington law, because this law "blocks" motor carriers from using the freeway (Interstate System) and the route that reduces radiological risk. The Motor Vehicles Division also claims that the Washington law is an obstacle to the policy of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law No. 101–615, 104 Stat. 3244 (1990), which requires consultation with other affected jurisdictions and assurances that the route selected enhances safety for all jurisdictions, not just the jurisdiction establishing the route.

The Fire Chief for the Rainier Rural Fire District encourages the DOT to support the use of the safest route by carriers of radioactive waste from the Trojan Plant. The Fire Chief also encourages the DOT to open the Washington route if it determines that to be safer. He states that information provided by Oregon shows that the Washington route may be safer. The Fire Chief comments on the types of highways and bridges on each route and expresses surprise that Washington is banning only radioactive shipments from the Washington route, while allowing the transport of other hazardous cargo on that route that pose a more imminent threat to life and property.

B. Comments Opposing Preemption

In requesting a denial of Oregon's application, the Washington State Patrol asserts that the application fails to demonstrate that Washington's port of entry restrictions meet the dual compliance and obstacle criteria of the preemption provision. The State Patrol explains that the State of Washington established the port of entry requirements for the purpose of inspecting shipments of radioactive waste destined for the Hanford waste disposal site. The inspection process is necessary to ensure that vehicle safety equipment is in proper working order and that there has not been a loss of containment of the radioactive materials. The State Patrol alleges that it would be impossible for the State to provide inspection stations for these shipments at the over 25 entry locations in the State's border with Oregon and Idaho. As a result, the State Governor and legislature established the two ports of entry. The State Patrol claims that this process has worked well and has been accepted by both public and private agencies.

The State Patrol refutes Oregon's claims that the Washington regulations are a prohibition on transport by stating that radioactive materials have been safely transported from the Trojan Plant to Hanford for the last 15 years, without incident. It states that a conflict between the State regulations and 49 CFR 177.825 does not exist as motor carriers have complied with both for many years. The State Patrol contends the Oregon route is the shortest and safest route, and that from 1985 to 1989 there were 43 more truck tractor semitrailer accidents on the Washington route than on the Oregon route. It adds that the proposed Washington route would present a greater risk of accidents or incidents as radioactive waste would have to cross a two-lane bridge and then proceed down city streets in Longview, past Kelso to I–5.

The State Patrol is joined by Washington State Senator Sutherland in opposing Oregon's application. Senator Sutherland describes in detail the circumstances behind the establishment of WAC 446–50–040 by the Governor in 1979 and the enactment of RCW 46.48.200 by the State legislature. He explains that the legislature passed legislation in 1987 allowing the formation of the Pacific States Agreement on Radioactive Waste Transport to promote regional consensus on such transportation. The Senator adds that the legislature also passed RCW 46.48 to ensure that the legislature did not delegate too much authority to this regional group. Pursuant to this State law, additional ports of entry for radioactive waste shipments can only be authorized by the State legislature until the legislature and

at least one other eligible State enact an interstate agreement on radioactive materials transportation management. Senator Sutherland states that this has not occurred and submits a State Attorney General's opinion to that effect. The Senator states that there has never been an official attempt to contact the Washington Legislature on the issue presented in the Oregon petition.

Senator Sutherland urges the DOT to carefully scrutinize the statistics presented by Oregon to prove that the Washington route is safer. He stresses that there is not presently a problem with the Oregon route and that this route is safer. He alleges that Oregon has not demonstrated that the Oregon route is not safe.

The Attorney General of Washington, Ken Eikenberry, also submitted comments indicating his opposition to Oregon's application. The Attorney General alleges that Oregon offers no reason for abandoning a system that has worked well for years, and the application is an attempt to route waste from a nuclear plant in Oregon along Washington's highways and urban areas, rather than along Oregon's highways and urban areas. This, he says, is not a basis for Federal preemption of State law. He joins the State Patrol and Senator Sutherland in emphasizing that the existing route is both shorter and safer. The Attorney General states that Oregon has offered no explanation why interstate cooperation under the Pacific States Agreement should be abandoned in favor of preemption.

C. Comments From Interested Parties

Two private companies, the Portland General Corporation and the Edison Electric Institute, expressed interest in the preemption procedure. Portland General, a co-owner/operator of the Trojan Nuclear Power Plant, and Edison Electric Institute both encourage the Department of Transportation to develop an administrative process for resolving disputes among States, their political jurisdictions and Indian tribes. They also urge the DOT to ensure that there is a safe and reliable route available for radioactive shipments from Trojan to Hanford consistent with the provisions of the HMTA.

Edison Electric states that while shipments of radioactive materials have enjoyed an excellent safety record over the route preferred by the State of Washington, its members contend that requirements of 49 CFR 177.825 (HM–164) should have been followed in this case. It claims that the choosing of the alternative route was not done by a State routing agency, in consultation with affected local jurisdictions and neighboring States, as required by this Federal regulation.

Although Edison Electric does not specifically state that it supports the Oregon application, it mentions in its comments that the Washington port of entry restrictions constitute a routing rule applicable to radioactive materials shipments by highway. Edison further indicates that the restrictions have the practical effect of a routing restriction, as they relate to the nature of the cargo and have the potential to reroute shipments and/or divert them from one jurisdiction to another. Edison states that the HMTA and the DOT's HMR promulgated thereunder almost completely cover the field of radioactive materials transportation safety and that in Docket No. HM–164, (transferred from RSPA to FHWA), 49 CFR 177.825, in IR–13, 49 FR 46653 (Nov. 27, 1984), and in IR–30, 55 FR 9676 (March 14, 1990), the DOT explained that State and local radioactive materials transportation routing requirements other than those identical to Federal requirements are very likely to be inconsistent and thus, preempted under 49 U.S.C. app. 1811(a). It adds that for non-highway route controlled quantities (HRCQ) of radioactive materials, the determination of what routes minimize radiological risk is left to the carriers, not cities or States.

Edison Electric states that the mandated use of the Oregon route is preempted because it violates the requirement, in § 177.825, that the pickup route be the shortest distance route from Trojan to the nearest Interstate highway, and, although Washington may designate that route as the pickup route, it must do so in accordance with the radiological risk minimization and alternative route designation criteria of that section. It concludes that between the two routes, it appears the Washington route is the only one that fully satisfies the regulatory criteria because it maximizes travel on preferred Interstate highways as opposed to local roads, and minimizes the distance of travel required on the non-Interstate highway pickup route.

D. Rebuttal Comments

In rebuttal to comments from the Oregon Department of Transportation, the Washington State Patrol states that there is no evidence that the Washington route reduces radiological risk. In response to the comments by Edison Electric Institute, the Washington State Patrol contends the port of entry restrictions do not constitute a routing restriction nor do they provide any impediment to the transportation of radioactive waste, as radioactive waste shipments have reached the port of entry for many years without accident or incident. The State Patrol indicates that Federal regulations do not require non-HRCQ radioactive materials to be transported on preferred routes. It notes that the Federal regulations merely require carriers of non-HRCQ radioactive materials to select the route based on radiological risk, except where there is no other practicable route available considering operating necessity and safety. The State Patrol maintains that the Oregon route is the only practicable highway route. In its rebuttal, the State Patrol objects to Edison Electric's claim that Washington's restrictions and the mandated use of the Oregon route are in conflict with the preferred route requirements of 49 CFR 177.825(b). It alleges that because the Trojan Plant's officials have indicated that HRCQ radioactive materials have not been transported, and will not be transported for the life of the plant, the provisions of 49 CFR 177.825(b) do not apply. It adds that accordingly, Washington is not required to develop a route analysis and that because the route is in their State, Oregon should develop the analysis if it feels that the route is improper. Finally, the State Patrol again asserts that the Oregon route is the safest and shortest, and that it meets the Federal mandates.

Similar responses were provided by the State Patrol to comments presented by the Oregon Facility Siting Council and the Oregon Department of Justice. The State Patrol commented that there had been no accidents or incidents involving vehicles carrying radioactive materials on the Oregon route in over 15 years, reiterated that the Oregon route is the shortest route, and acknowledged that other hazardous materials were allowed to use the Washington route. Further, in its rebuttal to comments from the Oregon Senate's Interim Committee on Transportation, the State Patrol provided cost information for providing an inspection station at Longview, and explained that the Washington port of entry law mandates inspection of radioactive waste.

In response to comments from the Washington State Patrol, a Washington State Senator, and the Washington Attorney General, Oregon offers to cooperate with Washington to assure that all radioactive waste shipments to Hanford are inspected based on the CVSA standard. Oregon contends that, as implemented, Washington's port of entry restrictions are a routing rule. It states that HRCQ shipments are denied

access to a preferred route and the use of an alternative route in Oregon is mandated, without Washington conducting a routing analysis or consulting with the State of Oregon. It claims that Trojan's spent nuclear fuel will be shipped as HRCQ radioactive materials. Oregon also alleges that Washington's restrictions create an obstacle to the carrier's choice of a route from the Trojan Plant which would minimize radiological risk, in accordance with the guidance established by the Federal rules. It disagrees with the Washington State Patrol argument that the port of entry restriction leaves only one practicable route, the Oregon route, and therefore the routing criteria in § 177.825(a) do not apply. It claims that the port of entry restriction cannot be the basis for making the Washington route impracticable.

Oregon alleges that Washington has never compared the two routes in question using DOT guidelines, as required by 49 CFR 177.825, that the burden of such analysis rests on the State that establishes the routing restriction, and that the chance of an accident appears lower on the Washington route. It also questions why the Washington commenters object to the use of the Longview Bridge and Longview streets for shipments of radioactive materials when it is acceptable to use that route for shipments of other hazardous materials. Oregon contends that an objective comparison of the two routes requires a systematic review of factors that contribute to safety. Finally, Oregon states that it has tried to use the Pacific States Agreement and communications between the governors of both States to resolve the dispute, and it became clear that the Washington Legislature would not authorize a new port of entry.

In response to the rebuttal provided by Oregon, the Washington State Patrol states that the port of entry restriction is not a routing rule, that shipments of radioactive waste may travel any appropriate highway in Washington as long as they enter at one of the two ports of entry, and that for non-HRCQ shipments the carrier is responsible for the selection of routes, and the carriers have used the Oregon route, which is the shortest and safest. The State Patrol claims that Oregon's offer to perform the vehicle inspections is not acceptable because Washington State law requires that shipments of radioactive waste be inspected by members of the Washington State Patrol. Finally, it reiterates its position that the Oregon route is shorter and safer, and that Oregon is simply shifting responsibility for its waste to its neighbor.

III. Preemption Under the HMTA

The HMTA was enacted to give the U.S. Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 U.S.C. app. 1801. This Act replaced a patchwork of State and Federal laws and regulations concerning hazardous materials with a scheme of uniform, national regulations. *Southern Pacific Transportation Co.* v. *Public Service Commission of Nevada*, 909 F.2d 352, 353 (9th Cir. 1990). The HMTA was amended by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990, Public Law No. 101–615, 104 Stat. 3244 (1990). The HMTUSA, like its predecessor, grants the Secretary of Transportation broad powers to promulgate regulations governing the transportation of hazardous materials:

> The Secretary shall issue regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. The regulations issued under this section shall govern any aspect of hazardous materials transportation safety which the Secretary deems necessary or appropriate.

Public Law No. 101–615, section 4, 104 Stat. 3244, 3247 (1990), 49 U.S.C. app. 1804(a)(1). Pursuant to this section, the Secretary's regulations establish requirements for, among other things, highway routing, driver training, placarding, and shipping papers. *Colorado Public Utilities Commission* v. *Harmon*, 951 F.2d 1571, 1576 (10th Cir. 1991). Congress found that uniform Federal standards for the transportation of hazardous materials were "necessary and desirable" to solve the problem that:

> [M]any States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements.

Public Law No. 101–615, section 2(3), 104 Stat. 3244, 3245 (1990), 49 U.S.C. app. 1801 note.

Section 112(a) of the HMTA, 49 U.S.C. app. 1811(a), as amended by the HMTUSA, establishes the general preemption standards which are applicable to hazardous materials highway routing requirements.[1] This section provides that unless the Secretary of Transportation waives preemption or the requirement is otherwise authorized by Federal law, any requirement of a State, political subdivision thereof, or Indian tribe is preempted if—

(1) Compliance with both the State or political subdivision or Indian Tribe requirement and any requirement of the HMTA or of a regulation issued under the HMTA is not possible, or

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of the HMTA or the regulations issued under the HMTA.

(3) It is preempted under section 105(a)(4)[2] or section 105(b)[3] of the HMTA.

The 1990 amendments to the HMTA also authorize any person "directly affected" by a requirement of a State, political subdivision, or Indian tribe to apply to the Secretary of Transportation for an administrative determination of whether that requirement is preempted by the HMTA. 49 U.S.C. app. 1811(c)(1). As stated earlier, the Secretary of Transportation delegated to the FHWA the authority to issue determinations of preemption with respect to matters involving the highway routing of hazardous materials. See 49 CFR 1.53(b) and 56 FR 31343 (July 10, 1991). As a result of this delegation, the FHWA published an interim final rule to incorporate the RSPA's preemption determination and waiver of preemption procedures contained in 49 CFR 107.201—107.227, into the FHWA's regulations as subpart E of 49 CFR part

---

[1] This HMTUSA amendment codified the preemption standards of the DOT regulations (Material Transportation Board and RSPA) that implemented the preemption language of the HMTA by providing for the issuance of inconsistency rulings. See 41 FR 38167, 38171 (Sept. 9, 1976), 49 CFR 107.209(c) (Oct. 1, 1990 ed.). These regulations had adopted the "dual compliance" and "obstacle" standards used by the U.S. Supreme Court in decisions involving Federal preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*. 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

[2] This section establishes the preemption standard applicable to the certain "covered subjects" listed therein. Any requirement which concerns a "covered subject" is preempted if it is not "substantively the same as" any provision of the HMTA or the HMR which concerns such subject. 49 U.S.C. app. 1804(a)(4).

[3] This section provides for the issuance of Federal standards applicable to highway routing designations affecting the transportation of hazardous materials, and the preemption of State and Indian tribe highway routing designations not made in accordance with the procedural and substantive requirements of the Federal standards. 49 U.S.C. app. 1804(b). The FHWA has published in the **Federal Register** a notice of proposed rulemaking (NPRM) proposing to implement these requirements. 57 FR 39522 (August 31, 1992).

397 (49 CFR 397.201 to 397.225). See 57 FR 44129 (September 24, 1992). This rule also incorporated, without substantive change, the routing requirements for Class 7 (radioactive) materials, contained in the RSPA regulations at 49 CFR 177.825, into the FHWA's regulations at subpart D of 49 CFR part 397 (49 CFR 397.101 and 397.103).

Preemption determinations issued in accordance with the HMTA do not address issues of preemption arising under the Commerce Clause of the Constitution or other Federal statutes, unless it is necessary to do so in determining if a requirement is "otherwise authorized by Federal law." 49 U.S.C. app. 1811(a). In making preemption determinations pursuant to the HMTA, the FHWA is guided by the principles and policy set forth in Executive Order no. 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The express preemption provisions of the HMTA and the HMR clearly comply with the requirements of Executive Order no. 12612. These provisions have been interpreted by the DOT in a long series of inconsistency rulings beginning in 1978 and in recent preemption determinations.

IV. Route Risk Analyses and Informal Meeting

Following a review of the comments to the docket the FHWA undertook three separate route analyses to determine the risk associated with each route. Normally, a route analysis is to be performed by the State making the route designation or establishing the restriction affecting the highway routing of hazardous or radioactive materials. With respect to this application for preemption, the FHWA decided to undertake the route analyses to expedite the resolution of the preemption request because the parties to this application for preemption could not agree on who should perform the analyses. The methods of analyses used were consistent with Federal guidelines as published in "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials" (DOT/RSPA/HMS/92–02) and "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials" (DOT/RSPA/OHMT–89–02).

Two of the route analyses dealt with HRCQ radioactive materials and one with non-HRCQ radioactive materials. The HRCQ analyses specify three primary components associated with the determination of overall transport risk: (1) Radiation exposure from normal transport, (2) public health risk from accidental release of radioactive materials, and (3) economic risk from accidental release of radioactive materials. The analysis dealing with non-HRCQ radioactive materials focused on accident likelihood and population density. This analysis was further modified to separate the Longview Bridge as a separate section. This was done because several comments indicated that the bridge was a safety concern. The analyses considered all accidents from data submitted by the Attorney General of Washington State (FHWA Docket PDA–4(F)–10). Ideally, tractor/truck semi-trailer accident rates would have been used in the analysis. However, the State of Washington did not have tractor/truck semi-trailer accident rates on several sections of the Washington route due to a lack of tractor/truck semi-trailer vehicle-miles of travel (VMT) data. However, the number of semi-trailer accidents was available, and the ratio of tractor/truck semi-trailer accidents to total accidents was included in the analysis to account for the percentage of accidents that involved semi-trailers. All analyses divided the routes into segments having similar characteristics. The relative risk of each segment was calculated and then summarized over all segments. All three analyses indicated the Washington route presented less radiological risk than the Oregon route. These analyses and two reference documents were included in the docket as supplementary information.

The analyses, two reference documents, the summary of comments to the docket, and a summary document were provided to Mr. Bob Robison, Facilitator, Oregon Department of Energy, and Mr. Stan Moon, Deputy Secretary of Transportation, Washington State Department of Transportation. Representatives of both States were also invited to a meeting held on December 2, 1992, in the FHWA Regional Office in Portland, Oregon. The purpose of the meeting was to discuss the issues surrounding the routing of radioactive material from the Trojan Nuclear Power Plant and also explore the possible resolution of the routing dispute.

On the day preceding the meeting, FHWA representatives drove both routes and visited with officials of the Trojan Power Plant. Several items of interest were discussed with Trojan Plant officials, including the fact that five years following the closing of the power plant the number of non-HRCQ radioactive shipments will increase significantly (from 12 to about 60 per year) and that HRCQ radioactive materials shipments will not take place before 2015. During the visit, Trojan officials stated that the closing of the plant was planned for 1996; however, in January of 1993, it was announced that the Trojan Plant, which had been closed for repairs, would not reopen. It is expected that high-level shipments will be sent to sites in Utah or Nevada. Plant officials indicated that if the Washington route was available to transport these materials, that would be the route of choice because it appears to meet the requirements of § 177.825.

The meeting with the States was held on December 2, 1992. Representatives of both States and the FHWA's headquarters, region, and division offices attended the meeting. Each State presented its position and both urged the FHWA to make a determination quickly. It became very clear during the meeting that the parties could not resolve the dispute informally. Both States agreed that the FHWA's determination should address both HRCQ and non-HRCQ radioactive materials.

V. Discussion

Oregon's application for a preemption determination and the comments submitted to the docket raise several major issues. First, it must be decided whether Washington's port of entry restrictions are in the nature of a routing restriction or designation affecting the transportation of radioactive materials, subject to 49 CFR 397.101. If routing requirements are involved, then it must be determined whether the State requirements are preempted by the HMTA and the Federal regulations issued thereunder, and whether they are not otherwise authorized by Federal law. This preemption analysis will examine if compliance with both the State and the Federal requirements regulations is impossible (dual compliance test) and if the Washington requirements create an obstacle to the accomplishment and execution of the HMTA and the HMR (obstacle test). As part of this analysis, it must also be determined which route complies with the Federal routing requirements, that is, which route minimizes radiological risk, and in the case of HRCQ radioactive materials, which route is the shortest-distance route to a preferred route, in this case, an Interstate System highway. 49 CFR 397.101 and 177.825.

A. Are Washington's Port of Entry Restrictions Routing Requirements?

The State of Washington port of entry requirements are included in the Washington Administrative Code at WAC 46–50–040, *Procedures upon entering the state.* This section provides:

> Effective October 10, 1979, all carriers of radioactive waste materials entering the state of Washington shall be required to enter the state through one of only two allowable ports of entry. These ports of entry are located on Interstate 90 approximately one-half mile west of the Idaho state line, in Spokane County, and on Washington State Sign Route 14 approximately one mile north of the Oregon state line, in Benton County.

The State legislature placed a further restriction by enacting RCW 46.48.200, *Radioactive waste—Additional ports of entry,* which provides:

> Any additional ports of entry for highway transportation of radioactive waste materials other than those designated by WAC 446–50–040 as filed on December 11, 1979, must be authorized by the state legislature. This section shall expire when both the Washington state legislature and at least one other eligible state enact an interstate agreement on radioactive materials transportation management. [1987 c 86 section 1.]

These regulatory and statutory requirements prevent motor carriers transporting radioactive waste from entering the State of Washington except at the two designated ports of entry. The requirements have the practical effect of forcing these motor carriers to use routes in adjoining States until access to the ports of entry is available. The requirements constitute a transportation ban affecting the shipment of radioactive waste into the State on all routes except for the ports of entry, and therefore, are clearly in the nature of a routing designation or restriction. The restrictions, like routing restrictions, are applied strictly because of the nature of the cargo (radioactive waste) and have the potential to route or divert shipments through another jurisdiction. See IR–13, 49 FR 46653 (November 27, 1984).

B. Federal Routing Requirements

The Federal routing requirements applicable to the routing of Class 7 (radioactive) materials are contained in 49 CFR 397.101 and 397.103 (incorporating, without substantive change, 49 CFR 177.825).[4] Section 397.101(a) requires a carrier or driver of a vehicle transporting placarded radioactive materials (non-HRCQ) to operate on routes that minimize radiological risk, taking into account certain factors,[5] unless there is only one practicable route or when the carrier is operating on a preferred highway.

Section 397.101(b) requires highway carriers of HRCQ radioactive materials to operate on preferred routes, which are Interstate System highways or State-designated routes, selected by the carrier to reduce time in transit. An Interstate System bypass or beltway around a city shall be used instead of a preferred route through a city, unless a State designates an alternative route. State-designated routes must be submitted to the FHWA (previously, to RSPA) and a list of such routes is provided, upon request. 49 CFR 397.103(d).

A motor vehicle may be operated over a route, other than a preferred route, only under the following conditions:

> (1) The deviation from the preferred route is necessary to pick up or deliver a highway route controlled quantity of Class 7 (radioactive) materials, to make necessary rest, fuel or motor vehicle repair stops, or because emergency conditions make continued use of the preferred route unsafe or impossible;
>
> (2) For pickup and delivery not over preferred routes, the route selected must be the shortest-distance route from the pickup location to the nearest preferred route entry location, and the shortest-distance route to the delivery location from the nearest preferred route exit location. (emphasis added).

49 CFR 397.101(c).

C. Dual Compliance

The Washington port of entry restrictions prevent motor carriers and drivers of radioactive materials from complying with the requirements of these Federal routing regulations. For example, in the situation under review, if a carrier transporting non-HRCQ radioactive waste from the Trojan Plant determines that the Washington route minimizes radiological risk, it is prevented from complying with the requirements of 49 CFR 397.101(a) by the Washington port of entry requirements. In addition, any carrier transporting HRCQ radioactive materials in that area of Oregon would be denied the use of the shortest distance route to the closest preferred route, an Interstate System highway in Washington. Further, when the Trojan Plant starts shipping HRCQ radioactive waste materials in the future, it would be forced to ship on the Oregon route through the City of Portland, instead of using the preferred route in Washington to bypass Portland. This would be contrary to the requirement in 49 CFR 397.101(b)(2) that an Interstate bypass or beltway around a city be used. Motor carriers are put in the position that they have to comply with the Washington requirements and violate the Federal regulations, or vice versa. As a result, "dual compliance" with the Washington port of entry requirements and the Federal regulations discussed above is not possible.

The Washington State Patrol in its comments and rebuttals appears to raise the issue that the preferred route requirements of 49 CFR 397.101 (b) and (c) are not applicable to the instant case because HRCQ radioactive materials have not been transported from the Trojan Plant. This argument has no merit. It is impossible to anticipate when a shipment of HRCQ of radioactive materials will occur; however, the existence of a nuclear plant in the area should make this type of shipment likely. In fact, Trojan officials indicated that such shipments will occur in the future. The issue here is that if such shipment did occur compliance with both the Washington restrictions and applicable Federal routing requirements would be impossible, and as a result, the State requirement is preempted under the HMTA.

D. Overall Effects; Consultation With Affected Jurisdictions; Obstacle

In its various inconsistency rulings, RSPA has indicated that State and local governments imposing routing requirements on hazardous materials are required to consider overall safety effects and to consult with all affected jurisdictions. RSPA final rule (Docket No. HM–164), 49 FR 5298 (Jan. 19, 1981); IR–3, 46 FR 18918 (Mar. 26, 1981); IR–3 (Decision on Appeal), 47 FR 18457 (Apr. 29, 1982); IR–10, 49 FR 46645 (Nov. 27, 1984), correction, 50 FR 9939 (Mar. 12, 1985); IR–11, 49 FR 46647 (Nov. 27, 1984); IR–14, 49 FR 46656 (Nov. 27, 1984); and IR–16, 50 FR 20873 (May 20, 1985). There is no evidence in the record that the State of Washington consulted with affected jurisdictions, and specifically the State of Oregon, or considered overall safety effects before imposing the port of entry requirements.

As discussed earlier, the Washington port of entry requirements are in the nature of a transportation ban on shipments of radioactive materials through the Washington route. In IR–3 (Decision on Appeal), 47 FR 18457, 18458–9 (Apr. 29, 1982), the effects of

[4] See Interim Final Rule, 57 FR 44129 (September 24, 1992).

[5] The carriers are required to consider available information on accident rates, transit time, population density and activities, and the time of day and the day of the week during which transportation will occur to determine the level of radiological risk.

transportation bans on affected jurisdictions were described as follows:

Local transportation bans export risks from one jurisdiction to another. IR–3 addressed the problems caused when a local jurisdiction does not evaluate the effects of an exported risk on another jurisdiction or does not consult other jurisdictions and consider their risks in comparing them with the risks it is avoiding by resorting to a ban. While a jurisdiction can be assumed to have reduced its own risk by exporting it, there is no reason to think that overall risk is reduced unless the changes in risk have been analyzed from all perspectives, including the perspectives of the jurisdictions to which the risk is shifted. Even where the long-term risk is reduced by avoiding a local jurisdiction, those jurisdictions to which risk is shifted are likely to be unaware of the nature and extent of the risk until it actually materializes and they may be unprepared to deal with it unless some prior consultation has occurred. In short, a unilateral ban, lacking inter-jurisdictional perspective and driven by the isolated interest of one jurisdiction, is entitled to no practical assumption in favor of increased public safety. Such action may be assumed only to move the risks from one place to another.

As expressed in IR–3, local bans are almost invariably the sort of piecemeal requirements that Congress intended to preempt unless they are adopted through "a process that adequately weighs the full consequences of its (the local government's) routing choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules." 46 FR 18922 (Mar. 26, 1981).

Local routing requirements for radioactive materials face even greater hurdles than those for all hazardous materials. The effect of the HMR routing requirements on State and local routing requirements for radioactive materials was addressed by RSPA in IR–8 (Decision on Appeal), 52 FR 13000 (Apr. 20, 1987). In that decision RSPA stated that:

[T]he Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the field of routing * * * requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation routing * * * requirements other than (1) those identical to Federal requirements or (2) state-designated * * * routes under 49 CFR 177.825(b), are very likely to be inconsistent and thus preempted under section 112(a) of the HMTA.

52 FR at 13003. Thus, State and local routing restrictions on radioactive materials required to be placarded are inconsistent with the HMR unless they are identical to 49 CFR 397.101(a). Likewise, State and local routing restrictions on HRCQ of radioactive materials are inconsistent with the HMR unless they are identical to 49 CFR 397.101(b)—except for State, not local, designations of preferred routes pursuant to 49 CFR 397.103(b). IR–8 (Decision on Appeal), 52 FR 13000 (Apr. 20, 1987); IR–16, 50 FR 20872 (May 20, 1985); IR–18, 52 FR 200 (Jan. 2, 1987); IR–18 (Decision on Appeal), 53 FR 28850 (July 29, 1988); IR–20, 52 FR 24396 (June 30, 1987), correction, 52 FR 29468 (Aug. 7, 1987); IR–30, 55 FR 9676 (Mar. 14, 1990); IR–32, 55 FR 36736 (September 6, 1990); *Jersey Central Power & Light Co.* v. *New Jersey,* No. 84–5883 (D.N.J. Dec. 27, 1984), appeal dismissed as moot, 772 F.2d 35 (3d Cir. 1985). Clearly, in the area of radioactive materials routing, nationwide uniformity is required by the HMTA and any local routing requirement that is not identical to the Federal requirements must be preempted because it would create an obstacle to the accomplishment of the HMTA and the regulations implementing its requirements.

E. Not Otherwise Authorized by Federal Law

None of the commenters opposing preemption have claimed that Washington's port of entry restrictions are otherwise authorized by Federal law, and we have found no other Federal statute that authorizes the Washington restrictions. Although, the DOT encourages the State inspection of all hazardous materials shipments, including radioactive materials shipments, no Federal law requires or authorizes the creation of limited ports of entry to conduct such inspections. Accordingly, we find that Washington's port of entry restrictions are not otherwise authorized by Federal law.

F. Minimization of Radiological Risk; Shortest Distance to Preferred Route

Based on the information provided to the docket and the route analyses performed by the FHWA, it is clear that the Washington route minimizes radiological risk. As indicated in Supplementary Information part IV, Route Risk Analysis and Information, three independent routing analyses were conducted. The two route analyses that addressed the transportation of HRCQ of radioactive materials on the two routes in question were performed by the Sandia National Laboratory and Abkowitz & Associates, Inc. These analyses indicate that the relative risk associated with the Washington route is approximately half that of the Oregon route. A separate FHWA routing analysis that addressed the transportation of non-HRCQ of radioactive materials in the two routes provided similar results. This is primarily because the Washington route avoids extensive travel through the City of Portland, thus reducing the risk of radiological exposure to a more densely populated area. In addition, the analyses indicate that the Washington route provides the shortest-distance route from the pickup location to the nearest preferred route entry location (8 miles to Interstate I–5 in Washington, versus 48 miles to the Interstate highway in Portland, Oregon). Thus the Washington route minimizes radiological risk and provides for the shortest-distance to a preferred route from the Trojan Nuclear Plant, as required by 49 CFR 397.101(c).

VI. Ruling

The FHWA finds that, for the reasons set forth above, the statutory and regulatory requirements contained in Washington's WAC 446–50–040 and RCW 46.48.200 are preempted by the HMTA, 49 U.S.C. app. 1811(a) (1) and (2). These State of Washington requirements make it impossible for motor carriers to comply with both these requirements and applicable Federal regulations governing the highway routing of radioactive materials, create an obstacle to the accomplishment and execution of the HMTA and the HMR, and are not "otherwise authorized by Federal law."

VII. Petitions for Reconsideration or Judicial Review

In accordance with 49 CFR 397.223(a),[6] any party aggrieved by this decision may file a petition for reconsideration with the FHWA Administrator within 20 days of service of this decision. The petitioner shall mail a copy of the petition for reconsideration to each person who participated in the proceedings and shall include in the petition a certification to that effect, as provided in 49 CFR 397.223(c).

Any party to this proceeding may seek review by the appropriate district court of the United States by filing a petition with such court within 60 days after the final agency decision. 49 CFR 397.25 and 49 U.S.C. app. 1811(e). The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision.

The FHWA Administrator's decision regarding a petition for reconsideration shall constitute the final agency decision. If no petition for reconsideration is filed within the 20-day period prescribed above, then this decision shall be effective and shall

[6] See Interim Final Rule, 57 FR 44129 (September 24, 1992).

become the agency's final decision. 49 CFR 397.223(d).

(49 U.S.C. app. 1811; 49 CFR 1.48(u)(2)

Issued in Washington, DC on May 25, 1993.

Jane F. Garvey,

Deputy Administrator.

[FR Doc. 93–13034 Filed 6–2–93; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Computer Matching Programs

AGENCY: Internal Revenue Service; Treasury Department.

ACTION: Notice.

SUMMARY: Pursuant to Section 552a(e)(12) of the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of Internal Revenue Service computer matching programs.

In accordance with various provisions of section 6103 of the Internal Revenue Code (IRC) of 1986, the computer matching programs provide Federal, State, and local agencies with tax information from IRS records to assist them in administering the programs and activities described hereafter. The purpose of these programs is to prevent or reduce fraud and abuse in certain Federally-assisted benefit programs and facilitate the settlement of government claims while protecting the privacy interest of the subjects of the match. The matches are conducted on an on-going basis in accordance with the terms of the Computer Matching Agreement in effect with each participant as approved by the Data Integrity Boards of both agencies, and for the period of time specified in such Agreement. Members of the public desiring specific information concerning an on-going matching activity may request a copy of the agreement at the address provided below.

EFFECTIVE DATE: July 6, 1993.

ADDRESSES: Inquiries may be mailed to Director, Office of Disclosure, Internal Revenue Service, P.O. Box 388, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Gwen Collins, Program Manager, FOI/Privacy Section, Internal Revenue Service, (202) 622–6240.

SUPPLEMENTARY INFORMATION: The nature, purposes, and authorities for IRS computer matching programs are as follows:

Matches Conducted Pursuant to IRC 6103(l)(7)

The Service is required, upon written request, to disclose current information from returns with respect to unearned income to any Federal, State, or local agency administering federally-assisted benefit programs which provide:

(a) Aid to Families with Dependent Children (AFDC) provided under a State Plan approved under Part A of Title IV of the Social Security Act;

(b) Medical assistance provided under a State plan approved under Title XIX of the Social Security Act;

(c) Supplemental Security Income benefits provided under Title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66, 87 Stat. 155);

(d) Any benefits provided under a State plan approved under Titles I, X, XIV or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam and the Virgin Islands);

(e) Unemployment Compensation provided under a State law as described in section 3304 of the Internal Revenue Code;

(f) Assistance provided under the Food Stamp Act of 1977; and

(g) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66).

(h) Needs-based pensions provided under United States Code (USC) Title 38, Chapter 15 or under any other law administered by the Secretary of Veterans Affairs;

(i) Parents' dependency and indemnity compensation provided under section 1315 of Title 38, USC;

(j) Health-care services furnished under sections 1710(a)(1)(I), 1710(a)(2), 1710(b) and 1712(a)(2)(B) of USC Title 38; and

(k) Compensation paid under chapter 11 of Title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

Information is disclosed by the Service only for the purpose of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under the aforementioned programs.

The return information is extracted on a monthly basis from the Internal Revenue Service Wage and Information Returns Processing File (Treas./IRS System 22.061 (IRP)) for the latest tax year. The file contains information returns filed by payers of income.

Federal agencies participating in (l)(7) matches, and their Privacy Act systems of records:

Administration for Children and Families (Income and Eligibility Verification for Aid for Families With Dependent Children Quality Control (AFDC–QC) Review, HHS/ACF/OFA 09–08–0201).

Department of Veterans Affairs (Compensation, Pension, Education and Rehabilitation Records, 58 VA 21/22; and Loan Guaranty Home, Condominium, and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records, 55VA26).

Department of Veterans Affairs (Patient Medical Records-VA, 24VA136);

Health Care Financing Administration (Income and Eligibility Verification for Medicaid Eligibility Quality Control Reviews System, HHS/HCFA/MB 09–07–2006); and,

Social Security Administration (Supplemental Security Record (SSR), HHS/SSA/OSR 90–06–0103);

State agencies expected to participate in (l)(7) matches are using a non-Federal system of records;

Alabama Department of Human Resources and Medicaid Agency
Alaska Department of Health and Social Services
Arizona Department of Economic Security
Arkansas Department of Human Services
California Departments of Social Services and Health Services
Colorado Department of Social Services
Connecticut Department of Income Maintenance
Delaware Department of Health and Social Services
District of Columbia Department of Human Services
Florida Department of Health and Rehabilitation Services
Georgia Department of Human Services
Guam Department of Public Health and Social Services
Hawaii Department of Social Services
Idaho Department of Health and Welfare
Illinois Department of Public Aid
Indiana Family and Social Services Administration
Iowa Department of Human Services
Kansas Department of Social/Rehabilitation Services
Kentucky Department of Social Insurance
Louisiana Departments of Social Services and Health and Hospitals
Maine Department of Human Services
Maryland Department of Human Resources
Massachusetts Department of Public Assistance

Michigan Department of Social Services
Minnesota Department of Human Services
Mississippi Department of Human Services and Division of Medicaid
Missouri Department of Social Services
Montana Department of Social/Rehabilitation Services
Nebraska Department of Social Services
Nevada State Welfare Division
New Hampshire Division of Human Services
New Jersey Department of Human Services
New Mexico Department of Human Services
New York Department of Social Services
North Carolina Department of Human Resources
North Dakota Department of Human Services
Ohio Department of Human Services
Oklahoma Department of Human Services
Oregon Department of Human Services
Pennsylvania Department of Public Welfare
Puerto Rico Department of Social Services and Department of Health
Rhode Island Department of Human Services
South Carolina Department of Social Services
South Dakota Department of Social Services
Tennessee Department of Human Services
Texas Department of Human Services
Utah Department of Social Services
Verment Agency for Human Services
Virgin Islands Department of Social Welfare and Department of Health
Virginia Department of Social Services
Washington Department of Social and Health Services
West Virginia Department of Human Services
Wisconsin Department of Health/Social Services
Wyoming Department Health and Social Services

Matches Conducted Pursuant to IRC 6103(l)(12)

The Service shall, upon written request from the Commissioner of Social Security (SSA), disclose to SSA available filing status and taxpayer identity information from the Individual Master File (IMF), (Treas./IRS System 24.030) relating to whether any medicare beneficiary identified by SSA was a married individual for any specified year after 1986, and, if so, the name of the spouse of such individual and such spouse's taxpayer identity number (TIN).

Further, the Social Security Administration shall, upon written request from the Administrator of the Health Care Financing Administration (HCFA), disclose taxpayer identity information (provided by IRS) and certain employer identification information for each medicare beneficiary and/or spouse identified as having wages from a qualified employer. With respect to the information redisclosed by the Commissioner of SSA, the Administrator of HCFA may further disclose said information to certain qualified employers and group health plans.

Information is disclosed by the Service and SSA only for purposes of, and to the extent necessary in, determining the extent to which any medicare beneficiary is covered under any group health plan.

The return information provided by IRS is extracted annually from the Individual Master File (IMF), Treas./IRS System 24.030.

The return information provided by SSA is extracted annually from the Earnings Recording and Self-employment System (HHS/SSA/OSR 09–60–0059).

SSA will initiate the matching program with information from the Master Beneficiary Record (MBR), (HHS/SSA/OSR 09–60–0090); and verify return information from IRS against the Master Files of Social Security Number Holders (HHS/SSA/OSR 09–60–0058).

HCFA will maintain information received from the matching program in the Carrier Medicare Claims Records (DHHS/HCFA/BPO 09–70–0501) and Intermediary Claims Records (DHHS/HCFA/BPO 09–70–0503)).

Matches Conducted Pursuant to IRC 6103(m)(2)

The Service may, upon written request, disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of Title 31 of the United States Code. This section also provides for the redisclosure of a taxpayer's mailing address to a consumer reporting agency, but only to allow for the preparation of a commercial credit report on the taxpayer for use by the requesting Federal agency in accordance with the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982.

The IRS information provided is extracted weekly from the Individual Master File (IMF) (Treas./IRS System 24.030).

Federal agencies participating in (m)(2) matches and the Privacy Act systems of records involved, are:

U.S. Army Community and Family Support Center (Nonappropriated Fund Accounts Receivable System (A0215–16SAFM)).
Defense Finance & Accounting Service, Indianapolis Center (A0037–104–1bSAFM Debt Management System.)
Equal Employment Opportunity Commission (Claim Collection Record (EEOC–10)).
Health Resources & Services Administration (Loan Repayment/Debt Management Records System (HHS/HRSA/OA 09–15–0045)).
Department of Housing & Urban Development (Accounting Records (HUD/DEPT–2)).
Defense Finance and Accounting Service, Kansas City Center (Debt Management and Collection System (N07430–1)).
National Institute of Health (IRS Address Request System (116841)).
Defense Finance and Accounting Service, Cleveland Center (Debt Management and Collection System (N07430–1)).
Navy Exchange Services Command (Bad Check and Indebtedness List (N04066–1)).
Railroad Retirement Board (Railroad Unemployment and Sickness Insurance Benefit System (RRB–21); Railroad Retirement, Survivor and Pensioner Benefit System (RRB–22); and Uncollectible Benefit Overpayment Accounts (RRB–42)).
Social Security Administration (Supplemental Security Record (HHS/SSA/OSR 09–60–0103)).
Department of Education (Guaranteed Student Loan Program Pre-Claims Assistance System (ED 18–40–0031); Financial Management Information System (18–40–0033); Payroll, Attendance and Leave Records (18–11–0008); National Defense Student Loan File System (18–40–0025); Guaranteed Student Loan Paid Claim Files System (18–40–0026)).
Department of Health & Human Services (Administrative Claims System (HHS/OS/OGC 09–90–0062)).
Department of Veterans Affairs (Compensation, Pension, Education and Rehabilitation Records (58VA21/22/28) and Loan Guarantee Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records (55VA26)).

Matches Conducted Pursuant to IRC 6103(m)(4)

Upon written request from the Secretary of Education, the Service may disclose the mailing address of any taxpayer who has defaulted on certain loans extended under the Higher Education Act or Migration and Refugee Assistance Act for purposes of locating such taxpayer to collect the loan. This section further provides for the redisclosure by the Secretary of Education of a taxpayer's mailing address to any lender, or any State or nonprofit guarantee agency, participating under the Higher Education Act, or any educational institution with which the Secretary of Education has an agreement under that Act.

Redisclosure is made by the Secretary of Education for use only by officers, employees, or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such loan programs for purposes of collecting such loans.

The IRS information provided is extracted from the IMF (Treas./IRS System 24.030). The U.S. Department of Education matches the Guaranteed Student Loan Program Pre-Claims Assistance System (ED 18–40–0031) with the IMF.

Matches Conducted Pursuant to IRC 6103(m)(5)

Upon written request from the Secretary of Health and Human Services (HHS), the Service may disclose the mailing address of any taxpayer who has defaulted on certain loans extended under the Public Health Service Act for purposes of locating such taxpayer to collect the loan. This section also provides for the redisclosure by the Secretary of HHS of a taxpayer's mailing address to any school with which the Secretary has an agreement under the Public Health Service Act, or any eligible lender participating under such Act.

Redisclosure is made by the Secretary of HHS for use only by officers, employees, or agents of such school or eligible lender whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under the Public Health Service Act for the purposes of collecting such loans.

The IRS information provided is extracted from the IMF (Treas./IRS System 24.030). The Department of Health and Human Services matches the Public Health Service and National Health Service Corps Provider Records System (HHS/HRSA/BHCDA 09–15–0037) with the IMF.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Dated: May 26, 1993.

Wesley L. Hawley,

Acting Deputy Assistant Secretary (Administration).

[FR Doc. 93–12994 Filed 6–2–93; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Programs of Student Exchange With the Baltic Countries, the Newly Independent States and Central and Eastern Europe

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of college students with Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Poland, the Republic of Slovakia, Romania, Russia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. These exchanges represent part of the activities of the Presidents' University Student Exchange (the 1000–1000 Student Exchange) and the Samantha Smith Memorial Exchange Program and are subject to the availability of funding for Fiscal Year 1994.

Support is offered for three categories of exchange programs:

Category A: Presidents' University Student Exchange Program (the 1000–1000 Student Exchange) with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan;

Category B: Samantha Smith Memorial Exchange with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; and,

Category C: Samantha Smith Memorial Exchange with East and Central Europe (Albania, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Poland, the Republic of Slovakia, Romania, and Slovenia).

Each category has separate conditions and requirements, which are stated in this announcement. Institutions may compete in one, two or three of the categories, but must submit a separate proposal and budget for each category.

Institutions applying under any or all categories must follow the requirements stipulated in this RFP, the application guidelines, and any additional material specific to a given category. Failure to do so may result in a proposal being deemed technically ineligible. Programs and projects must conform with all Agency requirements and guidelines, and are subject to final review by a USIA contracting officer. Proposals must be for study programs for which academic credit is given. While programs may include internships, the focus of projects should be classroom work or research. Programs designed specifically for foreign participants to teach their native language or area studies in American institutions are ineligible for support.

Please Note: Programs with Azerbaijan are subject to restrictions of Section 907 of the Freedom Support Act: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation and no U.S. participant overseas may work for the Government of Azerbaijan or any if its instrumentalities. In addition, the Government of Azerbaijan and/or its instrumentalities will have no control in the actual selection of participants.

DATES: Deadline for proposals: September 15, 1993. All copies of proposals for Categories A, B and C must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on September 15, 1993. Faxed documents will not be accepted, nor will documents postmarked on September 15, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the appropriate deadline. No funds may be expended until the grant agreement is signed with USIA's Office of Contracts.

ADDRESSES: The original and 14 complete copies of the application, including required forms, should be addressed as follows: U.S. Information Agency, Reference: _____; Category _____(Program Title); Office of Grants Management, E/XE room 336, 301 4th Street, SW; Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call: Mr. Ted Kniker or Ms. Effie Wingate, U.S. Information Agency, 301 4th Street, SW., European Branch, Academic Exchanges Division, E/AEE room 208, Washington, DC 20547; telephone (202) 619–5341, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, formats, guidelines for preparing proposals, and for other technical information. The application packet will be mailed to you via regular mail. USIA will not send the application packet via express mail, nor will USIA staff accept requests to send application packets via express carriers using non-USIA account numbers.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the

United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

Category A

Presidents' University Student Exchange Program (the 1000–1000 Student Exchange) with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with undergraduate and graduate students from Armenia, Azerbaijan,[1] Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. For academic year 1994–95 the intention is to exchange 750 students in each direction. Priority will be given to applications from international exchange organizations and consortia of universities that have a demonstrated ability to exchange students from multiple countries in the former USSR. Preference will then be given to applications from single institutions for programs outside Russia. For projects in Russia, preference will be given to applications involving multiple foreign partner institutions, especially outside of Moscow and St. Petersburg. Both existing and new projects are eligible.

Participants

Participants must be citizens either of the U.S. or of the host country. Undergraduate students are defined as students who have not received their baccalaureates prior to participation in this program. Graduate students for this program should be studying at the equivalent of the Master's degree level. Doctoral candidates are not eligible. Students in all academic fields are eligible; students of agriculture are especially encouraged to apply (please note special conditions for agriculture programs below). Projects that include graduate students must delineate between the number of graduate and undergraduate participants, separately describe the academic programs, and include for each a separate line item in the budget. All projects must include undergraduate students.

Language Qualifications

Students should have sufficient fluency in the instructional language of the host country to be able to pursue university study in that language and to be able to converse with citizens of the country without the aid of interpreters. Generally, the equivalent of two years of college-level study is considered the minimum.

Duration

Applications will be accepted for projects with durations of at least eight weeks to no more than one academic year, including programs lasting an academic quarter, trimester, or semester. Exchanges of less than eight weeks duration or more than one full academic year will be considered technically ineligible. Although grant awards may begin earlier, the actual exchange of participants may not begin before February 1, 1994 and must be completed by December 31, 1995. Programs for exchanges in subsequent academic years will be considered technically ineligible.

Institutional Commitment

Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign institutions' directors, or in the form of signed agreement by the same persons. Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program, and each institution's activities in support of that program. Documentation of support from governmental ministries or academies will be acceptable when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the completed application. Applying institutions are expected to make their own arrangements with the appropriate foreign institutions.

Preference Factors

—Preference will be given to proposals in which incoming students study in the U.S. for a full academic year
—Preference will be given to programs that reflect wide geographic distribution in recruitment of participants
—Preference will be given to programs that recruit foreign and U.S. participants through merit-based, open competition

Reciprocity

Proposals should be reciprocal, but not necessarily equal in numbers. In cases where political or practical circumstances do not allow for the placement of U.S. students, one way programs will be considered. The proposal should provide detailed information on the activities in both the U.S. and the partner country.

Orientation Programs

Participating students should be provided with a substantive and comprehensive orientation to the country where they will be studying, and proposals should describe these programs, including costs, in detail.

Internships

While programs may include internships, the focus of projects should be classroom work or research. If internships are included in the exchange experience, students should have completed at least one semester of classroom work. The duration of the internship should not exceed the duration of the classroom work. Institutions are encouraged to grant academic credit for the internship experience.

Special Allowances for Agriculture Programs

In order to give added encouragement to the participation of students of agriculture as provided for in the bilateral agreement, language standards may be modified for participating students of agriculture. Programs including agriculture students need not exchange agriculture students in both directions.

Allowable Costs for Category A

Projects: Project awards to U.S. organizations will be made in a wide range of amounts. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet. Grant-funded items of expenditure may

[1] Programs with Azerbaijan are subject to the restrictions of Section 907 of the Freedom Support Act.

include but are not limited to the following categories:

Program Costs

—International Travel (via American flag carrier);
—Domestic travel;
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Maintenance and per diem;
—Academic program costs (e.g. tuition, book allowance);
—Travel and maintenance costs for accompanying faculty or resident directors; for no more than one program supervisor per twenty students;
—Participant recruitment costs;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Medical insurance for participants (participants are covered by the Agency's self-insurance policy when USIA is funding over fifty percent of the total cost of the project);
—Taxes and visa fees.

Administrative Costs—Not to Exceed 20% of the Requested Budget:

—Salaries and benefits;
—Communications (e.g. fax, telephone, postage);
—Office Supplies;
—Administration of tax withholding and reporting as required by Federal, State and local authorities and in accordance with relevant tax treaties;
—Other Direct Costs;
—Indirect Costs.

Please Note: It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared.

Applications should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions.

Category B

Samantha Smith Memorial Exchange with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with Armenia, Azerbaijan,[2] Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan for undergraduate students under the age of 26. Participants must be citizens either of the U.S. or of the host country. Both existing and new projects are eligible. Programs designed specifically for foreign participants to teach their native language or area studies in American institutions are ineligible for support.

Category C

Samantha Smith Memorial Exchange/ Central and Eastern Europe.

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with Albania, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Poland, the Republic of Slovakia, Romania, and Slovenia for undergraduate students under the age of 26. Participants must be citizens either of the U.S. or of the partner country. Both existing and new projects are eligible. Programs designed specifically for foreign participants to teach their native language or area studies in American institutions are ineligible for support.

Criteria for Categories B and C

Applications for Categories B and C

Applications for substantive academic exchanges will be accepted from accredited, degree-granting U.S. universities or colleges (including two-year junior colleges), consortia of such universities and colleges, university systems, and not-for-profit organizations engaged in international educational exchange programs.

Language Qualifications

It is desirable, but not required, that undergraduate students have sufficient fluency in the language of the country to be visited for the pursuit of university study in the language and to converse with citizens of the country without the aid of interpreters. Preference will be given to programs in which U.S. participants will have had a minimum of two years of relevant language study.

Duration

Applications will be accepted for projects of at least twelve weeks duration. Projects of less than twelve weeks duration will be considered technically ineligible. Grants generally will be made for exchanges occurring within a 12-month period, but requests may be for longer periods of time. Preference will be given to proposals in which incoming students study in the U.S. for an academic year.

Institutional Commitment

Each proposal must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign partners' directors, or in the form of a signed agreement by the same persons. Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program and each institution's activities in support of that program. Documentation of support from governmental ministries or academies will be acceptable when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the completed, original application. Applicant institutions are expected to make their own arrangements with the appropriate foreign institutions.

Reciprocity

Preference will be given to reciprocal exchanges, although two-way programs are not a requirement. It is desirable, but not required, that the number of U.S. and foreign participants be nearly equal. The proposal should provide detailed information on the activities in both the U.S. and the partner country.

Orientation Programs

Participating students should be provided with a substantive and comprehensive orientation to the country of their visit, and proposals should describe these programs, including costs, in detail.

Allowable Costs for Categories B and C

Projects: Project awards will be made in a wide range of amounts but will not exceed $80,000. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet. Grant-funded items of expenditure may include but are not limited to the following categories:

[2] Programs with Azerbaijan are subject to the restrictions of Section 907 of the Freedom Support Act.

Program Costs

—International Travel (via American flag carrier);
—Domestic travel;
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Maintenance and per diem for students;
—Academic program costs (e.g. tuition, book allowance);
—Travel and maintenance costs for accompanying faculty or resident directors; for no more than one program supervisor per twenty students;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Medical insurance for participants (participants are covered by the Agency's self-insurance policy when USIA is funding over fifty percent of the total cost of the project);
—Taxes and visa fees.

Administrative Costs—Not to exceed 20% of the Requested Budget

—Salaries and Benefits;
—Communications (e.g. fax, telephone, postage);
—Administration of tax withholding and reporting as required by Federal, State and local authorities and in accordance with relevant tax treaties;
—Other Direct Costs;
—Indirect Costs.

Please Note: It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested for USIA; administrative expenses should be cost-shared.

Applications should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions.

Application Notice (All Categories)

Please be advised: Proposals submitted by the same institution under Categories A, B and C for this year's competition may not be duplicative. Each proposal must sponsor different students and employ separate budgets. Proposals not adhering to this restriction will be deemed technically ineligible and will not be reviewed for funding. Organizations applying for exchanges with the Newly Independent States are encouraged to submit under one category. Applicants from previous years are expected to submit new proposals detailing what has been accomplished in the current year of USIA funding. Proposals that are duplicative of previous submissions may be deemed ineligible.

General Requirements

Programs must comply with J visa regulations and should reference this adherence in the proposal narrative. Proposals must comply with reporting and withholding regulations for federal, state and local taxes as applicable. Applicants should demonstrate tax regulation adherence in the proposal narrative and budget notes.

Proposal Guidelines

Applicants must use the Guidelines dated April, 1993, when preparing the proposal. It is the responsibility of the applicant to ensure that it has these Guidelines. Proposals failing to use above Guidelines may be deemed technically ineligible.

Review Process (All Categories)

USIA will acknowledge receipt of all proposals and will review them for technical eligibility.

Ineligible Proposals

Proposals may be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package, including the Guidelines dated April, 1993.

Eligible Proposals

Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria (All Categories)

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan, including academic rigor, thorough conception of project, demonstration of meeting student needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Feasibility of the program plan and the capacity of the organization to conduct the exchange. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track record—relevant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA before, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity in promoting mutual understanding.

e. Value of U.S.-partner country relations—the assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost-effectiveness—greatest return on each grant dollar. A key measure of cost-effectiveness is the unit cost to the Agency. This is the total request of USIA monies divided by the number of exchangees (people moved). The Agency also reviews the ratio of cost-sharing exhibited. Cost-sharing through other financial support as well as institutional direct and in-kind funding contributions is strongly encouraged.

g. Diversity and pluralism (for student programs)—preference will be given to proposals that demonstrate efforts to provide for the participation of students with a variety of major disciplines, from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

h. Adherence of proposed activities to the criteria and conditions described above.

i. Institutional commitment as demonstrated by financial and other support to the program, including the provision for adequate and appropriate personnel and institutional resources to achieve the program goals.

j. Follow-on Activities—proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA-supported programs are not isolated events.

k. Evaluation plan—proposals should provide a plan for evaluation by the grantee institution to determine the success of the project.

l. Geographic diversity—the Agency will seek to achieve maximum geographic diversity in selection and placement of participants through its award of grants.

Application Disclaimer (All Categories)

The terms and conditions published in this RFP are binding and may not be codified by any USIA representative.

Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants for Categories A, B and C will be notified in writing of the results of the review process on or about February 1, 1994. All funded proposals will be subject to periodic reporting and evaluation requirements.

Options for Renewal (All Categories)

Subject to the availability of funding for FY 1995 and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: May 27, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–12961 Filed 6–2–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 105
Thursday, June 3, 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 ELECTION COMMISSION

DATE AND TIME: Tuesday, June 8, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, June 9, 1993 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Compliance Regulations—Notice of Proposed Rulemaking.
Report from the FEC Public Disclosure Division.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.
[FR Doc. 93–13253 Filed 6–1–93; 3:49 pm]
BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 7, 1993.

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 28, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 93–13141 Filed 5–28–93; 4:24 pm]
BILLING CODE 6210–01–P–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–17]

TIME AND DATE: June 10, 1993 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meetings
2. Ratification List
3. Invs. Nos. 303–TA–23 and 731–TA–568, 570 (Final) (Ferrosilicon from Russia and Venezuela)—briefing and vote.
4. Inv. No. 731–TA–625 (Final) (Certain Helical Spring Lockwashers from Taiwan)—briefing and vote.
5. Outstanding action jackets
   1. GC–93–057, Request for permission to file appeal and motion for stay in *Mitsubishi Materials Corp.* v. *United States.*
6. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205-2000.

Issued: May 28, 1993.

Paul R. Bardos,
Acting Secretary.
[FR Doc. 93–13243 Filed 6–1–93; 2:27 pm]
BILLING CODE 7020–02–P–M

federal register

Thursday
June 3, 1993

Part II

Department of Health and Human Services

Food and Drug Administration

Form for Reporting Serious Adverse Events and Product Problems With Human Drug and Biological Products and Devices; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0072]

Form for Reporting Serious Adverse Events and Product Problems With Human Drug and Biological Products and Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new form for reporting adverse events and product problems with human drug products, biologic products, medical devices (including in-vitro diagnostics), special nutritional products (dietary supplements, medical foods, infant formulas), and other products regulated by FDA. There are two versions of the form. One version of the form (FDA Form 3500) is available for use by health professionals for voluntary reporting; the other version of the form (FDA Form 3500A) is to be used by user facilities, distributors, and manufacturers for reporting that is required by statute or FDA regulations. The new form will simplify and consolidate the reporting of adverse events and product problems and will enhance agency-wide consistency in the collection of postmarketing data. This notice also responds to written comments the agency received on proposed versions of this form. Copies of both versions of the new form appear at the end of this document.

DATES: Version FDA 3500 (for voluntary reporting) is effective immediately; version FDA 3500A (for mandatory reporting) will become effective on November 30, 1993. Manufacturers, medical device distributors, and user facilities are encouraged to begin using FDA 3500A now.

ADDRESSES: Copies of version 3500 (for voluntary reporting) and/or instructions for completing the form may be obtained by calling 1–800–FDA–1088 or writing MEDWATCH, 5600 Fishers Lane, Rockville, MD 20857–9787. Ten copies or less of version 3500A (for mandatory reporting) and/or a copy of the instructions for completing the form may be obtained from either: Division of Epidemiology and Surveillance (HFD–730), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; Adverse Experience Branch (HFM–220), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448; or Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857. Bulk copies of both version 3500 and version 3500A may be obtained by writing to the Consolidated Forms and Publications Distribution Center, Washington Commerce Center, 3222 Hubbard Rd., Landover, MD 20785. The guideline for postmarketing reporting of adverse drug experiences is available from the CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Dianne L. Kennedy, Office of the Commissioner (HF–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0117.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 26, 1993 (58 FR 11768), FDA announced the availability of two proposed versions of a form for reporting adverse events and product problems with human drug products, medical devices, and other FDA-regulated products excluding vaccines. The draft form requested information concerning the patient, the adverse event or product problem, the suspect human drug product or medical device, and other information concerning the manufacturer, user facility, or distributor. FDA developed the new form to simplify and consolidate the mandatory reporting of adverse events and product problems for human drugs, biologics (excluding vaccines), and medical devices, as well as to facilitate the voluntary reporting of adverse events for these and other FDA-regulated products. FDA found that there was confusion about what to report to the agency, and the existing patchwork of reporting forms and systems sometimes made it difficult to report problems quickly and easily.

The new form is part of MEDWATCH—FDA's new Medical Products Reporting Program, which is intended to facilitate the reporting of adverse events and product problems for all FDA-regulated products by the entire health care community (manufacturers, distributors, user facilities, and health professionals). The main focus of the MEDWATCH program is to inform and encourage health professionals (physicians, physician assistants, pharmacists, nurses, and others) about reporting serious adverse events and product problems. Currently, FDA relies, for the most part, on manufacturers, distributors, and user facilities (hospitals, ambulatory surgical facilities, nursing homes, or outpatient treatment facilities) for reports of adverse events and product problems. These parties usually obtain such information from health professionals. Adverse event reporting by health professionals is an efficient means for monitoring the safety of marketed drug products and medical devices.

Health professionals should use FDA version 3500 to report adverse events or product problems to manufacturers or to FDA. FDA encourages health professionals to use version 3500 if they suspect that a drug or biological product, medical device, or other FDA-regulated product may have been associated with a serious outcome, such as death, a life-threatening condition, initial or prolonged hospitalization, disability, congenital anomaly, or may have resulted in a condition that required surgical or medical intervention to prevent permanent impairment or damage. FDA also encourages health professionals to report product quality problems such as defective devices, inaccurate or unreadable product labeling, packaging or product mix-up, contamination or stability problems, and particulate matter in injectable products.

Manufacturers, distributors, and user facilities should use FDA version 3500A to report adverse events and product problems to FDA as required in the applicable statutes and regulations.

The new form is intended to replace the following adverse event and product problem reporting forms:

FDA Form 1639 (all versions): Adverse Drug and Biologic Experience Reporting;

FDA Form 3318: Drug Quality Reporting System;

FDA Form 2519f: Medical Device and Laboratory Product Problem Reporting Program;

FDA test Form 3375: Medical Device Reporting;

FDA Form 3322: Medical Device Report.

FDA is preparing a proposal to amend the adverse drug experience reporting regulations to revise the definition of "serious" and to require, among other things, that version 3500A be used instead of Form 1639. In addition, FDA is also preparing a final rule for adverse experience reporting for licensed biological products, and a final rule on medical device user facility, distributor, and manufacturer reporting, certification, and registration. These rules will provide consistency with the

provisions of the new form. Biologics manufacturers and medical device manufacturers, distributors, and user facilities will be required to use Form 3500A when the agency has finalized the respective adverse event reporting regulations for these entities. Drug manufacturers will be required to use Form 3500A by November 30, 1993. All manufacturers, medical device distributors, and user facilities, however, are encouraged to begin using Form 3500A now.

Adverse events associated with vaccines should continue to be reported on a Vaccine Adverse Event Reporting System (VAERS) form and not on the new form.

As stated in the February 26, 1993, notice, FDA is committed to working with health professionals and user facilities, distributors, and manufacturers to identify rapidly serious adverse events and product problems. For the past year, FDA has consulted with industry and health professional organizations representing physicians, dentists, nurses, and pharmacists regarding the development of the new form and an education program. On May 4, 1993, FDA held a premeeting with organizations representing health care professionals to discuss ways in which these organizations can work with FDA to inform their members about FDA's MEDWATCH program. FDA is also planning to conduct a conference with organizations representing health professionals and industry to announce and explain the MEDWATCH program. In June 1993, FDA intends to publish articles about the MEDWATCH program in the *Journal of the American Medical Association* and the *American Journal of Hospital Pharmacy*. In addition, the agency is planning conferences, exhibits, speeches, and articles to inform health professionals about MEDWATCH. The agency is also making available to health professionals the "FDA Desk Guide For Adverse Event and Product Problem Reporting." Health professionals may obtain a copy by calling 1–800–FDA–1088.

II. Provisions of the Final Form and Other Reporting Information

Both versions of the form contain identical reporting provisions for the following sections:

A. Patient Information: Patient identifier, age or date of birth, sex, and weight.

B. Adverse Event or Product Problem: Outcome attributed to event (e.g., death, disability, etc.), date of event, date of report, description of event or problem, relevant tests or laboratory data and other relevant history.

C. Suspect Medication(s) (all products except medical devices): Name, dose, frequency and route used, therapy dates, diagnosis for use, lot number, expiration date, national drug code (NDC) number, and other information.

D. Suspect Medical Device: Brand name, type of device, manufacturer name and address, operator of device, expiration date, product identification number, date implanted and explanted, and other information.

E. Reporter: For version 3500, the reporter is the person who makes the report; for version 3500A, the reporter is the person who made the initial report of the adverse event or product problem to the user facility, distributor, or manufacturer.

Both versions of the form also request certain information that is specific to health professionals, user facilities, distributors, and manufacturers. For example, version 3500 includes "Advice About Voluntary Reporting," and describes "serious adverse events" and "product problems." FDA encourages health professionals to report even if they are not certain the product caused the event or if they lack all the details. The "Advice" also instructs health professionals to use additional blank pages if needed, and to use a separate form for each patient. It also advises health professionals to notify the responsible person in the facility where a medical device adverse event occurred, and provides telephone numbers by which reports may be submitted to FDA by FAX or modem, and telephone numbers to request additional information, to report product quality problems, or to request a VAERS form to report adverse events associated with vaccines.

In version 3500A, section F asks medical device user facilities and distributors to provide information about themselves and the report. Section G in version 3500A requests information from all manufacturers concerning adverse event or product problem reports. Section H in version 3500A requests information from device manufacturers concerning adverse events or product problem reports. Sections F, G, and H appear on the reverse side of version 3500A. If a human drug or biologic product manufacturer is reporting an adverse event in which no suspect medical device is involved, the manufacturers section (section G) on the reverse side of version 3500A may be completed and reproduced in place of the suspect medical device section (section D) on the front side of the form. This makes it possible for human drug product and biologics manufacturers to submit all necessary information on one side of the form. Version 3500A does not have to be submitted as a one page front-and-back form. If desired, the user facility, distributor, or manufacturer may submit their reports on two pages.

The specific provisions of these sections are explained in more detail in section III. of this document.

III. Comments on the Proposed Form

The February 26, 1993, notice requested comments on the proposed form. FDA received 79 comments from representatives of the pharmaceutical, biotechnology, and medical device industries, as well as from hospitals, academic institutions, and health profession associations. Although the comments generally supported the use of a consolidated reporting form, many comments offered useful suggestions on revising the proposed form.

A. General Comments

1. Confidentiality

Many comments were concerned with the issue of patient/reporter confidentiality and the confidentiality statement on the proposed version 3500. That statement read as follows:

> Confidentiality: The identity of the patient is held in strictest confidence by the FDA. The identity of the reporter will be shared with the manufacturer unless you request otherwise. However, the FDA will not disclose the reporter's identity in response to a request from the public.

Some comments questioned whether FDA and/or manufacturers are permitted by statute or regulation to protect the confidentiality of patients and/or reporters. Other comments questioned whether FDA and/or manufacturers would actually take steps to ensure confidentiality if so permitted. Several comments asked about State regulation of confidentiality and Federal preemption.

The Department of Health and Human Services (HHS) has a longstanding policy of providing strict protection to the confidentiality of patient information. This policy is based on a recognition of the extreme sensitivity of this information and the personal harm that can result from the disclosure of such information found in HHS' records.

FDA, a component of HHS, has long shared the same belief in the importance of personal privacy and has implemented this confidentiality policy in its public information regulations (see part 20 (21 CFR part 20)). Under the authority of Exemption 6 of the

Freedom of Information Act (FOIA), these regulations have for many years protected patient names and other identifying information from disclosure in response to requests filed under the FOIA.

The agency also recognizes the importance of protecting the identity of individuals who voluntarily report information to the agency, specifically including those who report adverse reactions or product experiences. Thus, the regulations also protect from public disclosure the identity of the individual voluntarily reporting, whether that individual is the patient or a health professional, as well as the identity of the hospital or other institution associated with the report (see § 20.111).

The agency has maintained its protection of the identity of voluntary reporters because of its belief that confidentiality is a key to encouraging health professionals to report serious adverse experiences. Such reporting is essential to the agency's postmarketing surveillance program, which is designed to help ensure the continued safety of marketed health products in the United States.

FDA has been informed of a number of lawsuits pending in State courts in which manufacturers have been requested and, in some cases, ordered to provide the names of those reporting adverse reactions to particular products and, rarely, the names of the patients involved. Because of the agency's concern about these confidentiality issues, the agency, through the Department of Justice, has filed a statement of interest in a number of these cases. The statement informed the courts of the potential damage the agency believes would be done to its postmarketing surveillance program if the identities of patients and reporters are released to plaintiffs in these cases. The agency believes that the confidentiality of this information has been maintained in all of the cases in which it has participated. Because such cases are of continuing concern, FDA is currently exploring ways in which it might further strengthen its regulations to protect patient and reporter confidentiality.

In order to emphasize some of these precautions, the confidentiality statement on version 3500A has been revised to read as follows:

> Confidentiality: The patient's identity is held in strict confidence by FDA and protected to the fullest extent of the law. The reporter's identity may be shared with the manufacturer unless requested otherwise. However, FDA will not disclose the reporter's identity in response to a request from the public, pursuant to the Freedom of Information Act.

2. Consistency With Other Forms

Several comments asked how and whether the agency's efforts to issue a consolidated form were consistent with recent initiatives on clinical safety data management by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) and the international reporting of drug safety by the Council for International Organizations of Medical Sciences (CIOMS).

The agency believes the form is consistent with adverse reaction reports created or proposed by international organizations. For example, ICH is working on a draft guideline that would consider a serious adverse event, experience, or reaction to be an incident that results in death, requires inpatient hospitalization or prolongs existing hospitalization, results in persistent or significant disability/incapacity, or is life-threatening. The companies may continue to use the CIOMS form for reporting foreign events with prior approval.

3. Development of Guidelines

Several comments requested additional information about the following statement made in the February 26, 1993, notice: "Specific user facility, distributor, and manufacturer reporting guidelines will be developed to provide guidance in the use of the new form." The comments asked whether the guidelines being developed are specific to the new form and when will they be made available. In addition, the comments asked about the availability of guidelines for the existing adverse event and product problem reporting regulations for human drugs, biologics, and medical devices.

To explain more thoroughly the voluntary reporting program for health professionals, FDA has prepared the "FDA Desk Guide for Adverse Event and Product Problem Reporting" which includes the instructions for completing the voluntary Form 3500. FDA also has prepared instructions for completing the mandatory reporting Form 3500A. Both versions of the form and their respective instructions are available now and may be obtained from the Center for Drug Evaluation and Research (CDER), the Center for Biologics Evaluation and Research (CBER), and the Center for Devices and Radiological Health (CDRH) (addresses identified above). Copies of both sets of instructions are also available on the FDA electronic bulletin board system at 1–800–222–0185.

To explain more thoroughly the mandatory reporting requirements for manufacturers, distributors, and user facilities, CBER and CDRH are preparing specific reporting guidelines to accompany each Center's adverse event reporting regulations. When these regulations become final and the guidelines are completed, FDA will announce their availability in a future issue of the **Federal Register**. Concerning adverse event reporting for human drug products, FDA has made available the "Guideline for Postmarketing Reporting of Adverse Drug Experiences." These guidelines will be updated to be consistent with the changes made in the regulations for the reporting of adverse drug experiences and the new Form 3500A.

4. Space on the Form

Several comments asked what should be done if more space is needed to complete the sections of the form.

FDA advises reporters to use additional blank sheets of paper, referenced to the section of the form being described, to complete any narrative sections of the form. Reporters should use additional copies of the form to complete all other sections. FDA reminds reporters to number all extra pages and the form with "page —— of ——."

Several comments stated that the space permitted for the requested information on the form as reproduced in the February 26, 1993, **Federal Register** was insufficient.

FDA advises that the actual size of the form is 8 1/2" by 11" and that its size had been reduced to accommodate publication in the **Federal Register**. Copies of two versions of the form in their actual size may be obtained by request as stated at the beginning of this notice.

5. Recommendations for Additional Information on the Form

One comment recommended that reporters should be able to indicate "ethnicity" on the form.

The agency notes that section B.7 on both versions requests "Other relevant history, including preexisting medical conditions (e.g., allergies, race, pregnancy, smoking and alcohol use, hepatic/renal dysfunction, etc.)." A reporter may indicate ethnic origin in this section.

One comment asked where on version 3500 reporters should indicate whether the report is an initial report or an update.

For the initial reporter, the information should be included in section B.5 of version 3500. For user facilities, distributors, and manufacturers, this information should be included in section G.7 of version 3500A.

Several comments suggested that the disclaimer at the bottom of the front side of proposed version 3500 page should be broadened to say: "Submission of a report does not constitute an admission that medical personnel or the product caused or contributed to the event." One comment suggested that the language for the disclaimer should be the same as the language in § 803.24(f) (21 CFR 803.24(f)), which provides more specifically that medical device reports do not in themselves constitute admissions of causality or liability.

FDA has amended the form to add the language "or contributed" to the disclaimer. The agency has not, however, adopted the language of § 803.24(f) for the form because that degree of specificity would be inappropriate for purposes of this form.

6. Reports from Consumers and to Manufacturers

Several comments asked whether there will be a form that consumers can use to report adverse events and product problems to FDA, or whether consumers should use the form for health professionals.

Although FDA expects that most reports will come from health professionals, consumers are encouraged to work with their health professionals to submit version 3500.

One comment stated that the submission of version 3500 to FDA would impede the ability of manufacturers to take corrective action concerning adverse events or product problems.

FDA disagrees with the comment. The agency intends to inform expeditiously manufacturers of any product problem reports it receives as well as reports of serious adverse experiences. The agency will expedite the transmission of these reports to enable manufacturers to conduct rapid and effective followup. In addition, the agency notes that health professionals may report to FDA or the manufacturer.

7. Use of the Form on a Test Basis

One comment recommended that the form should be used on a test-basis first before it is finalized.

The agency advises that in developing the draft form, it consulted health professional organizations representing physicians, dentists, nurses, pharmacists, and industry regarding the design and content of the form. FDA modified the draft form in response to many of the suggestions made by these groups. In addition, FDA has made a number of revisions to the final form based on comments made by health professionals and industry representatives who will be using this form. Finally, during the initial period of its use, FDA will continue to closely monitor comments and suggestions it receives from interested parties on the form, and will consider making further modifications to clarify and simplify the form as the need arises.

B. Section A (Versions 3500 and 3500A)—Patient Information

Section A.1 of the proposed form requested "patient initials" and stated that the initials would be "in confidence." FDA received numerous comments expressing concern about asking for the patient's initials, claiming that providing a patient's initials would compromise patient confidentiality. Some comments also noted that other identifiers, such as an identifying number in a clinical trial, might be more available and more useful. One comment suggested adding or substituting the pharmacy prescription number of the suspect medication as the identifier.

FDA has modified section A.1 to request a "patient identifier." The form does not specify the type of identifier that may be used. The reporter may use any number or other identifier that will allow the reporter to identify the patient if contacted for followup. This change will allow different reporters to use the identifier they believe is most appropriate, and will provide additional protection to the patient involved.

Section A.2 in the proposed form requested the patient's "age at time of event." Several comments suggested that FDA include the date of birth in addition to, or instead of, the age of the patient. One comment asked how to record the age at the time of event when multiple experiences are being reported, and one noted that there was no reference to age in hours when an adverse event affecting a neonate is being reported.

FDA has revised the form to enable the reporter to supply the patient's date of birth or age at the time of the event. As for recording the age at the time of the event when multiple experiences are being reported, the age reported should be the age at event onset. The form does not specify years or months, so hours can be used if a neonate is involved.

Section A.3 in the proposed form requested information on the patient's gender. One comment observed that there was no place to designate that the gender is not known.

FDA believes that health professionals will generally know the patient's gender, and FDA encourages whoever has the first direct contact with the patient or knowledge of the event to provide as much information as possible. As with all the fields in the report, if information is not known, the field can be marked as unknown.

Section A.4 in the proposed form requested the patient's weight in pounds or kilograms. Several comments said that weight data are difficult to obtain and are meaningless unless height data are also provided. One comment noted that there was no place for pediatric body weight.

FDA has decided to retain the space on the form for weight for those instances in which it can be provided. Some dosages are prescribed in terms of a patient's weight without regard to height, and so there may be instances where the weight is useful by itself. FDA can determine from the age of the patient whether the weight is pediatric weight.

C. Section B (Versions 3500 & 3500A)—Adverse Event or Product Problem

Section B in the proposed form was titled, "Adverse event or product problem." One comment suggested changing the title to "product related event" rather than "product related problem." The comment asserted that health professionals might be less likely to report an adverse event if the language suggests that the product has already been determined to be the cause of the problem.

The agency disagrees with this comment. The term "product problem" might be better understood by more people than the term "event" and may therefore lead to more comprehensive reporting of possible problems.

Another comment suggested that the term "product problem" be reserved for devices only.

Although the term "adverse drug experience" is associated with the regulations pertaining to adverse drug experience reporting, the more general "product problem" may be applicable to other FDA-regulated products, including drugs and biological products, as well as devices. A general term that is applicable to all classes and types of products is more appropriate for a single form that is used for the reporting of problems associated with each of the types of products. FDA has retained the headings and terminology referring to adverse events and product problems. The agency does not believe that the

language is misleading. The outcomes attributed to the adverse event will be described and the description of the event or problem will clarify whether the product being reported is a drug or a device. This will facilitate the agency's direction of the form to the proper program for attention.

Section B.1 of the proposed form asked whether the report pertained to an "adverse event and/or product problem (defect or malfunction)." Several comments supported drawing a distinction between defect and malfunction of medical devices. The proposed form did not define these terms, but listed them separately, i.e., "defects or malfunctions." However, some comments suggested deleting the terms "defect" and "defective," stating that such terms could have an impact on product liability action.

The final form has replaced "defect or malfunction" with "defect/malfunction." Defects may be related to product design or manufacture whereas malfunctions may be related to a device not operating as intended. For purposes of reporting, however, the agency does not believe these distinctions need to be set out on the form itself, because the agency is not asking the reporter to make such distinctions on the form. Although the underlying information may be relevant to product liability issues, submitting the form itself, as is clearly stated on the form, does not constitute an admission that the product caused the adverse event. FDA needs information on defects and malfunctions to protect the public health.

Section B.2 in the proposed form pertained to "Reasons for reporting adverse event" and listed seven reasons: "death," "life-threatening," "hospitalization—initial or prolonged due to event," "disability," "congenital anomaly," "required intervention to prevent permanent damage," and "other;" for reporting an adverse event. The proposed form directed the person completing the form to "check all that apply." FDA received many comments stating that some listed reasons for reporting apply only to certain classes of products and the categories are, therefore, too broad, and suggested that these specific limitations to classes of products be described in the section of the form listing outcomes.

FDA acknowledges that not all reasons listed are applicable to all classes of products and reporters. Some relate primarily to drugs (e.g., congenital anomalies, as included in §§ 310.305, 312.32, and 314.80 (21 CFR 310.305, 312.32, and 314.80)), and some relate primarily to medical devices (e.g., required intervention to prevent permanent impairment/damage, as derived from § 803.3 (21 CFR 803.3)). This section is for the general reporting and description of the event. FDA does not want to limit the choices of reasons for reporting in this general section, but would rather leave the reporter all the options that might be applicable. Further specificity may be provided in later sections of the form.

In addition, the purpose of the new form is to consolidate the reporting of adverse events and product problems for all FDA-regulated products in order to enhance agency-wide consistency in the collection of postmarketing data.

Several comments asked FDA to define "disability."

As noted above, FDA is asking that only serious adverse events be reported. An event is serious if it results in a disability that is significant, persistent, or permanent, as described on the reverse side of version 3500.

Several comments asked FDA to explain the phrase "required intervention to prevent permanent damage." Other comments said that this pertains only to devices and should be so described.

FDA has replaced "required intervention to prevent permanent damage" with "required intervention to prevent permanent impairment/damage" to be consistent with statutory and regulatory language. The agency is proposing to add this element to the regulatory definition of "serious" as that term is applied to adverse experiences with drugs and biologics. This proposed change makes the definition of "serious" consistent for drugs, biologics, and devices and also reflects the definition of "serious" proposed by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The agency believes it is desirable, where possible, to have a consistent definition of what constitutes a serious adverse event for all regulated products. FDA hopes that such consistency will eliminate confusion about what events should be reported. Further guidance will be provided in adverse event regulations in the near future.

One comment asked whether treatment with a drug is an intervention.

The agency advises that drug treatment necessary to preclude permanent impairment of a body function or permanent damage to a body structure would constitute intervention.

Another comment sought clarification of the term "permanent damage."

"Permanent damage" means damage that is not reversible.

FDA received one comment concerning the "other" listed reason for reporting an adverse event. One comment suggested that FDA could increase the number of reports received by broadening the "other" category to include such reasons as loss of work, physician visit required, pharmacist intervention required, product not working properly, product defect, and unexpected effect.

The reporter may indicate the "other" category for any serious event that does not fit into the other categories provided. The reporter may explain the reason in the space provided immediately after the word "other" and in the narrative in section B.5.

FDA received several comments questioning the purpose of and support for reporting congenital anomalies. One comment suggested that it might involve drawing conclusions that could be legally damaging to a provider and beyond the capacity of the risk manager in a particular hospital.

FDA has retained the category of congenital anomalies because these events are relevant to the evaluation of the safety and efficacy of products. Experience has shown that these abnormalities can occur through the use of certain drug products. For example, the drug thalidomide, used in Europe as a sedative in the 1960's, caused serious congenital anomalies in the fetus, including dysmelia, or malformation of the limbs, when taken early in pregnancy.

The form is intended to help FDA identify possible serious adverse events and product problems in order to protect the public health. Version 3500A bears specific disclaimers stating that submission of a report does not constitute an admission that medical personnel, user facility, distributor, manufacturer, or product caused or contributed to the event. Version 3500 bears a similar disclaimer that submission of a report does not constitute an admission that medical personnel or the product caused or contributed to the event.

One comment suggested that FDA delete "Reasons for reporting adverse event," but retain "check all that apply" because the outcomes listed are pertinent outcomes but may not be the reason the event is being reported.

To address this concern, FDA has modified the title of this field to "Outcomes attributed to adverse event." This will clarify the agency's intent that pertinent outcomes thought to be attributable to the adverse event are the ones that reporters should identify.

On a related issue, one comment stated that if the date of death were

being included with the reasons for reporting adverse events, it would be important to leave space to clarify whether the reported adverse event was the cause of death. Another comment said that the form should indicate whether "death" should be checked if it is not related to the adverse event.

The revised form does include a space for the date of death. Since the reporter is told that section B.2 is for "Outcomes attributed to adverse event," if the patient died while using the product, but the reporter does not think the death was related to the event, the reporter should not check the box for "death" on the form.

Sections B.3 and B.4 of the proposed form pertained to the "date of event" and "date of this report," respectively. FDA received several comments suggesting that these dates are ambiguous or unnecessary.

One comment asked how the date of the report in section B.4 differs from the date the manufacturer receives the report, which is requested in section G.

FDA has not changed these sections of the form. FDA believes that both of the dates are necessary because they provide important information for both identification and regulatory purposes.

To provide clarification for the terms "date of event" and "date of this report," the "date of event" is the date of first onset of the adverse event. The "date of this report" is the date that the report is filled out by the individual submitting the report. The date the report is filled out may or may not differ from the date that the manufacturer receives the report. The date of the report in section B is not redundant with the date the manufacturer receives the report because these two dates also may differ.

One comment said that section B should include an entry for the date of completion of an investigation of an adverse event so that FDA can verify that the report has been submitted within 10 days of the investigation. Another comment stated that a date indicating the date it is determined that an event is reportable should be added.

FDA does not believe that it needs information in this section that describes the length of the investigation, the date the reporter determines that an event is reportable, or the date of completion of the investigation. Pursuant to revisions in section F.6 that are described more fully below, the revised form will now provide information from which FDA can determine the lengths of investigations or the date that a reporter determines that an event is reportable, to the extent that such information is relevant for regulatory purposes.

Section B.5 of the proposed form requested a reporter to "describe event or problem," and to "attach hospital discharge summary, if available." One comment suggested adopting the language from the FDA test Form 3375 (Medical Device Reporting) that requires a narrative description of relevant information.

FDA believes that any information that is relevant to help FDA determine the causation of an adverse event should be included in the narrative if it is not already provided by other sections of the form. However, "Attach hospital discharge summary, if available" has been deleted from the final form to dispell the impression that the hospital discharge summary is required. FDA encourages the reporter, however, to attach the discharge summary if available.

Section B.7 of the proposed form pertained to a listing of "preexisting medical conditions and other relevant history." In the proposed form for user facilities, manufacturers, and distributors, this section contained four lines for entering information. Several comments opposed the inclusion of the preprinted lines.

The preprinted lines were originally included to allow for the option of optical scanning, but the lines are not necessary for the technology that FDA currently uses and have been deleted from the final versions of the form. For submission of adverse events related to the use of biologics, optical scanning remains a useful tool for FDA to enhance the speed and accuracy of data entry, and FDA urges biologics manufacturers to submit forms that can be optically scanned. The agency recognizes that for the successful application of optical scanning technology, replication of version 3500A will require a high level of precision. Manufacturers will be required to submit their computer-generated version of the form for approval by the agency.

One comment indicated that preexisting medical conditions are part of the confidential medical record and should not be required on either version of the form.

The knowledge of preexisting medical conditions is often crucial to an adequate evaluation of an event. If a confidential patient identifier is used, it is not likely that simply indicating a patient's medical history would identify the patient.

One comment suggested including allergies in the list of preexisting medical conditions.

FDA agrees that it would be useful to include allergies in the list of conditions and has revised the form accordingly.

One comment asked whether ICD–9 codes (an International Classficiation of Diseases code) and verbatim terms should be included in this section.

Including ICD–9 codes and descriptors of the codes is optional for manufacturers.

D. Section C (Versions 3500 and 3500A)—Suspect Medication(s)

Section C in the proposed form would require information on "suspect medication(s)," such as the dose, frequency, and route of administration, therapy dates, diagnosis for use or indication, and expiration date.

One comment preferred the use of "associated medication(s)" rather than "suspect medication(s)," saying that the term "suspect" implies causality that, ostensibly, has not been proven.

FDA has retained the use of the term "suspect" because the report is intended to alert manufacturers and FDA to suspected links between particular products and adverse events. The agency does not believe that this term "suspect" implies that causality has been proven. In addition, the term "associated medications" might be construed as "related" or "concomitant" medications. The form is intended to collect information about drug products connected with particular adverse events and problems. The concomitant medications are requested separately on the form.

Two comments suggested adding "manufacturers only" to "Suspect medication(s)" because user facilities are not required to report medication problems. One comment noted that user facilities who choose to report medication problems can use version 3500.

Not all elements of version 3500A are required by regulation for each type of reporter. The agency believes that asking user facilities to report on two different versions of the form would be confusing and will not facilitate the ability of a user facility to receive a report from a health professional and relay it to FDA. In addition, FDA wants to know about suspect drug products that may have contributed to an adverse event associated with a medical device.

Section C.1 of the proposed form requested information on the "Name & strength (give mfr/labeler if known)" for the "Suspect medication(s)." The proposed form provided lines for two separate suspect medications and designated them as "a" and "b." Several comments suggested replacing the

letters "a" and "b" with numbers ("1" and "2").

FDA has revised the form as suggested by the comments.

One comment suggested removing the preprinted lines to facilitate more efficient use of available space by computer systems.

The final form retains one line for each of two possible listed suspect medications. FDA believes that providing the lines will make the submission of information clearer and easier to read.

Regarding the section requesting the name and strength of suspect medications, one comment said that drugs are not addressed in the tentative final rule entitled Medical Devices; Medical Device, User Facility, Distributor, and Manufacturer Reporting, Certification, and Registration published in the **Federal Register** of November 26, 1991 (56 FR 60024) and are not subject to the rules applicable to medical device reporting.

As noted earlier, the reporting form is not for devices only. FDA regulations at §§ 310.305, 312.32, and 314.80 require adverse event or safety reports for human drug products. CBER is also preparing final regulations that adopt similar reporting requirements for biologics. Adverse experience information is used to further FDA's objectives of effectively monitoring the safety and efficacy of human drug and biological products.

Section C.2 of the proposed form requested information on the "dose, frequency & route" for the suspect medication(s). One comment suggested that these items pertain to the drug product "as used" rather than "as labeled."

Although the proposed form did not specify either "as used" or "as labeled," FDA has adopted the suggestion. Consequently, section C.2 of the final form pertains to the suspect medication's dose, frequency, and route "used."

One comment suggested that providing total daily dose would be clearer than providing the dose, frequency, and route as prescribed.

FDA believes that total daily dose will not provide important information about dosing intervals and dosage strength that might distinguish between multiple preparations of the same chemical substance. In addition, total daily dose can be calculated from dose and frequency.

Section C.3 of the proposed form pertained to "Therapy dates (or give duration)."

Several comments expressed concern that duration of therapy does not provide sufficient information to evaluate the relationship between the suspect medication and the adverse event. The comments suggested that FDA revise the section to indicate the temporal relationship between the starting and stopping dates of the administration of the drug and the onset of the adverse event.

FDA agrees that, when available, starting and stopping dates of drug therapy are very important pieces of information. However, when these dates are not known, it is preferable to have information on duration of therapy than to have no timing information at all. The agency, therefore, declines to revise this section except to encourage the reporter to estimate the dates and duration if exact dates are not known.

Section C.4 in the proposed form concerned the "Diagnosis for use (indication)." FDA received one comment suggesting that the words "if known" should be added to the heading of "Diagnosis for use (indication)" because community pharmacists may not know the underlying diagnosis for a prescription.

FDA declines to accept the suggestion. In most cases, FDA expects that the reporter will know the diagnosis for use because the reporter either will be the physician who made the diagnosis or the manufacturer who can obtain the information from the initial reporter. The reporter may also state on the form that the diagnosis is unknown if the information is not available.

Section C.5 in the proposed form asked whether the adverse event "abated after use stopped or dose reduced." The form contained "yes/no" boxes for two products, designated as "a" and "b." Several comments suggested that a space be added for "not applicable" for drugs, such as insulin, that are generally not discontinued after an adverse event, or "unknown," for cases in which the information is not available. FDA received several similar comments for section C.8 in the proposed form, which asked whether the event reappeared after reintroduction of the drug product.

In each instance, FDA has added a box to check for "doesn't apply" but, because of space limitations, has declined to add an entry for "unknown." Generally, FDA expects that the reporter will know whether the event abated after reduction or elimination of the drug treatment and whether it reappeared after reintroduction. The field may be left blank or "unknown" may be written in if the information requested is not available.

Section C.9 in the proposed form requested the suspect medication(s) NDC number, if known. FDA received several comments stating that the NDC number is often not available and is of little value.

FDA has revised the form to specify providing the NDC number when reporting "product problems only (if known)." Knowledge of the NDC number is critical when evaluating a reported drug quality problem. However, if the reporter does not know the NDC number, it can be omitted.

Section C.10 in the proposed form required information on "other medications/devices used prior to event" and "therapy dates." The form also contained three lines, marked "a," "b," and "c" for listing information. Several comments said that this language was misleading and suggested that "concomitant medical products" would more clearly indicate that the information sought pertains to products used immediately prior to or at the same time that the event occurred. Some comments asked that the preprinted lines be deleted.

FDA agrees that the word "concomitant" provides a clearer description of the information sought and has revised the form accordingly. The agency has also removed the preprinted lines from the form to provide more flexibility in entering information.

One comment suggested that this section and its counterpart in D.10, "other medications/devices used prior to event," be combined and moved to section B (Adverse event or product problem).

The agency declines to make this change. FDA wants to separate the specific data concerning drugs or devices so that each may be addressed separately. Section B of the form is for describing the adverse event itself, while sections C.10 and D.10 respectively request a description of concomitant medical products in use at the time of the adverse event but not used to treat the event. FDA believes that reporting the information in this way will be clearer and less likely to cause confusion.

E. Section D (Versions 3500 and 3500A)—Suspect Medical Device

Section D of the proposed form, "Suspect medical device," requested 10 items of information: (1) The product name of the device; (2) the type of device; (3) the device manufacturer's name and address; (4) whether the person operating the device was a health professional, lay user/patient, or "assistive personnel;" (5) the expiration

date of the device (if known); (6) information specifically identifying the device, such as the model, catalog, serial, lot, or other number; (7) if implanted, the date of implantation; (8) if removed, the date of removal; (9) whether the device had been returned and was available for evaluation; and (10) other medications or devices used prior to the event and the therapy dates.

FDA received a number of general comments on this section. Several comments proposed reversing the locations of Sections G ("All manufacturers") and D so that all information regarding suspect medications could be presented on one side of the MEDWATCH form.

As stated above and in the February 26, 1993, notice, if a medication manufacturer is reporting an adverse event in which no suspect medical device is involved, the manufacturers section (section G) on the reverse side of version 3500A may be completed and identically reproduced in place of the suspect medical device section (section D) on the front of the form. This makes it possible for medication manufacturers to submit all necessary information on one side of the form.

One comment suggested that manufacturers be permitted to submit and refer to the user facility report rather than repeating the information in section D.

FDA agrees with this comment. The manufacturer does not have to recopy the information supplied by the user facility and may refer to the answer in the user facility/distributor section (section F in version 3500A) if the manufacturer, after conducting an appropriate investigation, verifies the information.

One comment suggested replacing the heading, "Suspect Medical Device" with "Subject Medical Device."

FDA declines to accept this suggestion. The form is intended to provide information on "serious adverse events" and deaths that are suspected of being related to a device. The term "Suspect medical device" quite appropriately focuses the reporter's attention to a possible association between a serious injury or death and a medical device.

FDA, on its own initiative, has changed the caption of section D.1 from "product name" to "brand name." "Brand name" is more commonly used in the device industry and will identify products with a greater degree of specificity.

Section D.3 of the proposed form asked for the manufacturer's name and address. Several comments asked whether this referred to the manufacturing site or the reporting site.

FDA advises that the name and address refers to the reporting or headquarters site. The agency urges voluntary reporters to provide whatever information is available to them regarding the manufacturer. In the final form, section G.1, mandatory for all manufacturers, now specifies that the name and address for the contact office and the site of manufacturing for a device be provided.

Section D.4 of the proposed form asked whether a health professional, lay person, patient, or "assistive personnel" operated the suspect medical device. Several comments questioned the term "assistive personnel," noting that health professionals rarely use this term.

FDA agrees with these comments and has replaced the term with an "other" designation which can be used by individuals, such as nurse's aides, orderlies, or engineers who are in a position to detect an adverse event involving a medical device.

One comment requested that FDA provide a way of designating devices that do not require an operator.

FDA recognizes that there are a significant number of devices that do not require operators. In such cases, the subsection would not apply.

Section D.5 of the proposed form asked for the device's "exp. date." Several comments noted that the term "exp. date" could be understood as an abbreviation of "explant date."

To avoid any possible confusion, FDA has replaced "exp. date" with "expiration date."

Section D.8 of the proposed form requested the date on which the suspect medical device was "removed." Several comments stated that the word "explant" more accurately described the information sought under this subsection than remove.

FDA agrees with these comments and has changed the form to provide a space to indicate the date implanted devices may have been "explanted."

Section D.9 of the proposed form asked whether the device was "available for evaluation" and whether the device had been returned to the manufacturer. Several comments suggested that the agency should advise user facilities to return allegedly faulty devices to manufacturers.

FDA advises that requiring user facilities to return devices is beyond the scope of the user facility reporting authority under section 519 of the act (21 U.S.C. 360i) and accordingly beyond the scope of this report form. User facilities should be aware that the failure to return a device to the manufacturer generally reduces the manufacturer's ability to identify the cause of the problem. It may not be practicable, however, to return all devices as, for example, when a patient who owns a device will not relinquish it or where shipping the device might pose possible public health problems.

The agency, on its own initiative, has amended section D.9 of the form to state that the suspect medical device should not be sent to FDA. The agency has made this change because manufacturers, not the agency, have the primary responsibility for performing an evaluation of the device and are best equipped to provide instructions on the shipping and handling of a device.

One comment asked FDA to include a space "for the current possessor of the device."

FDA declines to amend the form as suggested by the comment. FDA notes that the form, at section D.9, asks whether the device is available for evaluation or is in the manufacturer's possession. Based on the responses to this section, as well as information in other sections of the form, FDA believes that the agency and manufacturers will be able to determine where a suspect medical device is located, if necessary.

One comment stated that FDA should provide "instruction in the proper handling of 'explanted' materials."

FDA believes that such instruction could vary, depending on the medical device involved, and so it would be impractical, given the limited space on the form, to amend the form to provide instructions for every possible type of explanted device. FDA acknowledges, however, that the issue raised by the comment is important and intends to address these issues in the future.

Section D.10 in the proposed form requested information on "other medications/devices used prior to event" and also requested "therapy dates." Several comments claimed this request was too broad or would yield little value. Other comments stated that the requested information might not be pertinent, and that FDA should limit the requested information to drugs or devices that might have had a bearing on the adverse event being reported. One comment suggested that FDA amend the form to specify other medications or devices that might have had an impact on the event. Another comment suggested the listing of other medications and devices in use at the time of the event.

The agency agrees that the proposed form's request for "Other medications/devices used prior to event—give therapy dates," was overly broad and might yield information that is not

pertinent. FDA also agrees with the comments suggesting listing other medications and devices in use at the time of the event and specifying other medications or devices that may have had an impact on an event. Accordingly, FDA has deleted the request for "Other medications/devices used prior to event," and replaced it with "Concomitant medical products and therapy dates (exclude treatment of event)." FDA believes that this revision will provide the key information necessary to determine whether the cause of an adverse event is related to possible drug or device interactions.

Other comments suggested that the agency amend the form to permit reporters to determine whether concomitant treatments were related to the adverse event.

The agency declines to accept this suggestion. The emphasis on adverse event reporting is to identify events and possible interactions which are not already known or, if known, occur at a greater frequency than expected. Thus, restricting concomitant products to those which the reporter believes "may have had an impact" may result in incomplete information or delay the discovery of previously unknown interactions.

F. Section E (Version 3500 Only for Voluntary Reporting)—Reporter

Section E in the proposed version for health professionals requested information about the reporter (name, address, and telephone number), whether the reporter was a health professional, the reporter's occupation, whether the information had been reported to the manufacturer, user facility, or distributor, and whether the reporter did not want his or her identity disclosed to the manufacturer.

Several comments asked FDA to explain who the "reporter" is.

The "reporter" on version 3500 is the health professional or consumer, who may submit the form to manufacturers, user facilities, and distributors, as well as to FDA. If one health professional is completing the form for another, the reporter on the form should be the health professional who can be contacted in the event that followup is necessary. FDA recognizes that the hospital pharmacist may serve as the facilitator for reporting by physicians.

Several comments asked for clarification of the entry of the reporter's name, address, and telephone number. Two comments asked for specific data entry lines for identification of the doctor, university, or other relevant information in addition to name, address, and telephone number.

FDA declines to amend the form as suggested by the comment. There is sufficient space to provide any additional identifying information that the reporter may believe is useful.

Several comments said section E.2, which asked whether the reporter is a health professional, is unnecessary on version 3500, which is created expressly for health professionals. One comment suggested that the form provide space for a specific health profession.

Asking whether the reporter is a health professional is not redundant because version 3500 may be completed by consumers as well as by health professionals.

The form includes a space, designated section E.3, for the reporter to indicate his or her occupation; if the reporter is a health professional, this is the place to indicate a specific profession and specialty.

Section E.3 in the proposed form for health professionals pertained to "Occupation." FDA received two comments seeking clarification as to whose occupation was being requested.

The initial reporter's occupation should be provided.

G. Section E (Version 3500A Only for Mandatory Reporting)—Initial Reporter

Section E in the proposed form for user facilities, distributors, and manufacturers also requested information about the reporter (name, address, and telephone number), whether the reporter was a health professional, the reporter's occupation, and whether the information had been reported to the manufacturer, user facility, or distributor.

Several comments asked FDA to clarify who the "reporter" is.

FDA has modified the title of section E of version 3500A to read "Initial Reporter." This will allow the user facility, distributor, or manufacturer to indicate who reported the adverse event to it.

Section E.4 in the proposed form asked whether the information had been reported to the manufacturer, user facility, or distributor. One comment suggested that FDA add a space to indicate whether the initial reporter also sent the report to FDA.

FDA has revised section E.4 to ask whether the initial reporter also sent a report to FDA. This will allow FDA to know whether the initial reporter has also sent the agency a voluntary report of the same event. The agency has deleted the references to a manufacturer, user facility, or distributor in section E.4 of version 3500A because version 3500A is submitted by those parties.

One comment asked FDA to define "user facility" when an adverse event is being reported by a manufacturer.

FDA has deleted this portion on version 3500A. Only the health professional's form (version 3500) continues to ask whether the event was also reported to a manufacturer, user facility, or distributor. As for the definition of "user facility," FDA has defined the term in the next section.

H. Section F (Version 3500A Only)—For Use by User Facility/Distributor—Devices Only

Section F of proposed version 3500A requested device data from user facilities or distributors. The proposed section requested 14 items of information: (1) Designation of the reporter as either a user facility or distributor; (2) a report number; (3) the user facility's or distributor's name and address; (4) the contact person's name; (5) the phone number where the contact person can be reached; (6) the date the event was reported to the user facility or distributor; (7) the type of report (initial or followup); (8) the report's date; (9) the device purchase date; (10) event (patient and device) problem codes; (11) whether a report has been sent to FDA; (12) the location where the event occurred; (13) whether a report was sent to the manufacturer; and (14) the manufacturer's name and address.

Section F.1 in proposed version 3500A asked whether the reporter was a user facility or distributor. One comment asked FDA to define "user facility." Section 519(b)(5) of the act defines "Device User Facility" as a "hospital, ambulatory surgical facility, nursing home, or outpatient treatment facility which is not a physician's office."

Under section 519(e)(5) of the act, the Secretary of HHS may, by regulation, include an outpatient diagnostic facility which is not a physician's office within the definition "device user facility." FDA, in its tentative final rule published in the **Federal Register** of November 26, 1991 (56 FR 60024), proposed to include such outpatient diagnostic facilities within the definition of device user facilities. Unless and until FDA issues a final regulation requiring outpatient diagnostic facilities that are not physician's offices to submit adverse event reports, such entities are not required to report. In the interim, however, FDA encourages the submission of voluntary reports from such entities.

Proposed section F.2 requested information on the "report number." Seven comments asked FDA to clarify the term "report number."

In response to these requests for clarification, FDA has revised the wording so that the entry in the final form requests the "UF/Dist Report Number" which is an abbreviation of User Facility/Distributor Report Number. The number consists of the facility's Health Care Financing Administration (HCFA) number, the calendar year, and a consecutive 4-digit number for each report filed that year by the facility, e.g., xxxxxxx-1991–0001, xxxxxxx-1991–0002. If a facility does not have a HCFA number, the first report should be submitted with all zeros in the HCFA space, and FDA will assign a number to be used on future reports. If a facility has more than one HCFA number, the facility may choose any one of those numbers, but must use the same number for subsequent submissions. These numbers, which will be unique to each form, will facilitate tracking and auditing by FDA. Device distributors follow the same format but use their FDA registration number with the calendar year and sequence number.

Proposed section F.4 of the form requested that user facilities or distributors list a contact person. One comment sought clarification as to who the contact person should be.

User facility submissions should be made by an individual who is designated by the facility's most responsible person as the device user facility contact for this requirement. FDA will conduct its medical device reporting (MDR) correspondence with this individual. The contact person may or may not be an employee of the facility. However, the facility and its responsible officials will remain the parties ultimately responsible for compliance with the requirements.

Proposed section F.6 of the form requested the date the adverse event was reported to the user facility or distributor. Four comments said this date should be the date on which the user facility or distributor determined that the event was reportable. One comment noted that without requesting this information, FDA would be unable to determine if the user facility complied with the provision in the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), which requires user facilities to report an event within 10 days after the user facility becomes "aware" of a reportable event (21 U.S.C. 360i(b)(1)).

FDA has revised section F.6 to read, "Date user facility or distributor became aware of event." The agency believes that this language is the most relevant to the distributor and user facility reporting requirements because it is derived directly from the statutory language relating to user facilities in section 519(b)(1) of the act, and from the distributor reporting regulations, part 803 (21 CFR part 803), which became final by operation of law on May 28, 1992. This statutory and regulatory language triggers a reporting requirement for those entities within 10 days after they are deemed to "become aware" of the event. FDA, in its November 26, 1991, tentative final rule requiring user facility reporting, stated that the user facilities are deemed to "become aware" of information that triggers the reporting requirements only when they have sufficient information to make a determination that a report is required. Distributors, however, only serve as a conduit of information submitted to them, and are deemed to become "aware" of information that triggers reporting requirements when they receive a report.

Proposed section F.7 requested that user facilities and distributors specify whether the report is an initial or followup report. FDA received four comments on this section. One comment suggested mandatory resubmission of the entire form with each addendum.

FDA disagrees with the comment suggesting mandatory resubmission of the entire form for each addendum. Resubmission of the entire form would hinder FDA's ability to determine whether an initial or followup form was being submitted and also make it difficult to identify new information. Such resubmissions would also place additional paperwork burdens on user facilities or distributors without any apparent benefit to the user facility, distributor, or FDA. Consequently, FDA declines to require resubmissions of an entire form with each addendum.

Another comment suggested that FDA amend the form so the designation of an initial report or a followup report would appear in a section requesting "general information."

FDA has taken this comment under advisement and will consider it after the agency acquires some experience with the final form.

One comment asserted that the proposed section F.7 did not adequately distinguish between initial and followup reports.

The agency disagrees with the comment. Section F.7 in version 3500A permits the user facility or distributor to check simply whether the report is an initial report or a followup report. By permitting these parties to check an appropriate box, FDA believes that a user facility or distributor can readily determine and indicate which type of form it is completing and that agency personnel will be able to determine quickly whether they are receiving an initial or followup report.

Proposed section F.8 of the form asked for the "date of this report."

Three comments asked FDA to explain how this date differed from the entry in proposed section B.4 of the form for the "date of this report."

The date of the report in section B.4 of the form is the date that the report is filled out by the reporter, who may or may not be a user facility or distributor. The date of the report in section F.8 refers to the date the user facility or distributor forwards the report to FDA or the manufacturer. This information is relevant because it indicates the date that statutory and regulatory timeframes for reporting are triggered. (See the discussion to comments for section F.6.)

Proposed section F.9 of the form asked for the "device purchase date." FDA received eight comments on this section. Some comments noted that the device purchase date was often not accessible to a distributor. Other comments suggested that it would be more realistic to request the approximate age of the device.

The agency agrees that purchase dates may often not be accessible and that approximate age of the device is more appropriate. Therefore "device purchase date" has been revised to read, "Approximate age of device."

Section F.10 in the proposed form requests "Event problem codes" and refers to a "coding manual." FDA received many comments expressing confusion over these codes as well as the coding manual to be used in section F.10.

The agency intends to make the Coding Manual available at the time version 3500A is effective.

Proposed section F.11 asked whether a report had been sent to FDA and, if so, the date the report was sent.

One comment said that the information requested in this entry is redundant to section F.7 ("Type of report").

The agency disagrees with the comment. Section F.7 asks whether the information being provided is part of an initial or followup report; it does not ask whether the report was sent to FDA, nor does it ask when the report was sent. In contrast, section F.11 will inform manufacturers and others analyzing the report whether FDA has also been informed of possible problems with the device.

One comment stated that the question whether a report had been sent to FDA could make user facilities and

distributors believe that they should send a report to FDA.

FDA advises that distributors and user facilities must submit reports of certain adverse events to FDA. Under section 519(b) of the act, a user facility must submit reports of deaths that are suspected of being device related to FDA and to the manufacturer, if known. User facilities must also submit reports of serious injuries that are suspected of being device related to the manufacturer or, if the manufacturer of the device is unknown, to FDA. Similarly, distributors are required by regulation to submit all reportable adverse events to FDA and to the manufacturer. Thus, the statute and regulations do require user facilities and distributors to report to FDA.

Proposed section F.12 listed seven possible choices—"hospital," "home," "nursing home," "outpatient treatment facility," "outpatient diagnostic facility," "ambulatory/surgical facility," and "other"—for the location at which the adverse event occurred.

One comment questioned whether the request for "location" referred to the location of the adverse event or the user facility.

The "location" request in the form means the location where the adverse event occurred.

Thirteen comments asked FDA to delete "home" from the form. Several comments stated that reporting home events is not required under the SMDA. One comment suggested putting "(voluntary)" after the entry for "home."

FDA does not agree that the reporting of certain events that occur in the home is not required under the SMDA. For example, a distributor that becomes aware that one of the devices it distributed is suspected of causing a death or serious injury while being used in someone's home must report this event to FDA. Accordingly, inclusion of the choice "home" in F.12 is appropriate and should not be followed by the word "voluntary."

Another comment suggested adding "home" as a possible location of the adverse event to version 3500, the voluntary form used by health professionals.

FDA does not believe it is necessary to include this information on the voluntary form. The agency will have this information for all deaths and other serious adverse events on the report form submitted by the distributor and/or user facility.

One comment suggested changing "nursing home" to "residential care facility" in order to encompass a broader range of institutions.

FDA declines to amend the form as requested. The category of "nursing home" is specified in the SMDA, and the "other" option will allow reporters to indicate different kinds of facilities that are not specifically indicated on the form.

One comment suggested changing "ambulatory/surgical facility" to "ambulatory surgical facility."

FDA agrees with comment and has changed the form accordingly.

Proposed section F.13 of the form asked whether the user facility or distributor had sent a report to the manufacturer, and the date of such a report. One comment expressed concern over the accuracy of the information provided to the manufacturer.

The agency is aware that information provided to manufacturers may be anecdotal or incomplete, but notes that it is the manufacturer's obligation to investigate reports of adverse events related to their devices.

Proposed section F.14 of the form asked user facilities or distributors to provide the manufacturer's name and address. Three comments claimed that this provision duplicated information requested in section D.3 ("Manufacturer name & address") and section G.1 ("Manufacturer name/address & phone # (site of mfr for device)") (now "Contact Office name/address (& mfring. site for devices")).

The agency disagrees with the comments. The three sections cited by the comment can result in different manufacturing names and addresses from different parties. Section D.3, for example, which requests the manufacturer's name and address for the suspect medical device, may be completed by a voluntary reporter. This individual will probably only have access to the device itself and will therefore supply the name or address of the manufacturer that is imprinted or attached to the device. In contrast, section F.14, which is completed by the user facilities or distributors, will provide the manufacturer's name and the address these reporting entities use for the purpose of communicating adverse event information to the manufacturer. The name and address may be different from the manufacturer name and address present on the device itself. FDA has revised the request for information in section G.1 of the final form, which is completed by manufacturers, to clarify that the manufacturer must identify both a contact office and include the name and address of the manufacturing site for the device. The contact office and manufacturing site information provided by the manufacturer may be different from the information filled out in section D.3 or F.14.

I. Section G (Version 3500A Only)—All Manufacturers

Section G in the proposed form for user facilities, distributors, and manufacturers requested information from all manufacturers, including the manufacturer's name, address, and telephone number, the report source (such as literature, health professional, user facility, etc.), the date the manufacturer received the report, the application number if the report involved a human drug product, the type of report, the adverse event term(s) (for a biological product), and the report/control number.

Section G.1 in the proposed form requested the manufacturer's name, address, and telephone number.

FDA has, on its own initiative, changed the description of the information sought in section G.1 to identify a "Contact office—name/address (& mfring. site for devices)." In addition, FDA has created a new section G.2 for the contact office's telephone number.

Section G.2 in the proposed form (now renumbered as G.3) requested information on the report source. The section lists several possible sources, such as "foreign," "study," "literature," "consumer," "health professional," user facility," "company representative," "distributor," and "other." Several comments said that "company representative" should be deleted because the report source should be the original reporter.

FDA disagrees with the comment. FDA recognizes that certain segments of the industry frequently receive reports from company representatives. The agency wants to track reports received in this manner.

One comment suggested designating the last four items in the list of report sources (user facility, company representative, distributor, and other) as being relevant to devices only, and another suggested adding "foreign health authorities." One comment objected to the use of the term "literature."

The proposed form did include, and the final version retains, the choice of a "foreign" source. However, FDA has not revised the form to make the other suggested changes. FDA realizes that "user facility," for example, may only be relevant to device-related adverse events. The purpose of this form, however, is to provide one form that can be used to report adverse events that are related to several FDA-regulated products. It is therefore necessary to

include some choices in this section that may not be relevant to a specific FDA-regulated product. FDA also does not agree with the comment which objects to the request for "literature" as a report source. FDA regulations at § 314.80(b) provide that each applicant having an approved application under 21 CFR 314.50 or 314.94 shall promptly review all adverse drug experience information obtained or otherwise received by the applicant from any source, foreign or domestic, including information derived from commercial marketing experience, postmarketing clinical investigations, postmarketing epidemiological/surveillance studies, scientific literature, and unpublished scientific papers. Current regulations for device manufacturers and distributors also require submission of reports from any source, including literature (see part 803). Thus, the form appropriately lists possible sources of reports.

Section G.3 in the proposed form (now renumbered as G.4) requested information on the "date received by manufacturer." FDA received several comments requesting clarification of this date. Two comments wanted to ensure that the date meant the date the manufacturer received enough information to make a report, and one asked whether the date meant receipt of information by the corporation anywhere in the world or in the United States.

The date received by manufacturer means the date the manufacturer initially received information to determine that an adverse event occurred. This would apply to a report received anywhere in the world.

Section G.4 in the proposed form (now renumbered as G.5) pertained to an NDA number, IND number, PLA number, and asked whether the drug product was a "pre-1938" product. One comment suggested that the form either specify that the acronyms (NDA, ANDA, etc.) pertain only to pharmaceutical manufacturers or spell out the terms.

The acronyms pertain to human drug products. "ANDA" stands for "abbreviated new drug application;" "NDA" stands for "new drug application;" "IND" refers to an investigational new drug application, and "PLA" refers to a "product license application." The agency has not, however, revised the form as the comment suggests because it believes medical device and drug and biological product manufacturers know what abbreviations are applicable to their products.

Several comments asked why the form did not request the application numbers for applications submitted under section 510(k) of the act (21 U.S.C. 360(k)) or the premarket approval application (PMA) number for medical devices. One comment suggested they be included.

FDA has not required the 510(k) number or the PMA number on version 3500A because this information would duplicate other information FDA may receive in periodic reports from device manufacturers.

Two comments asked whether reports for investigational device exemptions (IDE's) are to be included in this form.

Devices that are subject to IDE's pursuant to 21 CFR parts 812 and 813 are exempt under § 803.36(b) from the adverse event reporting requirements. These devices are instead subject to IDE reporting requirements.

One comment asked whether the form should be used to report adverse events for IND products in development.

Adverse events associated with these products should be reported. FDA Form 3500A is not required but may be used to report 10-day IND safety alerts. One comment asked whether, for marketed biologic products, both the IND and the PLA numbers should be provided for spontaneous postmarketing reports and asked about products with multiple IND's but only one PLA.

For a marketed biologic product, the PLA number should be provided for spontaneous postmarketing reports. The IND number should only be referenced if the suspect product associated with the adverse event was administered under a specific IND protocol, and the report is being submitted as a 10-day IND Safety Report.

One comment said the form should ask whether the product is an over-the-counter (OTC) product.

FDA agrees and has revised the form to include a box to indicate whether the report concerns an OTC product.

Section G.6 in the proposed form (now renumbered as G.7) concerned the "type of report" and included six possible choices: 5-day, 10-day, 15-day, initial, periodic, or followup. One comment said that the form repeatedly asks whether a report was an initial report or a followup.

FDA disagrees with the comment. The designation of an initial or followup report by manufacturers only appears once on the form.

Section G.7 in the proposed form (now renumbered as G.8) concerned "adverse event term(s)" for biologics and provided three lines for entering information. FDA received many comments noting that the information was requested only for biologics and asked whether FDA intended to limit this section to biologics. Several comments asked whether this information could be moved to section B ("Adverse event or product problem"). Some comments said that the preprinted lines limited the number of terms that could be provided.

FDA has revised the form to delete the term "Biologics" because the agency did not intend to limit the applicability of this section to biologics. FDA has also deleted the preprinted lines. FDA declines, however, to move this information to section B because the agency believes this information is best linked to other information provided by the manufacturer in section G.

Section G.8 in the proposed form (now renumbered as G.9) requested the "Report/control #." Several comments sought clarification of this section. One comment asked how the report/control number differed from the manufacturer report number. Another comment noted that the manufacturer report number is already required at the top of the form and questioned why manufacturers should provide the number in section G.8 (now renumbered as G.9).

FDA has revised both entries to read "Mfr. report number." The manufacturer report number is required in both places to allow the front and back pages of a particular report to be matched in the event they are submitted as separate pages or if they are copied as separate pages.

J. Section H (Version 3500A Only)—Device Manufacturers Only

Section H in the proposed form for user facilities, distributors, and manufacturers requested device manufacturers to provide 13 items of information: (1) A contact office, including an address and phone number; (2) the device manufacture date; (3) the product code; (4) whether the device is labeled for single use; (5) the report type; whether it concerns a death, serious injury, a malfunction, or some other problem; (6) whether the event being reported involved the initial use or reuse of the device; (7) whether the manufacturer has evaluated the device, and, if so, whether it has conducted a failure analysis; (8) if the report is a followup report, whether it reports a correction, provides additional information, responds to an FDA request, or involves a device evaluation; (9) evaluation codes, including entries for method, results, and conclusions; (10) the type of remedial action initiated, such as recall, repair, or replacement; (11) whether the action was being reported to FDA under FDA regulations; (12) a manufacturer narrative, and (13) corrected data.

FDA, in response to comments and on its own initiative, has significantly reorganized and revised this section. Section H, as revised, assigns greater prominence to certain entries, such as the type of reportable event and whether the manufacturer has evaluated the device, and deleted the entry concerning "product code." The agency will discuss these comments in the order in which they relate to the sections in the final form.

Section H.1 in the final form requests information on the "Type of Reportable Event." This section was at H.5 in the proposed form, and was originally captioned "Type of Report." Several comments stated that the information requested in this section duplicated that requested in section B.2, "Reasons for reporting adverse event."

FDA disagrees with the comments. Section B.2, which is now titled, "Outcomes attributed to adverse event," applies to medications, medical devices, and other FDA-regulated products. Consequently, it identifies possible adverse events or problems, such as congenital anomaly, that may not be applicable to medical devices. In contrast, section H.1 is devoted exclusively to medical device manufacturers and is specific to the categories of adverse events that device manufacturers are required to report. Further, the agency anticipates that section B.2 will contain information provided by the initial reporter, such as a user facility, and forwarded to the manufacturer. After an investigation, the manufacturer's interpretation of the event may differ from that provided by the initial reporter.

Several comments requested that FDA change the phrase "malfunction that might cause death or serious injury if it were to recur" to "malfunction that is likely to cause death" in order to conform to section 519(b)(1)(B) of the act and 21 CFR 803.24.

FDA has amended the language to refer only to a "malfunction." The agency notes that, under the 1992 amendments enacted on June 16, 1992, Congress has changed the standard for determining when adverse events must be reported. This law will be effective 1 year from the date of enactment of these amendments. Moreover, FDA has not yet published a final MDR reporting regulation, based on comments submitted in response to the November 26, 1991, tentative final rule. Accordingly, at the time of publication of this notice, it is impossible to provide the exact standard that will be required for reporting under the new law and future regulations. Regulations or other guidance will be issued by FDA by the effective date of this form.

One comment objected to including "other" as a type of report, stating that the SMDA only requires reports of death, serious illness, or serious injury. Another comment asked what type of event would fall under this category.

The form's reference to "other" is intended to capture any reports that a manufacturer believes the agency should be aware of that are not covered by "death," "serious injury," and "malfunction," as these terms are defined by statute or regulations. This category can be used to notify FDA of a correction action or removal. Section 519(f)(1) of the act states that no report of corrective action or removal is required if it has been reported per section 519(a) of the act. Moreover, under the Medical Device Amendments of 1992, the category can be used to report "other significant adverse device experience as determined by the Secretary to be necessary to be reported."

Section H.8 of the proposed form (now renumbered as H.2 in the final form) was captioned, "If follow-up, what type?" The form provided four boxes to indicate whether the followup was a correction, additional information, response to FDA request, or device evaluation. Several comments requested clarification. One comment asked whether a manufacturer had to complete a new form whenever new information became available. Another comment requested clarification of the term "correction." A third comment asked whether the agency was trying to determine whether a report was an original or followup report.

Section H.2 is intended to assist agency personnel swiftly determine the purpose behind a followup report. For example, a "correction" would indicate that the manufacturer has already submitted a report and is correcting information provided in the previous report. If the manufacturer indicated that it was responding to an FDA request, this would alert FDA personnel to the possible existence of documents or discussions on the adverse event or product problem. FDA does not expect device manufacturers to submit reports that contain information the agency has received in a previous report. The manufacturer should simply provide the new information to FDA and mark the box indicating what kind of followup report is being submitted.

One comment suggested that FDA place a similar entry regarding the type of followup report in section F for use by user facilities and distributors. The comment said such information could be "helpful in clarifying the nature of the particular problem."

FDA does not agree that adding these entries under the user facility/distributor reporting section will provide clarifying information. The user facility and distributor reports are forwarded to the manufacturer. The manufacturer must then submit a report based on the distributor or user facility report indicating the kind of followup report. Accordingly, requiring this information from user facilities or distributors would provide duplicative information to FDA.

Section H.7 of the proposed form, "Device evaluated by mfr?" (now renumbered as H.3 in the final form), contained three boxes that device manufacturers could mark: "yes," "failure analysis attached," and "no (if no, attach page to explain why not) or provide code." Two comments said FDA should delete this section or, if retained, change "failure analysis attached" to "evaluation summary attached."

FDA disagrees that this section should be eliminated. It is the manufacturer's primary responsibility to determine whether its devices have caused an adverse event and, in turn, to provide such information to FDA so the agency can determine whether further steps are needed to protect the public health. The agency agrees, however, that the term "failure analysis attached" might be interpreted to preclude any other evaluation outcomes and has replaced it with "evaluation summary attached."

Another comment suggested that a manufacturer may be unable to conduct an evaluation for all types of devices, notably devices that are disposable.

The agency advises manufacturers who believe that they cannot conduct an evaluation for a medical device to use the "no" option and attach an explanation or provide the appropriate code. If the manufacturer believes that direct evaluation is not applicable, the manufacturer, in some circumstances, could perform a surrogate method of evaluation.

One comment suggested that FDA create an additional box to indicate "not returned."

FDA agrees and has added a modified version of this suggestion, "not returned to mfr." to the final form.

Several comments said FDA should delete section H.2 in the proposed form, "Device manufacture date," (now renumbered as section H.4 in the final form) because it duplicated information requested in section D.6, which asks for the suspect medical device's model number, catalog number, serial number, lot number, and other numbers.

FDA disagrees with the comment. These two sections provide different information to FDA. Section D.6 does not request the manufacturing date; it merely provides information that will help identify a specific medical device. This information may help FDA determine whether a specific device design is a problem. Section H.4 asks when the device was manufactured; this information may be important should the manufacturer or FDA determine that the adverse event may be caused by manufacturing problems during a certain time period.

Another comment noted that the manufacturing date "may not be readily available for large equipment" and asked FDA to delete this item.

FDA does not agree with this comment's suggestion. As discussed above, determining the manufacturing date of a product is extremely important in enabling FDA to trace device defects to flaws in the manufacturing process. Consumers, health professionals, distributors, and others affected may then be informed with some precision of the products posing a risk, and any possible recall can be limited to the period in which the manufacturing flaw appeared.

One comment asked that, in order to reduce the burden on manufacturers, the manufacturing date should be changed from month, day, and year to month and year only.

FDA agrees and has revised the final form to request only the month and year.

Section H.4 in the proposed form (now renumbered as section H.5 in the final form) asks whether a device is "Labeled for single use." FDA received two comments suggesting that the section was not relevant to devices. Another comment requested clarification of this provision.

FDA does not agree with the assertion that the section is not relevant to devices. FDA is aware that adverse events can arise from the reuse of devices that are intended to be used only once.

Another comment stated that this section was not relevant to capital equipment.

If the section is not relevant to the device being reported, such as capital equipment, the "No" box is the appropriate selection.

One comment asserted that this section constituted FDA interference in the practice of medicine.

FDA does not agree with this comment because the requested information is part of section H of the form which only requests information from device manufacturers and concerns labeling information. Information from this section is not intended to be used to interfere with the practice of medicine; it is intended to provide FDA with information to carry out its statutory obligation to protect the public health. Information from this category may, in turn, be provided to health care professionals to make them aware of unsafe devices for the protection of their patients.

FDA has enlarged and reformatted section H.9, "Evaluation codes; of the proposed form" (now renumbered as section H.6 in the final form). Several comments said FDA should eliminate this section because it was too narrow and called for subjective judgments rather than objective facts.

FDA does not agree with these assertions. Although all codes require a measure of subjective evaluation, they also enable reviewers to ascertain very quickly certain key facts. Manufacturers have, or can obtain, the best initial assessment of the product problem, and this will help FDA and the manufacturer determine the cause of the problem and take any steps necessary to protect the public health.

Section H.10 in the proposed form, "If remedial action initiated, check type," (now renumbered as section H.7 of the final form) provided nine boxes: "recall," "repair," "replace," "relabeling," "notification," "inspection," "patient monitoring," "modifications, adj.," and "other" that device manufacturers could select. FDA received two comments on this section.

One comment noted that some terms had not been defined, could "overlap," and requested clarification.

Most of these terms are defined or further explained in the act or in existing FDA regulations concerning recalls and remedial action (see 21 U.S.C. 360h and 21 CFR parts 7 and 803). FDA believes that the remaining terms are self-explanatory. If a manufacturer believes there is some overlap or that more than one type of remedial action applies, more than one box may be checked.

Another comment suggested that the "recall" option be placed in section H.11 (now renumbered as section H.9 in the final form) which requests that, if action is required under 21 U.S.C. 360i(f), the correction or removal reporting number be listed.

FDA believes the current format more clearly presents the requested information and allows FDA to determine quickly what remedial action has been taken by the manufacturer.

FDA also advises that the proposed form stated an incorrect citation, which has been corrected.

Section H.6 "Usage of Device," in the proposed form, is now renumbered as section H.8 in the final form. The proposed form offered three options: "initial use of device," "reuse," or "unknown." One comment claimed this section was not relevant to medical devices.

For the reasons stated in FDA's response to comments to section H.5, FDA disagrees with this comment. Adverse events can be related to reuse of devices only intended for a single use. Moreover, this information may help FDA to determine whether the adverse event is attributable to the device or to its operation and maintenance.

In section H.12 in the proposed form, "Manufacturer narrative," (now renumbered and renamed as section H.10, "Additional manufacturer narrative," in the final form) two comments questioned how this manufacturer narrative differed from the narrative requested in section B.5, "Describe event or problem."

FDA notes that Section H is to be completed solely by device manufacturers. In contrast, section B, "Adverse event or product problem," may be completed by individuals or entities other than device manufacturers. The accounts of the event by the manufacturer in section H may differ from the accounts presented by others in section B. This is particularly true because a manufacturer is obligated to investigate the causes of the adverse event, and is therefore likely to have additional information. FDA, however, does not wish the manufacturer to duplicate information that has already been provided in section B. In order to clarify that the manufacturer should only include in section H.10 information that is additional to that in section B.5, FDA has renamed section H.10 to request "Additional" manufacturer narrative.

In the proposed form, the manufacturer could indicate in section H.13, "Corrected data," (now renumbered as H.11 in the final form) as an alternative response to the proposed section H.12 request for "Manufacturer narrative." One comment suggested that FDA replace "12. manufacturer narrative or 13. corrected data" with a reference to the manufacturer narrative "and/or" corrected data, to clarify that both sections could be checked or only one section.

FDA agrees that both sections or one section could be checked and that "and/or" language is more appropriate. Device manufacturers could provide "corrected data" in addition to a "manufacturer narrative" or, under

certain circumstances, could provide only corrected data, or only "additional manufacturer narrative." Accordingly, FDA has revised this section to read "10. Additional manufacturer narrative and/or 11. Corrected data."

One comment requested clarification of "corrected data." Another comment asked whether checking the "corrected data" box would require the manufacturer to submit a 510(k) or PMA supplement.

The "correction" option is only to be used to indicate changes to information previously submitted. It refers to corrected information in the form and not to any corrections the manufacturer may have made to the medical device or to data supporting the safety or effectiveness of the device. Consequently, this option indicates only the form is being corrected, and a 510(k) or PMA supplement will not be necessary unless otherwise required under FDA regulations.

In addition, the agency, on its own initiative, has deleted draft section H.1, captioned, "Contact office—include address and phone if different from G.1" from section H, and merged the information request with section G.1 ("Contact office—name/address").

FDA received many comments on section H.3, "Product Code," in the proposed form. The comments expressed confusion over what information was being requested.

FDA has deleted this section.

The following versions of the form that appear on the next page are a representation and are not the actual size.

Dated: May 26, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

BILLING CODE 4160-01-F

MEDWATCH

THE FDA MEDICAL PRODUCTS REPORTING PROGRAM

For VOLUNTARY reporting by health professionals of adverse events and product problems

Form Approved: OMB No. 0910-0291 Expires: 12/31/94
See OMB statement on reverse

FDA Use Only

Triage unit sequence #

Page of

A. Patient information

1. Patient identifier
In confidence

2. Age at time of event:
or
Date of birth:

3. Sex
☐ female
☐ male

4. Weight
____ lbs
or
____ kgs

B. Adverse event or product problem

1. ☐ Adverse event and/or ☐ Product problem (e.g., defects/malfunctions)

2. Outcomes attributed to adverse event (check all that apply)
☐ death
☐ life-threatening (mo day yr)
☐ hospitalization – initial or prolonged
☐ disability
☐ congenital anomaly
☐ required intervention to prevent permanent impairment/damage
☐ other:

3. Date of event (mo day yr)

4. Date of this report (mo day yr)

5. Describe event or problem

6. Relevant tests/laboratory data, including dates

7. Other relevant history, including preexisting medical conditions (e.g., allergies, race, pregnancy, smoking and alcohol use, hepatic/renal dysfunction, etc.)

C. Suspect medication(s)

1. Name (give labeled strength & mfr/labeler, if known)
#1
#2

2. Dose, frequency & route used
#1
#2

3. Therapy dates (if unknown, give duration) (from to or best estimate)
#1
#2

4. Diagnosis for use (indication)
#1
#2

5. Event abated after use stopped or dose reduced
#1 ☐ yes ☐ no ☐ doesn't apply
#2 ☐ yes ☐ no ☐ doesn't apply

6. Lot # (if known)
#1
#2

7. Exp. date (if known)
#1
#2

8. Event reappeared after reintroduction
#1 ☐ yes ☐ no ☐ doesn't apply
#2 ☐ yes ☐ no ☐ doesn't apply

9. NDC # (for product problems only)
– –

10. Concomitant medical products and therapy dates (exclude treatment of event)

D. Suspect medical device

1. Brand name

2. Type of device

3. Manufacturer name & address

4. Operator of device
☐ health professional
☐ lay user/patient
☐ other:

5. Expiration date (mo day yr)

6.
model #
catalog #
serial #
lot #
other #

7. If implanted, give date (mo day yr)

8. If explanted, give date (mo day yr)

9. Device available for evaluation? (Do not send to FDA)
☐ yes ☐ no ☐ returned to manufacturer on (mo day yr)

10. Concomitant medical products and therapy dates (exclude treatment of event)

E. Reporter (see confidentiality section on back)

1. Name, address & phone #

2. Health professional?
☐ yes ☐ no

3. Occupation

4. Also reported to
☐ manufacturer
☐ user facility
☐ distributor

5. If you do NOT want your identity disclosed to the manufacturer, place an " X " in this box. ☐

FDA

Mail to: MEDWATCH
5600 Fishers Lane
Rockville, MD 20852-9787

or FAX to:
1-800-FDA-0178

FDA Form 3500 (6/93)

Submission of a report does not constitute an admission that medical personnel or the product caused or contributed to the event.

ADVICE ABOUT VOLUNTARY REPORTING

Report experiences with:

- medications (drugs or biologics)
- medical devices (including in-vitro diagnostics)
- special nutritional products (dietary supplements, medical foods, infant formulas)
- other products regulated by FDA

Report SERIOUS adverse events. An event is serious when the patient outcome is:

- death
- life-threatening (real risk of dying)
- hospitalization (initial or prolonged)
- disability (significant, persistent or permanent)
- congenital anomaly
- required intervention to prevent permanent impairment or damage

Report even if:

- you're not certain the product caused the event
- you don't have all the details

Report product problems – quality, performance or safety concerns such as:

- suspected contamination
- questionable stability
- defective components
- poor packaging or labeling

How to report:

- just fill in the sections that apply to your report
- use section C for all products except medical devices
- attach additional blank pages if needed
- use a separate form for each patient
- report either to FDA or the manufacturer (or both)

Important numbers:

- 1-800-FDA-0178 to FAX report
- 1-800-FDA-7737 to report by modem
- 1-800-FDA-1088 for more information or to report quality problems
- 1-800-822-7967 for a VAERS form for vaccines

If your report involves a serious adverse event with a device and it occurred in a facility outside a doctor's office, that facility may be legally required to report to FDA and/or the manufacturer. Please notify the person in that facility who would handle such reporting.

Confidentiality: The patient's identity is held in strict confidence by FDA and protected to the fullest extent of the law. The reporter's identity may be shared with the manufacturer unless requested otherwise. However, FDA will not disclose the reporter's identity in response to a request from the public, pursuant to the Freedom of Information Act.

The public reporting burden for this collection of information has been estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send your comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Reports Clearance Officer, PHS
Hubert H. Humphrey Building,
Room 721-B
200 Independence Avenue, S.W.
Washington, DC 20201
ATTN: PRA

and to:
Office of Management and Budget
Paperwork Reduction Project
(0910-0291)
Washington, DC 20503

Please do NOT return this form to either of these addresses.

FDA Form 3500-back **Please Use Address Provided Below – Just Fold In Thirds, Tape and Mail**

Department of Health and Human Services
Public Health Service
Food and Drug Administration
Rockville, MD 20857

Official Business
Penalty for Private Use $300

MEDWATCH
The FDA Medical Products Reporting Program
Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20852-9787

MEDWATCH

THE FDA MEDICAL PRODUCTS REPORTING PROGRAM

For use by user-facilities, distributors and manufacturers for MANDATORY reporting

Page of

Form Approved: OMB No. 0910-0291 Expires:12/31/94
See OMB statement on reverse

Mfr report #

UF/Dist report #

FDA Use Only

A. Patient information

1. Patient identifier — In confidence
2. Age at time of event: or Date of birth:
3. Sex — female / male
4. Weight — lbs or kgs

B. Adverse event or product problem

1. Adverse event and/or Product problem (e.g., defects/malfunctions)
2. Outcomes attributed to adverse event (check all that apply)
   - death (mo day yr)
   - life-threatening
   - hospitalization – initial or prolonged
   - disability
   - congenital anomaly
   - required intervention to prevent permanent impairment/damage
   - other
3. Date of event (mo day yr)
4. Date of this report (mo day yr)
5. Describe event or problem
6. Relevant tests/laboratory data, including dates
7. Other relevant history, including preexisting medical conditions (e.g., allergies, race, pregnancy, smoking and alcohol use, hepatic/renal dysfunction, etc.)

C. Suspect medication(s)

1. Name (give labeled strength & mfr/labeler, if known)
   #1
   #2
2. Dose, frequency & route used
   #1
   #2
3. Therapy dates (if unknown, give duration) (from/to (or best estimate))
   #1
   #2
4. Diagnosis for use (indication)
   #1
   #2
5. Event abated after use stopped or dose reduced
   #1 yes no doesn't apply
   #2 yes no doesn't apply
6. Lot # (if known)
   #1
   #2
7. Exp. date (if known)
   #1
   #2
8. Event reappeared after reintroduction
   #1 yes no doesn't apply
   #2 yes no doesn't apply
9. NDC # – for product problems only (if known)
   – –
10. Concomitant medical products and therapy dates (exclude treatment of event)

D. Suspect medical device

1. Brand name
2. Type of device
3. Manufacturer name & address
4. Operator of device
   - health professional
   - lay user/patient
   - other:
5. Expiration date (mo day yr)
6. model #
   catalog #
   serial #
   lot #
   other #
7. If implanted, give date (mo day yr)
8. If explanted, give date (mo day yr)
9. Device available for evaluation? (Do not send to FDA)
   yes no returned to manufacturer on (mo day yr)
10. Concomitant medical products and therapy dates (exclude treatment of event)

E. Initial reporter

1. Name, address & phone #
2. Health professional? yes no
3. Occupation
4. Initial reporter also sent report to FDA yes no unk

FDA Form 3500A (6/93)

Submission of a report does not constitute an admission that medical personnel, user facility, distributor, manufacturer or product caused or contributed to the event.

Medication and Device Experience Report
(continued)

Refer to guidelines for specific instructions

Submission of a report does not constitute an admission that medical personnel, user facility, distributor, manufacturer or product caused or contributed to the event.

Page of

FDA Use Only

F. For use by user facility/distributor–devices only

1. **Check one** ☐ user facility ☐ distributor
2. **UF/Dist report number**
3. **User facility or distributor name/address**
4. **Contact person**
5. **Phone Number**
6. **Date user facility or distributor became aware of event** (mo/day/yr)
7. **Type of report** ☐ initial ☐ follow-up #
8. **Date of this report** (mo/day/yr)
9. **Approximate age of device**
10. **Event problem codes** (refer to coding manual) patient code ___ – ___ – ___ device code ___ – ___ – ___
11. **Report sent to FDA?** ☐ yes ☐ no (mo/day/yr)
12. **Location where event occurred** ☐ hospital ☐ home ☐ nursing home ☐ outpatient treatment facility ☐ outpatient diagnostic facility ☐ ambulatory surgical facility ☐ other: (specify)
13. **Report sent to manufacturer?** ☐ yes ☐ no (mo/day/yr)
14. **Manufacturer name/address**

G. All manufacturers

1. **Contact office – name/address** (& mfring site for devices)
2. **Phone number**
3. **Report source** (check all that apply) ☐ foreign ☐ study ☐ literature ☐ consumer ☐ health professional ☐ user facility ☐ company representative ☐ distributor ☐ other:
4. **Date received by manufacturer** (mo/day/yr)
5. (A)NDA # IND # PLA # pre-1938 ☐ yes OTC product ☐ yes
6. **If IND, protocol #**
7. **Type of report** (check all that apply) ☐ 5-day ☐ 15-day ☐ 10-day ☐ periodic ☐ Initial ☐ follow-up #
8. **Adverse event term(s)**
9. **Mfr. report number**

H. Device manufacturers only

1. **Type of reportable event** ☐ death ☐ serious injury ☐ malfunction (see guidelines) ☐ other:
2. **If follow-up, what type?** ☐ correction ☐ additional information ☐ response to FDA request ☐ device evaluation
3. **Device evaluated by mfr?** ☐ not returned to mfr. ☐ yes ☐ evaluation summary attached ☐ no (attach page to explain why not) or provide code:
4. **Device manufacture date** (mo/yr)
5. **Labeled for single use?** ☐ yes ☐ no
6. **Evaluation codes** (refer to coding manual) method ___ – ___ – ___ – ___ results ___ – ___ – ___ – ___ conclusions ___ – ___ – ___ – ___
7. **If remedial action initiated, check type** ☐ recall ☐ repair ☐ replace ☐ relabeling ☐ other: ☐ notification ☐ inspection ☐ patient monitoring ☐ modification/ adjustment
8. **Usage of device** ☐ initial use of device ☐ reuse ☐ unknown
9. If action reported to FDA under 21 USC 360i(f), list correction/removal reporting number:
10. ☐ **Additional manufacturer narrative** and/or 11 ☐ **Corrected data**

The public reporting burden for this collection of information has been estimated to average one-hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send your comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Reports Clearance Officer, PHS
Hubert H. Humphrey Building, Room 721-B
200 Independence Avenue, S.W.
Washington, DC 20201
ATTN: PRA

and to:
Office of Management and Budget
Paperwork Reduction Project (0910-0291)
Washington, DC 20503

Please do NOT return this form to either of these addresses.

FDA Form 3500A - back

[FR Doc. 93–12917 Filed 6–2–93; 8:45 am]

BILLING CODE 4160–01–C

federal register

Thursday
June 3, 1993

Part III

Department of Education

College Facilities Loan Program; Notice Inviting Applications for New Loans for Fiscal Year 1993

DEPARTMENT OF EDUCATION

[CFDA No. 84.142]

College Facilities Loan Program; Inviting Applications for New Loans Under the College Facilities Loan Program for Fiscal Year (FY) 1993

Purpose of Program: The College Facilities Loan Program provides low interest loans to eligible graduate and undergraduate institutions of higher education for the construction, reconstruction, or renovation of academic, housing and other educational facilities for students and faculty. These facilities further the objectives of Goal 5 of the National Education Goals by enabling institutions to provide programs that will enable Americans to acquire the skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Public or private, nonprofit institutions of higher education or higher education building agencies, as defined in section 734(b) of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, Public Law 102–325.

Deadline for Transmittal of Applications: July 15, 1993.

Deadline for Intergovernmental Review: September 14, 1993.

Applications Available: June 10, 1993.

Authorized Loan Leval: $29,465,055.

Estimated Range of Loans: $250,000 to $2,000,000.

Estimated Average Size of Loans: $1,500,000.

Estimated Number of Loans: 20.

Project Period: Until completion.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74, subparts D and P; 34 CFR part 75, §§ 75.105, 75.600–75.616; 34 CFR parts 77, 79, 82, 85 and 86; and (b) when published as final regulations, the College Facilities Loan Program regulations. The notice of proposed rulemaking (NPRM) was published in the **Federal Register** on April 13, 1993 (58 FR 19298).

SUPPLEMENTARY INFORMATION: It is the policy of the Department not to solicit applications before the publication of final regulations; however, in this case it is necessary to solicit applications on the basis of the NPRM in order to have sufficient time available to conduct the competition and make awards before the end of the fiscal year (September 30, 1993).

The public comment period for the proposed rules ended on May 13, 1993. Three parties responded with comments on the notice. The Secretary anticipates making two changes as a result of these comments. The first change concerns points allocated to two of the selection criteria for construction of new academic facilities (section 614.21(a)). The points allocated to the use of existing facilities will be increased to 50 and the points allocated to the relative impact of the project will be reduced to 20. The second change expands the consideration of a branch campus as a separate applicant to include those with either their own Employer Indentification Number (EIN) or their own Federal Interagency Committee on Education (FICE) indentification number in § 614.12(a)(2). Applicants should submit their applications based on the NPRM published on April 13. If any substantive changes are made in the final regulations, applicants will be given an opportunity to revise or resubmit their applications.

Priorities: Under 34 CFR 75.105(c)(3) and section 733(b) of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, Public Law 102–325 (20 U.S.C. 1132d–2), the Secretary gives priority to loans for renovation or reconstruction of older graduate and undergraduate academic facilities and academic facilities that have gone without major renovation or reconstruction for an extended period of time. To accomplish this objective, $19,465,055 will be reserved for loans for the renovation or reconstruction of older academic facilities that have gone without major renovation or reconstruction for an extended period of time.

In addition, under 34 CFR 75.105(c)(3) and § 614.4(b)(1) as proposed in the April 13 NPRM, the Secretary gives priority to loans to construct new academic facilities. $10,000,000 will be reserved for loans for new academic facilities.

Technical Assistance Workshops: The Department of Education will conduct technical assistance workshops to assist prospective applicants in application preparation. The workshops will take place in the Marquette Center, Water Tower Campus, Loyola University, Chicago, IL on June 10, 1993, from 1 p.m. until 4 p.m; in the Intercultural Center Auditorium, Georgetown University, Washington, DC on June 15, 1993, from 9 a.m. until noon; and in rooms A and B in the Barat Building (SUM), University of the Sacred Heart, San Juan, PR on June 22, 1993, from 9 a.m. until noon. Reservations are not necessary. For specific information on the workshops, please contact the Division of Higher Education Incentive Programs at (202) 708–8398, 708–9417, or 708–9421.

For Applications or Information Contact: John D. Adams or Anne S. Young, U.S. Department of Education, 400 Maryland Ave., SW, Room 3022, ROB–3, Washington, DC 20202–5339. Telephone: (202) 708–9417 or (202) 708–9421. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1132d–1132d–4.

Dated: May 27, 1993.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 93–12965 Filed 6–2–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
June 3, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Mississippi Band of Choctaw Indians, Alcohol Beverage Control Law; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mississippi Band of Choctaw Indians, Alcohol Beverage Control Law

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. This notice certifies that Ordinance No. 16–T, Legalizing the Limited Sale of Alcoholic Beverages on the Mississippi Choctaw Reservation was duly adopted by the Mississippi Band of Choctaw Indians on March 11, 1993. The Ordinance provides for the regulation of the activities of the manufacture, distribution, sale, and consumption of liquor in the area of Pearl River Indian Community under the jurisdiction of the Mississippi Band of Choctaw Indians.

DATES: This Ordinance is effective as of June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street NW, MS 2611–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Mississippi Band of Choctaw Indians, Ordinance # 16–T, is to read as follows:

Legalizing the Limited Sale of Alcoholic Beverages on Mississippi Band of Choctaw Indians

Chapter I—Introduction

101. *Title.* This ordinance shall be known as the "Legalizing the Limited Sale of Alcoholic Beverages".

102. *Authority.* This ordinance is enacted pursuant to the Act of August 15, 1953. (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. 1161) and Article VIII section 1(k) & section 1(m) of the Mississippi Band of Choctaw Indians Constitution.

103. *Purpose.* The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Mississippi Band of Choctaw Indians. The enactment of a tribal ordinance governing liquor possession and sale on the reservation will increase the ability of the tribal government to control reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

104. *Effective Date.* This ordinance shall be effective on June 3, 1993.

Title XVI

Alcoholic Beverages

Chapter 1. Licensing and Permitting

§ 16–1–1 Tribal and State licenses and permits.

It shall be unlawful for any person to sell, give away, barter, exchange or dispose of in any manner any alcoholic beverages, beer or light wine on or within the Choctaw Indian Reservation without having first obtained a valid license from the Mississippi State Tax Commission. Additionally, any licensee or permittee shall also obtain a tribal license or permit from the following:

A. If the license or permit authorizes the sale or other disposition on any premises under the jurisdiction of the Choctaw Gaming Commission then the licensee or permittee shall also obtain a tribal license or permit from the Choctaw Gaming Commission. Any such licensee or permittee shall not be required to obtain a permit to engage in business from the Choctaw Tribal Tax Commission. However, nothing contained herein shall be construed to waive the right of the Choctaw Tax Commission to collect authorized taxes from such licensee or permittee.

B. All other tribal licenses and permits shall be obtained from the Choctaw Tribal Council.

For purposes of this ordinance, "person" means and includes any individual, partnership, corporation, association or other legal entity whatsoever.

§ 16–1–2 Package liquor sales prohibited.

Such license or permit shall authorize the holder thereof to either sell or give away, or both, alcoholic beverages, beer or light wine for consumption "by the drink" on the licensed premises only. No licensee shall permit package retail sales or distribution in any manner of unopened packages of alcoholic beverages, except beer and light wine. Any license or permit issued authorizing the sale of light wines and/or beer on the premises consumption shall not be construed to prohibit the sale of light wine and or beer by the bottle or can by the glass or by draft and in or from the original package in premises licensed to sell in such a manner.

§ 16–1–3 License a privilege.

Any license or permit issued under this Ordinance shall be deemed to be a revocable privilege and no person holding such a license or permit shall be deemed to have acquired any vested rights therein.

§ 16–1–4 Purchases from State warehouse or distributor.

No licensee shall purchase any alcoholic liquors, beverages, light wine or beer unless the same be purchased from the State Warehouse of the Mississippi State Tax Commission or from a distributor or wholesaler duly authorized and licensed by the Mississippi State Tax Commission.

§ 16–1–5 Records and reports.

All applications, records, reports or other documentation required to be provided to the State Tax Commission by any licensee or permittee shall also be provided to the Choctaw Tax Commission if licensed or permitted by the Tribal Council or to the Choctaw Gaming Commission if licensed or permitted by that authority, on the same basis and in the same form as required by the State Tax Commission. True and correct copies in lieu of originals shall be acceptable for filing with the Choctaw Tax Commission and the Choctaw Gaming Commission.

§ 16–1–6 Transportation.

It shall be unlawful for any person to transport any alcoholic beverages, liquor, beer or light wine in open containers beyond the licensed premises.

§ 16–1–7 Mississippi Tax Commission approval required.

No Tribal license or permit shall be issued unless and until a valid license or permit is obtained from the Mississippi State Tax Commission. Any Tribal license or permit issued shall be for, and run concurrently with, the license or permit issued by the State Tax Commission. Any fees charged by the Tribe shall be established by the Choctaw Tribal Council or Choctaw Gaming Commission and paid to the Choctaw Tribal Council or to the Choctaw Gaming Commission as may be appropriate under this licensing ordinance. Any revocation or suspension of a license or permit by the Mississippi State Tax Commission shall constitute a simultaneous revocation or suspension of the Tribal license or permit.

§ 16–1–8 Compliance with applicable laws.

Any person or entity holding a Tribal license shall comply with all statutes of the United States of America, the laws of the State of Mississippi, applicable to such licensee and its business pursuant to said license, the regulations of the Alcoholic Beverage Control Division of

the Mississippi State Tax Commission, the ordinances and resolutions of the Mississippi Band of Choctaw Indians, and the Regulations of the Choctaw Gaming Commission.

§16–1–9 Permit to engage in business.

In addition to the licenses and permits issued by the Tribe and the Mississippi State Tax Commission, the holder of said licenses and permits shall also acquire a permit to engage in business from the Choctaw Tax Commission pursuant to section 14–1–3 of the Choctaw Tax Code of the Choctaw Tribal Code, unless exempted by this Title.

§16–1–10 Contents of licenses and permits.

Any license or permit issued by the Tribal Council or the Choctaw Gaming Commission shall state with specificity the following:

1. The name and address of the licensed person.
2. The name and address of the licensed premises.
3. An exact description/location of the licensed premises.
4. The days and hours when alcoholic beverages and/or light wines and beer may be sold.
5. The expiration date of the license.
6. The license or permit number issued by the Mississippi Tax Commission.
7. The types of beverages authorized under the license or permit.

§16–1–11 Non-transferability of licenses and permits.

All licenses and permits issued by the Tribe and the Mississippi State Tax Commission shall be non-transferable without the written authority of the Tribal Council or the Choctaw Gaming Commission and the Mississippi State Tax Commission and shall at all times be displayed in a conspicuous place in the licensed premises.

§16–1–12 State suspension or revocation applicable to tribe.

Any suspension or revocation of a license or permit by the Mississippi State Tax Commission shall constitute a simultaneous suspension or revocation of the Tribal license or permit. Any notice of closure, temporary or permanent, of all or any part of the licensed premises by the Choctaw Gaming Commission shall serve to suspend or revoke as appropriate the licensee or permittee's right to operate under the Tribal license or permit within the closed area.

Any reinstatement of a license or permit by the Mississippi State Tax Commission shall not necessarily constitute a reinstatement of the Tribal license or permit. The licensee or permittee must seek a separate reinstatement of the Tribal license or permit from the appropriate licensing authority.

§16–1–13 No divestment of jurisdiction or immunity.

Nothing in this ordinance grants or shall be construed to grant to the State of Mississippi or any agency, department or commission thereof, general state civil regulatory or taxing authority or criminal jurisdiction, over the Tribe or its lands, property, members or activities except as expressly recognized under the Tribal-State Compact and/or 18 U.S.C. 1161. Additionally, nothing in this ordinance shall waive or be construed to waive the immunity of the Mississippi Band of Choctaw Indians or any agency, department, enterprise or commission thereof from suit without the express consent of the Tribal Council of the Mississippi Band of Choctaw Indians.

§16–1–14 Conflicts of interest.

No member of the Tribal Council of the Mississippi Band of Choctaw Indians or of the Choctaw Gaming Commission or its employees or of the Choctaw Tax Commission or its employees nor members of the immediate household of any of the above may, directly or indirectly, individually or as a member of a partnership or as a shareholder of a corporation have any interest whatsoever in the sale of alcoholic beverages and/or beer and light wines or have any compensation or profit therefrom as may be licensed or permitted by this ordinance. For purposes of this ordinance "immediate household" is defined as son(s), daughter(s), step-son(s), step-daughter(s), spouse or spouse recognized by common law and members of the family or of the household living in the same house.

§16–1–15 Solicitation and sales.

No person shall act as a solicitor or salesman for a manufacturer or wholesaler on the licensed premises without having obtained a proper permit from the Mississippi State Tax Commission. Any such permittee shall file with the Choctaw Gaming Commission, or the Choctaw Tax Commission, as appropriate, a true and correct copy of the said permit which shall entitle that person to solicit or sell on any Tribal licensed premises on the same terms and conditions as the permittee operates in other locations licensed by the Mississippi State Tax Commission. Any revocation or termination of said permit by the Mississippi State Tax Commission shall constitute a simultaneous revocation or termination of the tribal permit.

§16–1–16 Prohibitions on sales or distribution.

No person shall sell, furnish, give away, barter, exchange or dispose of in any manner or cause to be given any alcoholic beverages, beer or light wines on or within the Choctaw Indian Reservation to any person under the age of 21 years, or to any person who is known to be insane or mentally defective or to any person who is visibly intoxicated or to any person who is known to drink alcoholic beverages to excess or to any person who is known to be an habitual user of narcotics or other habit forming drugs.

§16–1–17 Environmental aspects.

Any person operating under a Tribal license or permit shall maintain adequate and sufficient procedures for the separation, storage and re-cycling of all plastic, glass and aluminum waste products generated by virtue of its operation under the tribal license or permit and shall at all times keep the licensed or permitted premises in a clean and orderly condition.

§16–1–18 Exchange of information with State.

The Alcoholic Beverage Control Division of the Mississippi State Tax Commission and the appropriate tribal licensing authority shall promptly provide to each other copies of any licenses or permits issued for use on tribal lands and shall promptly provide each other with copies of any disciplinary actions taken concerning any license or permits and its operations related to that license or permit.

§16–1–19 Access for ABC agents or inspectors.

Duly authorized agents or inspectors of the Alcoholic Beverage Control Division of the Mississippi State Tax Commission shall, upon presentation of their credentials, be granted immediate access to inspect any premises where alcoholic liquors and light wines or beer are stored, distributed or sold and to examine all books and records pertaining to the business conducted by virtue of the license or permit. In the event such agents or inspectors desire access to the licensed premises of any licensee or permittee of the Choctaw Gaming Commission, said agent or inspector shall first present his or her credentials to the Choctaw Gaming Commission representative on duty in the licensed premises who shall insure that said agents or inspectors are

provided with all lawful access. All other access to licensed premises shall be through the Choctaw Tax Commission.

§ 16–1–20 Storage of alcoholic beverages.

No licensee or permittee shall keep or store any alcoholic beverage or light wine or beer at any site other than the licensed premises.

§ 16–1–21 Revocation and suspension of tribal license or permit.

The appropriate tribal licensing or permitting authority shall have the right to suspend or revoke the license or permit at any time upon written notice to the licensee or permittee and subject to the rights of appeal under § 16–1–23 herein. Unless otherwise stated in the notice of suspension or revocation, the licensee or permittee shall cease any business by virtue of the license or permit within 24 hours. Notice may be served by United States Mail, or by personal delivery to the licensee or permittee, or by delivery to the licensed or permitted premises.

Any reinstatement of a tribal license or permit and/or any hearing thereon shall be granted or heard solely within the discretion of the Tribal Council or the Choctaw Gaming Commission, and on such terms and time limitations as are deemed appropriate by the considering authority.

§ 16–1–22 Administration and bonding.

The administration of all matters relating to the conduct of any business by virtue of a tribal license or permit shall be through the auspices of the Choctaw Tax Commission if the license or permit is issued by the Tribal Council, or through the Choctaw Gaming Commission, if issued by that authority.

The Tribal Council and the Choctaw Gaming Commission may, at any time before or after the issuance of any license or permit, order any applicant licensee or permittee to post an acceptable surety bond in such an amount as is deemed appropriate by the issuing authority, or to increase the amount of any existing bond.

The amount of any bond or the increase in any bond shall be based upon such factors as the issuing authority deems material to the circumstances, including, by way of illustration, the financial stability and strength, and the business history of the applicant or licensee or permittee, or such other considerations as may be relevant to the applicant or licensee or permitted. The issuing authority shall provide any applicant, licensee, or permittee with reasonable explanation of the basis for establishing or changing the amount of any bond and with sufficient time within which to acquire additional bond amounts, should the issuing authority make such an order.

§ 16–1–23 Appeals.

Any violation resulting in a revocation or suspension of a Tribal license or permit shall be appealable first to the Tribal Council, and then to the Choctaw Tribal Court, unless the same be by temporary or permanent order of closure by the Choctaw Gaming Commission, under its regulations.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–12976 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
June 3, 1993

Part V

Environmental Protection Agency

40 CFR Parts 51 and 52
Prevention of Significant Deterioration for Particulate Matter; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD–FRL–4658–4]

Prevention of Significant Deterioration for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is revising the maximum allowable increases (increments) for particulate matter (PM) under the requirements for prevention of significant deterioration (PSD) of air quality. The revised increments, based on particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM–10), replace the original increments for PM, which were based on total suspended particulate (TSP). As a result, the PSD increments and the national ambient air quality standards (NAAQS) for PM will be measured by the same indicator for PM, namely PM–10.

This action is authorized by the Clean Air Act (Act) and fulfills EPA's obligations arising out of a consent decree entered on April 19, 1990.

DATES: Effective: June 3, 1994.

Under section 307(b)(1) of the Act, petitions for judicial review must be filed on or before July 6, 1993 in the U.S. Court of Appeals for the DC Circuit.

ADDRESSES: Supporting information used in developing this rule is contained in Docket No. A–88–19. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), room M–1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dan deRoeck, Air Quality Management Division (MD–15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5593.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are in the following format:

I. Introduction
II. Background
  A. The PSD Program
  B. Proposal of PM10 Increments
  C. The 1990 Amendments
III. Discussion of Final Rule and Comments
  A. Legal Authority
  1. Background
  2. Public Comments
  3. Decision and Response to Comments
  B. Selection of the Equivalence Approach
  1. Background
  2. Public Comments
  3. Decision and Response to Comments
  C. Development of Equivalent Numerical Levels
  1. Background
  2. Public Comments
  3. Decision and Response to Comments
  D. Implementation Issues
  1. Source Applicability
  2. Geographic Applicability
  3. Retention of TSP Baseline Dates and Baseline Areas
  4. Implementation Date
  5. Grandfathering Provisions
  6. Exclusions From Increments Consumption
  7. Prevention of Significant Deterioration Monitoring
  8. Area Source Impacts
  E. Other Issues
  1. TSP Area Designations
  2. Regulatory Impact Analysis
IV. Administrative Requirements
  A. Reference Documents
  B. Executive Order (E.O.) 12291
  C. Paperwork Reduction Act
  D. Economic Impact Assessment
  E. Regulatory Flexibility Act Certification
  F. Effective Date

I. Introduction

The EPA is today adopting final rules which revise the PSD requirements for PM. The revisions affect the regulations in 40 CFR parts 51 and 52 which specify the increments for PM. These increments apply to actual emissions changes which occur after the baseline date in areas which have attained the national ambient air quality standards (NAAQS) for PM.

Increments for PM were originally set forth in the Clean Air Act Amendments of 1977 (1977 Amendments). The original increments were specified in terms of ambient concentrations of TSP, which was the form of PM addressed in the NAAQS at that time. The revised increments for PM, measured as PM–10, restrict increases in ambient concentrations of PM–10 to the following levels: 4 μ/m^3 (annual arithmetic mean) and 8 μ/m^3 (24-hour maximum) for Class I areas, 17 μ/m^3 (annual arithmetic mean) and 30 μ/m^3 (24-hour maximum) for Class II areas, and 34 μ/m^3 (annual arithmetic mean) and 60 μ/m^3 (24-hour maximum) for Class III areas.

The implementation of the new PM–10 increments will utilize the existing baseline dates and baseline areas for PM. As such, PM increments, measured as PM–10, already consumed since the original baseline dates established for TSP will continue to be accounted for, but all future calculations of the amount of increments consumed will be based on PM–10 emissions beginning on the implementation date of the new PM–10 increments. The implementation date will vary depending on the State implementation plan (SIP) approval status of the applicable PSD program. For the Federal PSD program, the implementation date is 1 year from today. For EPA-approved State PSD programs, the implementation date is the date upon which a particular State's revised program, containing the new PM–10 increments, is approved by EPA.

Today's preamble discusses the background of the PSD program and the relevant 1990 Amendments, and includes a discussion of the significant public comments EPA received on the proposed rule, as well as EPA's responses to these comments.

II. Background

A. The PSD Program

Although the Clean Air Act Amendments of 1970 provided a scheme to address emissions in areas of the country where pollution levels exceeded the NAAQS, the Act at that point contained no explicit provision addressing potential deterioration of ambient air quality in those areas where pollutant levels were below the NAAQS. In 1972, the Sierra Club brought suit alleging that the Act required State plans to include measures to prevent the "significant deterioration" of the air in parts of the country already in compliance with the NAAQS. The court held that the Act, by declaring the legislative "purpose of protecting and enhancing" air quality [section 101(b)(1)], mandated that EPA require States to protect the air quality of clean areas from significant deterioration. [1] In response to this decision, EPA promulgated PSD regulations in 1974.

In 1977, Congress consolidated and expanded EPA's original PSD program by adding a statutory PSD program at part C of title I of the Act, (sections 160–169). [2] Under these provisions, States with areas that are in compliance with the NAAQS are required to adopt a permit program for the preconstruction review of new stationary sources and modifications of existing stationary sources to prevent significant

[1] See *Sierra Club* v. *Ruckelshaus*, 344 F.Supp. 253, 256 (D.D.C. 1972), *aff'd per curium*, 4 ERC 1815 (D.C.Cir. 1972), *aff'd by an equally divided court, sub. nom Fri* v. *Sierra Club*, 412 U.S. 541 (1973).

[2] All section references are to the Act unless noted (sections 100–183, 42 U.S.C. 7401–7671q). Part C also includes a subpart which provides for the protection of visibility in certain national parks, wilderness areas and other so-called "mandatory Class I Federal areas" (see section 169B).

deterioration of existing air quality levels.[3]

The PSD program mandated by Congress is required to balance three primary goals, as specified by section 160 of the Act. The first of these goals is to protect public health and welfare from actual or potential endangerment. This goal includes the protection of existing air quality in all areas where the ambient pollutant concentrations required by the NAAQS are currently being achieved. The second goal emphasizes the protection of air quality in national parks, wilderness areas, and similar areas of special concern where air quality is considered particularly important. The third goal is to assure that economic growth in clean air areas occurs only after careful deliberation of the impacts of growth on air quality by the State and local communities, and only when such growth would be consistent with the preservation of clean air resources.

The PSD program in part C is implemented largely through a control technology requirement and an air quality protection requirement. The control technology requirement, contained in section 165, requires that major new and modified stationary sources of air pollution use best available control technology (BACT) in order to minimize pollution from these sources. The BACT mechanism is intended to result in the adoption of state-of-the-art pollution controls over time, as the existing capital stock of pollution generating equipment generally wears out and is ultimately replaced. The BACT requirement reflects several policy judgments by Congress. First, minimizing pollution from new and modified stationary sources serves the statutory goals of protection and enhancement of air quality and pollution prevention [sections 101(b)(1), 101(c) and 160]. Second, air quality protection mechanisms are imperfect and may not, standing alone, fulfill all of the goals of the PSD program. Third, the effective reduction of pollution from any single new or modified stationary source will increase opportunities for additional growth within the constraints of the air quality protection requirements of the PSD program.

[3] The PSD requirements apply to areas classified pursuant to section 107 of the Act as attainment or unclassifiable. For pollutants for which no NAAQS have been promulgated, and for pollutants not subject to the section 107 area designation process, the PSD requirements apply everywhere as long as an area is designated as attainment or unclassifiable for at least one pollutant for which NAAQS do exist (i.e., for at least one criteria pollutant).

The principal air quality protection mechanism under the PSD program involves a system of "increments" and area classifications that effectively define "significant deterioration" for individual pollutants.[4] In Section 163 of the Act, Congress initially defined statutory numerical increments for PM and sulfur dioxide (SO_2) as the maximum permissible increases, above baseline levels, in the ambient concentration of the pollutants in a PSD area. Congress determined that the PM increments levels it adopted provide for both protection of air quality and (in conjunction with the BACT requirement) reasonable industrial and economic expansion in PSD areas.

The Act divides PSD areas into three classes and applies increments of different stringency to each class. Congress designated areas of special national concern, where the need to prevent significant deterioration in air quality is greatest, as Class I areas. Consequently, the most restrictive increments apply in this class. Section 162(a) of the Act established "mandatory" Class I areas, which include all international parks as well as national parks, national wilderness areas, and national memorial parks exceeding certain sizes and existing on the effective date of the 1977 Amendments.[5] These Class I areas are termed "mandatory" because Section 162(a) also prohibits the States (or in the case of Indian lands, Indian tribes) or EPA from redesignating these mandatory Class I areas to any less protective classification.

Less restrictive increments apply in areas designated as Class II or Class III. Initially, Congress classified as Class II areas all attainment and unclassifiable areas that were not classified as Class I areas. Section 164 of the Act allows that Class II areas may be redesignated by the States to Class I or Class III under certain circumstances. The Class III area designation allows States (or Indian tribes) to permit more deterioration in air quality in specific areas which States may target for higher levels of industrial development and consequent growth in pollution. To date, no State or Indian tribe has elected to establish any Class III areas.

The EPA implements the statutory PSD requirements through two sets of regulations. At 40 CFR 51.166, EPA has set minimum program requirements for States to follow in preparing, adopting, and submitting a PSD program for inclusion as part of the required SIP pursuant to Section 110(c) of the Act. At 40 CFR 52.21, EPA has promulgated a Federal PSD program requiring the Administrator's preconstruction review and approval of major new or modified stationary sources in the absence of an approved State PSD program, and for areas such as Indian Lands and Outer Continental Shelf areas that are outside of the jurisdiction of individual States.

B. Proposal of PM–10 Increments

On July 1, 1987, the EPA revised the NAAQS for PM to replace the TSP indicator with the PM–10 indicator (52 FR 24634). In the same **Federal Register**, EPA adopted various final regulations to implement the revised standards. These regulations, in part, added PM–10 to the PSD regulations to reflect its status as a newly-regulated form of PM. Consequently, PM–10 emissions became subject to consideration for applying BACT, for conducting preconstruction ambient monitoring, and for dispersion modeling to demonstrate that proposed new and modified PSD sources will not cause or contribute to any violation of the PM–10 NAAQS. However, at that time TSP remained the ambient indicator of PM for determining the amount of significant deterioration of air quality.

On October 5, 1989, EPA proposed to revise the existing PM increments, based on TSP, by promulgating replacement increments based on PM–10 (54 FR 41218, October 1989). The proposed PM–10 increments were intended to be substantially equivalent to the existing TSP increments. The EPA issued its proposal under the authority of Section 166(a) of the Act which provides that "[i]n the case of pollutants which NAAQS are promulgated after the date of enactment of this part, [the Administrator] shall promulgate such regulations [to prevent significant deterioration of air quality]." Thus, EPA determined that with the promulgation of the NAAQS for PM using the new PM–10 indicator, it had authority under Section 166 of the Act to promulgate new PM increments also measured in terms of PM–10.

C. The 1990 Amendments

A new Section 166(f) to part C of the Act specifically authorizes EPA to

[4] The increments for PM enacted by Congress in 1977 and listed in 163 were based on the NAAQS for PM, which, until July 1, 1987, used TSP as the unit of measurement (indicator) for ambient PM concentrations.

[5] Under the 1990 Amendments, Congress enacted new language which affects the boundaries of the mandatory Class I areas. Section 162(a)(4) now stipulates that the boundaries of mandatory Class I areas must conform to any changes occurring since the date of their original classification in 1977. Previously, the boundaries were retained at the 1977 parameters unless specific boundary changes were made under the statutory redesignation procedures under § 164 of the Act.

substitute, for the maximum allowable increases in PM specified in Section 163(b) and Section 165(d)(2)(C)(iv), maximum allowable increases in PM with an aerodynamic diameter smaller than or equal to 10 micrometers.

In making such substitution, the amended statute requires that the PM–10 increments "shall be of equal stringency in effect" as the TSP increments which they replace. Moreover, new Section 166(f) requires that the current TSP increments remain in effect until the new PM–10 increments are promulgated.[6]

The 1990 Amendments also included provisions which for the first time required the States or EPA to designate all areas relative to their PM–10 attainment status. Pursuant to revised Section 107(d) of the amended Act, certain areas were designated by operation of law as nonattainment, effective upon enactment of the 1990 Amendments, and all other areas were initially designated as unclassifiable. Areas may subsequently be redesignated to a more appropriate attainment status in accordance with the procedures under the amended Act. Consequently, when States revise their SIP's to incorporate the PM–10 increments adopted today, the PM–10 increments will apply in all areas designated as attainment or unclassifiable for PM–10, but will not apply in areas designated nonattainment for PM–10. Rather, the nonattainment area new source review requirements of part D of title I of the Act are applicable to major new and modified stationary sources located in such areas.[7]

[6] While the statutory provision stipulates that the existing TSP increments remain in effect at least until the new PM–10 increments are promulgated, it is EPA's intent to require that the TSP increments remain in effect until the PM–10 increments are actually in place as substitutes for the TSP increments in the applicable Federal or State PSD regulations. In that way, the implementation of the PSD program for PM will continue without interruption while the indicator used to measure increment consumption switches from TSP to PM–10.

[7] The 1990 Amendments also added Section 189(e), which addresses requirements for major sources of PM–10 precursors in PM–10 nonattainment areas. Section 189(e) states: "The control requirements * * * for major stationary sources of PM–10 shall also apply to major sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area." The EPA issued initial guidance regarding the treatment of PM–10 precursors in the General Preamble (see 57 FR 13498, at p. 13541, April 16, 1992). Additional guidance will be provided in a forthcoming notice of proposed rulemaking to incorporate NSR program changes required under the 1990 Amendments. The 1990 Amendments contained no requirement that PM–10 precursors be reviewed as PM–10 under the PSD program. Today's action does not address this issue further.

III. Discussion of Final Rule and Comments

A. Legal Authority

1. Background

In the 1977 Amendments, Congress set numerical PSD increments in Section 163 for both PM and SO_2. In establishing the PSD increments for these two pollutants, Congress used the then-existing NAAQS for each pollutant as the benchmark for determining what constitutes "significant deterioration." Although Section 163 does not expressly define the PM increments in terms of a specific indicator, EPA reasoned that Congress' knowledge that TSP was the indicator for the PM NAAQS, and that the TSP standards were the starting point for the increments levels when the increments were established in 1977, meant that TSP was also the appropriate measure for the PM increments in Section 163. As a consequence, EPA concluded that the statutory PM increments could not simply be administratively redefined as PM–10 increments, retaining the same numerical values, following the revision of the PM NAAQS. Rather, EPA decided that it must promulgate new PM increments, reflecting an equivalent amount of air quality protection but expressed in terms of the new PM–10 indicator.[8]

In the proposal, EPA took the position that Section 166(a) of the Act granted EPA the authority to substitute appropriate PM–10 increments for the existing TSP increments. As cited previously, Section 166(a) authorizes EPA to promulgate new increments following promulgation of NAAQS for that pollutant. Thus, since EPA promulgated NAAQS based on a new ambient indicator, EPA reasoned that the requirements of Section 166(a) gave EPA authority to propose the PM–10 increments notwithstanding the existence, in the Act itself, of increments based on the TSP indicator.

The EPA considered simply adding the new increments to the existing TSP increments set forth in Section 163 of the Act. However, EPA determined that this would be burdensome and unnecessary even during a transition period. As a result, EPA proposed to replace the TSP increments with the PM–10 increments.

2. Public Comments

A few commenters challenged EPA's overall conclusion that the Act as it stood at the time of the 1989 proposal allowed EPA to promulgate increments based on the new PM–10 indicator, and phase out use of the TSP indicator. For instance, one commenter argued that Section 166 "by its clear terms" applies only to pollutants for which EPA establishes a "new" NAAQS. The commenter concluded that Section 166 could not apply to the PM–10 increments since EPA admitted that the adoption of PM–10 NAAQS was nothing more than a "revision" to the existing PM NAAQS measured as TSP. Another commenter, while not disputing EPA's power to issue PM–10 increments, questioned whether EPA could drop the TSP increments since it amounted to "amend[ing] a statute of the United States." However, most commenters agreed with EPA's conclusion that the existing statutory scheme allowed for the substitution of the PM–10 increments for the TSP increments, although—as will be discussed shortly—many took the view that EPA's power to create new PM–10 increments was narrowly circumscribed.

3. Decision and Response to Comments

As discussed, Congress eliminated any ambiguity regarding the propriety of EPA's 1989 proposal by specifically addressing EPA's authority to promulgate PM–10 increments. It did so by adding Section 166(f) as part of the 1990 Amendments. Pursuant to that section, the "Administrator is authorized to substitute" for the increments specified in Section 163(b) and Section 165(d)(2)(C)(iv), increments based on PM–10. The section also states that "[u]ntil the Administrator promulgates regulations under the authority of this subsection, the TSP increments shall remain in effect." Thus in the Act, Congress explicitly clarified EPA's authority to promulgate new increments based on the PM–10 indicator. Indeed, through the choice of the term "substitute" and the instruction to retain the TSP increments until the new increments are implemented, Congress also clearly

[8] The decision *Natural Resources Defense Coun. v. EPA*, 902 F.2d 962 (DC Cir., 1990) considered the issue of whether EPA had the authority to simply change the indicator by which the statutory increments for PM are measured and concluded that it did not. In that case, the Court held that EPA could in fact change the increments to reflect the new PM–10 indicator.

"Simply changing the measurement reference from TSP to PM–10 while maintaining the same numbers * * * would dramatically relax the PSD restrictions on particulate matter since the TSP indicator is a much more inclusive measure of pollutants * * *. It would be wholly irrational for Congress to set forth specific numbers of particulate matter increments and yet authorize a choice of indicators which radically alters the numbers' significance and therefore ultimately how much particulate matter may be emitted. Congress has plainly expressed an intent to allow a certain quantum of PM emissions, and we must give that intent effect" (see 902 F.2d at 978).

indicated that EPA need not maintain a two-increment system for PM. In short, the Act itself now contradicts any assertion that EPA is without power to adopt PM–10 increments or that the TSP increments must be retained.

Based on this grant of authority, EPA today is promulgating new PM–10 increments for Class I, II, and III areas, and, as described more fully below, is eliminating from the PSD regulations the existing TSP increments.

B. Selection of the Equivalence Approach

1. Background

In its 1989 proposal, EPA described two approaches for establishing PM–10 increments that, in accordance with section 166(d) of the Act, would be "at least as effective as the increments established in section 163 [of the Act]." These approaches were referred to as (1) the "equivalent to statutory increments" approach and (2) the "percentage of NAAQS" approach. Different sets of numerical increments levels would result from the two approaches.

The "equivalent to statutory increments" approach, described in Section III.C which follows, uses the existing statutory (TSP) increments as the benchmark for calculating new PM–10 increments, thereby retaining roughly the same limitations on future deterioration of air quality and economic growth as was allowed under the statutory TSP increments. In using this approach, EPA considered the historical consumption of TSP increments by a sample population of permitted PSD stationary sources. The EPA then determined the PM–10 increments, for each area classification and averaging time, that would provide approximately the same percentage of PM–10 increment consumption, on average, by the same population of sources.

Alternatively, the "percentage of NAAQS approach" defined amounts of deterioration relative to the PM–10 NAAQS which bore the same percentage relationship as the existing TSP increments bore to the TSP NAAQS from which they were derived. Thus, for example, since the statutory Class II increments for TSP were themselves set by Congress as 25 percent of the TSP NAAQS, the Class II increments for PM–10 are calculated as 25 percent of the PM–10 NAAQS.

The EPA believed that the general equivalence of the increments resulting from either approach would satisfy the requirements of section 166(d) of the Act because both sets of increments would be expressed as numerical measures and could be implemented similarly to the statutory increments which they were to replace. Also, both sets of increments would provide clean areas of the country with protection against significant deterioration of air quality, assuming that all existing baseline dates and baseline areas, as established under the TSP increments, are left in place.

Nevertheless, EPA decided to use the "equivalent to statutory increments" approach based on its belief that this approach more closely matched congressional intent in the special case where the new increments for PM are intended not only to prevent significant deterioration in general, but are specifically to replace (rather than supplement) the existing section 163 increments for PM. A more detailed account of this rationale can be found in EPA's 1989 proposal (54 FR 41221–41225).

2. Public Comments

While several commenters supported the "equivalent to statutory increments" approach, most commenters supported the "percentage of NAAQS" approach. Only five commenters favored the "equivalent to statutory increments" approach in whole or in part. A number of commenters expressed dissatisfaction with both approaches, and recommended other options instead.

Commenters favoring the "equivalent to statutory increments" approach agreed that it was appropriate to select increments which directly correlate with the TSP increments that they will replace. Among those supporters, however, were several commenters who expressed concerns about the technical analysis which EPA used to develop the equivalent numerical levels for the PM–10 increments. These particular comments are addressed in more detail in the following section entitled "Development of Equivalent Numerical Levels."

Commenters favoring the "percentage of NAAQS" approach generally reasoned that such an approach would be more consistent with the manner in which past increments were established by both Congress and EPA. That is, the statutory increments (PM and SO_2) and the regulatory increments (nitrogen dioxide) are based on percentages of the appropriate NAAQS concentrations. Two commenters supported the "percentage of NAAQS" approach because the numerical increments derived from that approach would be specifically designed to address PM–10 air quality deterioration relative to the then-new PM–10 NAAQS which were based on EPA's latest findings on harm to health and welfare from PM. One of these commenters further stated that such increments would establish lower permissible increases in ambient PM–10 concentrations.[9]

Eight commenters recommended a different approach altogether. Four such commenters indicated that EPA's best approach was to simply redefine the existing statutory increments for PM in section 163 of the Act as PM–10 increments. Within this group were two commenters who favored the "percentage of NAAQS" approach over the "equivalent to statutory increments" approach, but only as a secondary option. The other two commenters in this group questioned EPA's legal authority to revise the statutory increments in any manner other than to redefine them in terms of PM–10, without changing their numerical values.

One commenter recommended that EPA not only retain the statutory increments as TSP-based increments, but establish PM–10 increments to supplement those already mandated by Congress. Three commenters expressed concern that the proposed increments fail to adequately protect against the secondary or welfare effects—especially visibility—of PM. However, each commenter arrived at a different conclusion as to how to resolve the problem. One of the commenters supported the retention of the existing increments expressed as TSP concentrations. Another argued that EPA should adopt PM increments based on an indicator measuring fine particles (PM–2.5) [i.e., particles with a diameter of less than 2.5 micrometers]. This commenter maintained that there is "a large body of scientific evidence which indicates that PM–2.5 would be an appropriate indicator for visibility effects." The third commenter called for further EPA efforts to develop PM–10 increments which are protective of visibility in Class I areas.

3. Decision and Response to Comments

The EPA is today promulgating the PM–10 increments based on the "equivalent to statutory increments" approach as originally proposed. This decision is largely based on the reasons set forth in EPA's 1989 proposal, and upon the expression of congressional

[9] It should be noted that for the annual averaging period the "percentage of NAAQS" approach yields lower numerical PM–10 increments than does the "equivalent to statutory increments" approach (e.g. Class II—13 μ/m^3 vs 17 μ/m^3). However, for the 24-hour averaging period, which tends to be the more critical period for measuring point source ambient impacts, the former approach yields higher numerical increments (e.g., Class II—37 μ/m^3 vs 30 μ/m^3).

intent contained in the Act under new section 166(f). The EPA believes that this new section establishes a clear directive for EPA to follow the path laid out by EPA in 1989 for the development of equivalent increments for PM measured as PM–10. New section 166(f) specifically calls for PM–10 increments which are "of equal stringency in effect" to the existing statutory increments for PM. Accordingly, Congress left it to EPA to determine the appropriate equivalent levels of PM–10 that would ensure "equal stringency in effect." Arguably, if Congress had intended that the new PM–10 increments be based exclusively on their relationship to the PM–10 NAAQS, then it would have been a straightforward matter for Congress, itself, to replace the existing statutory increments for particulate matter with PM–10 increments calculated as a percentage of the PM–10 NAAQS.

In response to those commenters who stated that the Class I PM–10 increments should be set at levels which provide protection against welfare effects and visibility impairment, particularly in Class I areas, EPA agrees only in a general sense. While it is true that Congress set the Class I increments at levels which allow only a relatively small increase in the ambient concentration of a pollutant, there is no evidence that Congress adopted increments that would ensure specific levels of welfare and visibility protection at each Class I area throughout the Nation. For example, the increments standing alone do not represent an absolute ceiling on air quality, but rather a limit on the amount of deterioration in air quality that varies from area to area depending upon the baseline concentration of pollution for such area.[10] Under this system, based on the PSD increments alone, two areas with significantly different baseline concentrations of a pollutant (yet both within the limits of the NAAQS), and having resources that are significantly different in terms of their sensitivity to air pollution, could in theory be allowed to experience the same increase in ambient levels of pollution. Thus, the Class I increments are designed to protect an area from large adverse changes in air quality, but do not provide an absolute pollutant concentration ceiling that is grounded in the air pollution sensitivities of the various Class I areas.

The Act's main tool for protecting Class I areas are provisions specifically addressing the protection of "air quality related values" (including visibility) in such areas [see section 165(d) of the Act; see also, e.g., *Hadson Power 14—Buena Vista*, PSD Appeal Nos. 92–3, 92–4 and 92–5 (Remand Order, October 5, 1992]. Congress established the concept of air quality related values to enable the identification and protection of specific ecologically-based attributes contained within any particular Class I area.

Section 165(d)(2)(C)(ii) provides that even when a major emitting facility will not cause or contribute to an increment exceedance, a permit must not be issued if the Federal Land Manager (FLM) demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands. In contrast, section 165(d)(2)(C)(iii) provides that when a major emitting facility will cause or contribute to an increment exceedance, the State may issue a permit if the owner or operator demonstrates to the satisfaction of the FLM that the emissions will not have such an adverse impact.[11]

The Act also provides a general degree of welfare protection with the Class I increments by retaining the short-term increments rather than measuring air quality deterioration only on an annual average basis. Short-term increments were deemed necessary to protect, among other things, the environment of Class I areas against "chronic low levels of pollution or from repeated short-term peaks of pollution at levels below the minimum Federal standards."[12] The EPA believes that the levels of the 24-hour PM–10 increments for Class I areas will provide general protection against visibility impairment and other welfare-related impacts in the same manner as did the TSP increments which they replace. However, specific protection of any given Class I area is intended to be provided by the air quality related values as defined for the particular area of concern.

In addition, with respect to visibility impairment, EPA notes that Congress adopted, in section 169A, a specific mechanism whose goal is to remedy any existing, and prevent any future, impairment of visibility in Class I areas. Moreover, section 169B, added by the 1990 Amendments, calls upon EPA to assess the level of visibility that will remain following implementation of the other provisions of the 1990 Amendments, and to decide whether to adopt a "regional haze" program to address the residual impairment. That multi-year program is now underway.

C. Development of Equivalent Numerical Levels.

1. Background

In order to develop numerical levels such that the PM–10 increments would be "equivalent to the statutory increments," EPA considered source information contained in an existing new source review (NSR) data base. From the data base, containing information from over 500 existing PSD/NSR permits issued between 1977 and 1984, EPA found 249 permits which provided sufficient information to estimate PM–10 emissions (using available PM–10 emissions factors) and PM–10 increments consumption.

Separate technical analyses were carried out to establish equivalent levels for the Class I and Class II increments. In each case, two important steps were involved in the developmental process. First, the TSP levels were converted to equivalent PM–10 levels by comparing the ambient TSP impacts of all sources in the data base against their estimated PM–10 impacts, based on the estimated PM–10/PM emissions ratio for each source.[13] Second, the resulting levels of the equivalent PM–10 annual increments were converted from geometric mean values to arithmetic mean values. These procedures were described in the PM–10 increments proposal notice (54 FR 41218, pp.

[10] The Act sets forth a definition of "baseline concentration" which is key to the way in which the increments are implemented [section 169(4)]. Basically, the baseline concentration is the ambient concentration of a pollutant which exists at the time of the first complete application for a PSD permit in an attainment area. On such date the applicable baseline date is established and the baseline concentration is defined from which significant deterioration of air quality is hence measured.

[11] During the floor debate of Senate bill 252 (S. 252), Senator Muskie indicated that the Class I increments, as contained in S. 252, were established "solely as a means of determining where the burden of proof should lie as to adverse impact on air quality values * * * [The increments] do not, in any way, establish a final basis for approval or disapproval of a permit application." Committee on Environment and Public Works, 95th Cong., 2nd Sess., A Legislative History of the Clean Air Act Amendments of 1977 (Vol. 3) at 725–726 (1978).

[12] The committee report on the House of Representatives bill 2161 (H.R.2161) states that "[e]limination of the 24-hour and 3-hour standards would substantially undermine the public health and welfare protections built into the committee proposal." The committee indicated its concern that the short-term increments were of particular importance for protecting visibility in areas such as the Grand Canyon, Yellowstone and other national parks and national wilderness areas. Legislative History (Vol. 4) pp. 2636 and 2637

[13] The PM which sources emit is comprised of particles having a range of sizes. The PM–10/PM emission ratio, which was of interest for this particular rulemaking, reflects the relative amount of PM–10 vs. the amount of total particulate emitted by a source. For any given source, the PM–10/PM ratio will depend upon the specific emission unit(s) and control device (and control efficiency) associated with that unit. A necessary part of EPA's analysis, therefore, was the identification of the unique emission unit-control device combinations contained in the NSR data base.

41223–41225) as well as in a technical report entitled "Technical Report - Equivalency of Alternative PM–10 Increments" (Radian Corp., March 1989), which was made available for public inspection in the docket for this rulemaking action.

In summary, the determination of equivalent Class II PM–10 increments involved the selection of a PM–10 value from a range of "equivalent" increments by comparing the TSP vs. PM–10 impacts of each of the 249 PM sources in the NSR data base. In principle, for any source, the equivalent PM–10 increment is simply the product of the TSP increment and the source's PM–10/PM emissions ratio. Once the range of "equivalent" PM–10 increments was defined, EPA plotted the amount of TSP increment consumed along with the amount of PM–10 increment consumed (using trial increment levels selected from the defined range of "equivalent" PM–10 increments) on a source cumulative basis (i.e., percent of increment consumed vs. cumulative number of sources with impacts less than or equal to a specific amount of increment consumption). By plotting the information on a cumulative basis it was possible for EPA to determine the PM–10 increment level (for each applicable averaging time) that best represented "equivalent effect" in terms of amounts of TSP and PM–10 increment consumption for the entire sample PSD source population.

For the Class I increments, considerably less source data were available because relatively few major sources were found to be constructed in the vicinity of Class I areas. For this reason, in selecting equivalent Class I increments EPA did not attempt to compare the percentages of TSP increments and PM–10 increments on a source-aggregated basis. Instead, EPA directly examined 16 sources in the NSR data base having PM impacts which effect Class I areas.

No specific analysis was performed to develop equivalent Class III increments for PM–10. Instead, Class III increments were determined simply by doubling the levels selected for the Class II PM–10 increments, since all of the statutory Class III increments are levels which are twice the Class II increments levels.[14]

The equivalent numerical levels of the PM–10 increments initially bore the same deterministic form as the statutory TSP increments, and were stated as geometric mean values as well.[15] In contrast, the PM–10 NAAQS are expressed in a statistical form, with the annual standards stated as arithmetic mean values.[16] In order for the PM–10 increments to be completely consistent with the form of the PM–10 NAAQS, it would have been necessary to apply three separate conversion factors. As explained in the proposal notice, EPA elected to make only one conversion—that being to change the annual increments from geometric mean values to arithmetic mean values (54 FR at 41225). Thus, the PM–10 increments which EPA proposed remained in the deterministic form, but included annual increments expressed as arithmetic mean values.

2. Public Comments

Nine commenters, including some who supported EPA's "equivalent to statutory increments" approach for selecting equivalent PM–10 increments, expressed both general and specific concerns about the technical analyses and conversion procedures used to establish the equivalent numerical levels.

Several of the commenters expressed general concern about the overall adequacy of the NSR data base which EPA used to develop source-specific estimates of PM–10 emissions and PM–10 increments impacts. The commenters' concerns focused on both the quantity and quality of the information in the data base. One of these commenters questioned the completeness and accuracy of the information contained in the individual permit applications from which the data base was derived. This commenter complained that the use of only 249 sources "suggests the possibility of uncertainty and source-specific bias." This commenter also claimed that the ambient TSP impacts contained in the data base were suspect because the air quality dispersion models used by the permit applicants may have been conservative and outdated. Another commenter claimed that the data base is biased because it relies on information which does not take into account current, more efficient controls which result in higher PM–10/PM emissions ratios (i.e., majority of particulate emissions are PM–10).

The EPA's calculation of PM–10 emissions for sources in the data base was also the subject of several comments. One commenter complained that the EPA relied upon "limited and biased PM–10 data" to develop PM–10 emissions factors. The same commenter further noted that very little data were available on the PM–10 portion of TSP for major source categories to adequately define the proper PM–10/TSP ratios. Another commenter reiterated the concern over the lack of PM–10 emissions data and complained that EPA's method "assumed an arbitrary average of PM–10/PM ratios wherever multiple emission sources were involved." It was this commenter's conclusion that "[e]ach individual case may be far different than portrayed, and there is very little certainty that the grand total is correct." Regardless of the means of calculating the appropriate PM–10/PM emissions ratios, this commenter argued that "the EPA equivalent method substantially underestimates equivalent PM–10 increments because it uses PM–10/PM rather than the proper ratio of PM–10/TSP."

One commenter went to great lengths to describe "a basic fallacy" in EPA's technical method, based on the modeling of PM emissions from sources in the NSR data base, for developing new PM–10 increments which are equivalent to the existing statutory TSP increments. The basic fallacy, according to the commenter, is that "TSP does not equal PM." The commenter's claim was based on the fact that the collection efficiency of the ambient sampling method for collecting TSP is significantly different from various in-stack sampling methods for measuring emissions of PM. Thus, the commenter argued that "EPA's assumption that TSP and PM are equivalent, which underlies the 'equivalent' increments, is simply incorrect."

Several commenters representing the mining industry criticized the proposed PM–10 increments levels claiming they could lead to severe constraints or complete prohibition of some mining activities. According to these commenters, "this harsh result is imposed for little environmental benefit, because there is substantial evidence that mining-related fugitive dust, even that smaller than 10 micrometers, has little or no human health or

[14] For example, Congress set the annual Class II increments for PM at 19 $\mu g/m_3$ (25 percent of the annual PM NAAQS), and the Class II increments for PM at 37 $\mu g/m_3$ (50 percent of the annual PM NAAQS).

[15] The term "deterministic" describes the method by which attainment of a particular standard or increment is determined. Attainment of a deterministic standard or increment considers the number of exceedances that have occurred, or will occur (based upon modeling predictions), in a single year independently from other years of data. For example, a 24-hour deterministic standard would be attained when the standard level is not exceeded more than once in any given calendar year.

[16] Attainment of a statistical standard considers the number of exceedances that have occurred, or will occur (based on modeling), on average over a number of consecutive years. For example, a 24-hour statistical standard is attained when the expected number of exceedances of the standard level is, on average, no more than one per year.

environmental significance, as compared with the urban pollution upon which the PM–10 NAAQS were based." Faced with these alleged economic consequences, the commenters urged EPA to adopt a "two-tiered" PM–10 increments system, such that the second tier increments would be 50 percent larger than the first-tier (e.g., the proposed increments) and applicable to the arid Western United States and/or to "specific fugitive dust sources, such as surface mines."

Finally, one commenter criticized EPA's decision to convert the annual PM–10 increments from geometric mean to arithmetic mean values but to leave the increments in the deterministic form for compliance determinations. In the view of this commenter, EPA should express the annual PM–10 increments as geometric mean values in order to (1) avoid the greater stringency inherent to the arithmetic mean, and (2) maintain consistency with Congress' approach in section 163. On the other hand, the commenter recommended that EPA express the PM–10 increments on a statistical basis rather than the deterministic form which EPA proposed. Noting that the PM–10 NAAQS are already expressed as statistical standards, the commenter claimed that EPA's proposal would require duplicative and redundant recordkeeping and compliance evaluations, while PM–10 increments expressed in a statistical form would reduce the cost and complexity of the compliance analysis.

3. Decision and Response to Comments

The EPA disagrees with those commenters who claimed that the NSR data base was inadequate for developing the equivalent PM–10 increments. The EPA believes that the NSR data base sample is representative of the types of sources and PM emissions controls that can be expected to apply for PSD permits and consume PM–10 increments throughout the Nation. The 249 sources from which information on PM was taken for the equivalency analysis represent 39 different source categories, each with a wide range of emissions types and control technologies. Moreover, EPA finds no reason to believe that the information contained in the original PSD/NSR applications was either inaccurate or incomplete, nor was any specific deficiency identified by the commenter. The EPA remains unaware of any better data that could have been used to carry out the analysis.

The fact that the data base is limited to permits issued between 1977 and 1984 does not render the information as inadequate for establishing equivalent PM–10 increments. It does not automatically follow, as a few commenters concluded, that sources with improved control efficiencies (and thereby higher PM–10/PM emissions ratios) will have a more difficult time complying with the PM–10 increments promulgated by EPA. Improved control efficiencies serve not only to increase the PM–10/PM emissions ratios but to decrease the total amount of PM–10 emitted by a particular source.

The comments concerning the alleged conservative nature of models used "during the early stages of model development" fail to support the commenters' conclusion that the PM–10 increments are overly stringent. As described earlier, the equivalent PM–10 increments developed by EPA are linked directly to the PM–10/PM emissions ratios for the sources of PM in the NSR data base—not to the modeled ambient TSP concentrations. The EPA utilized modeling results (i.e., predicted TSP ambient impacts), along with the calculated PM–10 impacts, to plot cumulatively the amount of TSP and PM–10 increment (based on several trial increment levels) consumption occurring for each PM source in the data base. Each of the resulting PM–10 increment consumption curves was compared to the TSP increments consumption curve to determine which one best approximated the same amount of overall PM–10 increment consumption. In the event that the particular model used by a PSD applicant overestimated the source's TSP impact, then (1) the amount of TSP increment consumed also would have been overestimated, and (2) the corresponding PM–10 impact and amount of PM–10 increment consumed would have been equally overestimated. Consequently, all of the plotted curves would reflect equal overestimations. Since all curves (TSP and PM–10) would have been affected similarly, identifying the equivalent curve should not be affected by any overestimations.

With respect to commenters' criticism of the uncertainties associated with the conversion of PM emissions to PM–10 emissions, EPA believes that it took a reasonable and technically sound approach. When source-specific particle size distributions were available, PM–10 emissions estimates were made from them. When such information was not available, PM–10 emissions estimates were made based on particle size distributions for similar source or processes as found in the literature and using conservative engineering assumptions. Where appropriate, the resulting particle size distributions were checked for consistency against the interim results of ongoing research within the Agency.

The EPA readily acknowledges the fact that the PM–10/PM emissions ratios may vary considerably from one source category to another. As a result, a set of PM–10 increments which is equivalent in effect relative to each individual PSD source is not technically possible. However, EPA believes that the increment levels selected provide the best "fit" relative to the representative sample of PSD sources included in the analysis.

As was reported in the preamble to the proposal, some sources consume more of the available increments under the equivalent Class II PM–10 increments, and some consume less. There was essentially no difference in the percentage of increments consumed (i.e., less than 5 percent difference) for about 91 percent of the 249 NSR data base sources. Moreover, only four sources were projected to violate the equivalent PM–10 increments levels even though they demonstrated compliance with the TSP increments. In each case, control technology is available that could lower the emissions from new sources of these types such that those emissions would not cause violations of the new PM–10 increments.

In the case of the Class I increments, EPA found for a few sources that the selected PM–10 increments levels would result in a greater portion of PM–10 increments being consumed than of TSP increments. However, in no case would a PM–10 increments violation be predicted.

The commenters who criticized EPA's use of PM emissions data (and modeled ambient impacts) rather than ambient TSP data to develop equivalent PM–10 increments failed to understand how increments consumption is "measured" under the PSD program. Ambient data are rarely, if ever, used to determine increments consumption. There are several reasons for this fact. First, the predicted air quality impacts of the proposed new or modified source must be based on modeling estimated potential emissions. Also, under certain circumstances, actual emissions changes that would be detected by ambient monitors are not considered to consume increments. States may also exempt certain temporary emissions activities from increments consumption. Finally, statutory provisions prohibit sources from receiving credit for dispersive effects of stack heights which exceed good engineering practice. Accordingly, calculations of increments consumption have typically been accomplished by

modelling source emissions without reliance on ambient air quality data.

In response to the comments calling for a two-tiered PM–10 increments system, EPA does not agree that particle distinction based on chemical composition should be considered in setting the levels of the PM–10 increments. This issue was raised previously when EPA proposed the PM–10 NAAQS, and EPA responded at that time that a size-specific, rather than a chemical-specific, indicator should be used in setting NAAQS for PM.[17] The EPA continues to believe that particle size is of primary concern. Moreover, a two-tiered system for measuring air quality deterioration would be inappropriate in light of the fact that no such system exists for the NAAQS. It should be noted, however, that the PSD requirements do provide for the exclusion of certain emissions activities (i.e., temporary emissions) when a request is submitted by the Governor of a State. The exclusion provision is discussed in more detail in Section III.D.6. (Exclusions from Increments Consumption).

Finally, concerning the form of the PM–10 increments, EPA finds no compelling reason within the commenter's argument to adjust the proposed form. Interestingly, the commenter sought to establish consistency between the PM–10 increments and the PM–10 NAAQS recommending that the increments be expressed in a statistical form (as are the PM–10 NAAQS), but saw no need to express the annual increments as arithmetic mean values even though the PM–10 NAAQS are expressed as such.

The commenter's concern that EPA's proposed deterministic form for the PM–10 increments would require duplicative and redundant recordkeeping and compliance evaluations is unfounded because of the different data input typically required for the increments and NAAQS analysis. That is, both the inventory of sources and the source emissions input data tend to differ because of the differing nature of the two types of analyses. The emissions inventory needed to perform an increments analysis includes only those sources whose emissions consume a portion of the increments (as opposed to the baseline concentration) and the emissions input data reflects the actual emissions change since the baseline date. Thus, the fact that the compliance basis between the PM–10 increments and PM–10 NAAQS is different should provide no additional burden to the applicant or reviewing authority.

As explained in the proposal notice, the EPA's decision to convert the annual increments to arithmetic mean values was based largely on practical considerations. The calculation of an arithmetic mean value is a more straightforward method which is compatible with current modeling computations. The commenter correctly pointed out that the arithmetic mean value yields a higher value. However, in claiming that the proposed PM–10 increments were 12 percent more stringent than the statutory TSP increments, the commenter apparently overlooked the fact that EPA adjusted the initial PM–10 annual values by 12 percent to account for the difference.

D. Implementation Issues

1. Source Applicability

a. *Background.* The EPA did not propose any changes with respect to the criteria for determining whether a stationary source of PM is subject to PSD review. That is, in continuing the requirements of the existing PSD regulations, consideration will be given to both "PM emissions"[18] and "PM–10 emissions" in determining PSD applicability. Under the existing regulations, a new stationary source is subject to PSD for PM if it has the potential to emit any pollutant in major amounts and would emit either PM emissions or PM–10 emissions in "significant" amounts [§ 52.21(i)(2)]. An existing major stationary source is subject to PSD as a major modification of PM if its proposed net emissions increase would result in significant amounts of either PM emissions or PM–10 emissions.

Significant emissions of PM would continue to be defined as either 25 tons per year (tpy) or more of PM emissions, or 15 tpy or more of PM–10 emissions. However, a PSD applicant will only be required to perform an ambient impact analysis for PM–10 (NAAQS and increments) when the source has the potential to emit significant amounts of PM–10 emissions. The PSD requirement for a source to install BACT applies independently to either form of PM when it will be emitted in significant amounts.

b. *Public Comments.* Seven commenters opposed EPA's retention of a dual applicability test for PM. These commenters argued that elimination of the TSP increments (in addition to EPA's prior elimination of the TSP NAAQS) warranted a source applicability test based only on PM–10 emissions. The general response of these commenters was that "TSP" should be totally eliminated as a parameter of concern in all portions of the PSD rules.

c. *Decision and Response to Comments.* After careful review of the original proposal and the EPA's rationale for a dual applicability test for PM, EPA has determined that it is necessary to retain the requirements, as proposed, at this time. As indicated in the proposal, PM emissions continue to be regulated under a variety of section 111 new source performance standards (NSPS) (40 CFR part 60). Even though EPA has now eliminated TSP as the ambient indicator for measuring compliance with both the PM NAAQS and the PM increments, in-stack measurements of total particulate emissions continue to serve as the specific basis for evaluating compliance under the NSPS. Thus, PM emissions must be regarded as a pollutant "subject to regulation under the Act" and, therefore, subject to PSD review [§ 52.21(b)(23)(i)].

2. Geographic Applicability

a. *Background.* In the October 5, 1989 **Federal Register** proposal notice, EPA announced that the new increments generally would apply everywhere under a special system of PSD area designations for PM–10 (54 FR 41225–41226). This approach to applying the PM–10 increments differed from the existing geographic applicability provisions for the TSP increments [which apply in areas designated as attainment or unclassified for TSP pursuant to section 107(d) of the Act] because EPA had determined that the section 107(d) area designation procedures did not then apply to PM–10. The PSD increments for a pollutant do not apply when an area is designated nonattainment for that pollutant.

In accordance with the proposed geographic applicability format for PM–10, EPA proposed two specific actions. The first was to identify the surrogate area designations for PM–10 in the State-by-State listings in subchapter C of 40 CFR part 81, where the area designations pursuant to section 107 of the Act are currently contained for each criteria pollutant. The second action involved revising the definitions of

[17] In its original assessment of this issue, EPA examined available scientific information and concluded that the indicator for the primary standard should include those particles small enough to penetrate to the thoracic region rather than include only certain chemical-specific particles (52 FR 24634, July 1, 1987, pp. 24638–24639, 24717).

[18] The term "particulate matter emissions" is defined as all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method, specified by EPA or by a test method in an approved SIP [40 CFR 51.100].

"baseline area" and "baseline date" in the PSD regulations in parts 51 and 52 to incorporate references to the special PSD area designations for PM–10. The current definitions of "baseline area" and "baseline date" make reference only to "attainment" or "unclassifiable" areas designated pursuant to section 107(d) of the Act and, thus, would not have provided a means for identifying baseline areas and baseline dates for PM–10.

b. *Public Comments.* Only one commenter expressed any objection to EPA's proposed geographic applicability concept. That commenter questioned EPA's plan to require the implementation of the new PM–10 increments in areas designated nonattainment for PM–10 NAAQS.

c. *Decision and Response to Comments.* The commenter apparently overlooked the fact that no "nonattainment" designations were to be made for PM–10 under the then-existing area designation authority contained in section 107 of the Act. In any event, the commenter's concern that EPA would require consideration of PM–10 increments in areas that are not meeting the PM–10 NAAQS basically has been eliminated by new statutory requirements. As a result of the 1990 Amendments, it is no longer necessary for EPA to consider special geographic applicability provisions for the PM–10 increments.

By operation of law upon enactment of the 1990 Amendments certain areas were designated nonattainment for PM–10 [section 107(d)(4)(8) of the amended Act; also 56 FR 56694, Nov. 6, 1991; 57 FR 56762, Nov. 30, 1992]. Specific part D (nonattainment) requirements apply to the areas so designated (e.g., 57 FR 13498, April 16, 1992). All remaining areas were initially designated unclassifiable for PM–10 by operation of law upon enactment of the 1990 Amendments [section 107 (d)(4)(B)(ii)]. Any area may subsequently be redesignated to a more appropriate attainment designation in accordance with procedures under section 107(d)(3) of the amended Act (e.g., 57 FR 43846, Sept. 22, 1992). Consequently, when the new PM–10 increments take effect in each State, they will apply in all areas of the State designated as attainment or unclassifiable for PM–10 (section 161). Accordingly, the PM–10 increments will not apply in areas designated nonattainment for PM–10.

As a result of the new area designation requirements for PM–10 under revised section 107 of the Act, EPA is not adopting in final form certain proposed changes that would have added language to the definitions of "minor source baseline date" and "baseline area" to refer specifically to the PSD areas for PM–10 as they would have been listed in subchapter C of 40 CFR part 81. These changes are no longer necessary because attainment status designations pursuant to section 107(d) of the Act are now required for PM–10. It should be noted, however, that EPA proposed other changes to the definitions of "minor source baseline date" and "baseline area" that remain unaffected by today's action. These changes are discussed in the following section.

3. Retention of TSP Baseline Dates and Baseline Areas

a. *Background.* The equivalent increments approach proposed by EPA included the retention of the baseline areas and baseline dates established under the original TSP increments system. Under that system, the specific baseline area in which TSP increments consumption calculations were originally being made would carry over to the PM–10 increments system. Also, the major source baseline date for TSP (January 6, 1975), as well as any minor source baseline date already established for TSP, would be considered the baseline date for PM–10, even if the PSD source would not have triggered such date based on its potential PM–10 emissions. In any attainment or unclassified areas where the minor source baseline date (and therefore the baseline area) had not yet been set as of the implementation date of the PM–10 increments, the date would be set in the future by the first PSD application for a major new or modified stationary source having the potential to emit significant amounts (15 tpy) of PM–10.

b. *Public Comments.* Six commenters specifically objected to EPA's proposed retention of the original TSP baseline dates and baseline areas. These commenters cited legal, technical and procedural problems associated with a provision which they perceived to require the retroactive calculation of PM–10 increments using irrelevant TSP baseline dates and areas.

Many of these commenters argued that section 166 of the Act applies only to pollutants for which EPA establishes new NAAQS. Thus, if PM–10 is a new pollutant for increment-setting purposes under section 166 of the Act, prior consumption of the TSP-based increments is irrelevant and illegal. Several commenters alluded to EPA's promulgation of NO_2 increments, and the fact that EPA did not require retroactive increments consumption back to the original statutory baseline dates, to support their claim that EPA erred in proposing to utilize old TSP baseline dates and areas for PM–10 increments purposes.

Some of the commenters indicated that any requirement to calculate PM–10 increments based on previous TSP increments consumptions is illogical and unworkable. One commenter cited EPA's failure to provide a methodology for calculating prior PM–10 increments consumption. Another commenter stated that "[t]echniques are not currently available and probably never will be for accurately and consistently translating TSP increments consumption into PM–10 increments consumption." This commenter included as technical obstacles the number and diversity of industrial sources, varying PM–10/TSP ratios, and problems tracking major modifications and minor source contributions of PM–10 over the last 15 years.

Two commenters introduced implementation issues which they considered to be justification for starting over with new PM–10 baseline dates. One of these commenters stated that retention of the TSP baselines would penalize those areas which came into compliance with the TSP NAAQS, since those areas likely have already consumed a portion of the available increments and "would not receive full PM–10 increments." Meanwhile, areas which failed to attain the TSP NAAQS would now be "awarded full PM–10 increments." The other commenter opposed EPA's position calling for the retention of the existing TSP minor source baseline dates even where it could be shown that the source triggering the baseline date would not have done so based on potential PM–10 emissions.

c. *Decision and Response to Comments.* The EPA continues to believe that it is appropriate to retain the original TSP baseline dates and baseline areas as part of the program for implementing the PM–10 increments. The PSD program established by Congress under the 1977 Act was designed to prevent significant deterioration of air quality for the pollutant PM—Congress did not designate what indicator was to be used. The establishment of a new indicator for PM (both for the NAAQS and increments) does not mean that EPA must ignore all increments consumption of PM which has occurred to date. Moreover, this would ignore Congress' underlying intent to prevent the deterioration of local air quality due to increased PM emissions. Ambient PM–10, a component of TSP, has always been counted toward measurements used to determine compliance with the

TSP NAAQS. It would be difficult to argue that amounts of PM–10 emitted prior to the promulgation of the PM–10 NAAQS should not be counted for determining compliance with such standard simply because they were previously included as a measure of TSP.

The EPA selected the PM–10 indicator for measuring increments consumption on the basis that it would not be reasonable to continue to count larger particles in preventing significant deterioration when such particles were not part of the measurement for determining compliance with the revised NAAQS for PM. The statutory framework certainly ties the NAAQS to the increments, and EPA felt compelled to follow this approach. As mentioned earlier in this preamble, Congress did not intend for EPA to redefine the statutory increments for PM simply by using a new indicator along with the same numerical concentrations. Thus, EPA concluded that the promulgation of equivalent increments based on the new indicator, replacing the increments based on the old TSP indicator, represented the most reasonable alternative for preserving the PSD system for PM established by Congress.

The addition of new section 166(f) under the 1990 Amendments supports EPA's final decision. Congress clearly intended to preserve the current PSD process for PM when it provided for "[s]uch substituted maximum allowable increases * * * of equal stringency in effect as those specified in the provisions for which they are substituted." Moreover, Congress instructed EPA to retain the TSP increments until it promulgated the new PM–10 increments, thereby ensuring there would be no gap in the protection of air quality with respect to PM.

The EPA does not agree with those commenters who suggest that it will be more difficult for future PSD applicants to calculate PM–10 increments consumption than TSP increments consumption. Each PSD increments analysis is a case-by-case analysis involving the identification of the appropriate sources whose emissions consume increments. It is the responsibility of the applicant (under the direction of the permitting authority) to make such identification and to calculate the actual emissions for the affected pollutants accordingly. It was never EPA's intention, as some commenters have supposed, that a new applicant should utilize the results of a previous TSP increments assessment and determine the amount of PM–10 increments consumed based on the local ambient PM–10/TSP ratio. Increments consumption is based exclusively on predictions from air quality dispersion models. The EPA recognized some time ago that ambient monitoring data would be very difficult to use in the typical increments analysis (44 FR 51924, 51944, September 5, 1979).

Concerning the commenter who felt that former TSP attainment areas would be penalized (in comparison with former TSP nonattainment areas) by EPA's decision to retain the original minor source baseline dates for TSP, EPA disagrees. It is true that areas which were previously attainment for TSP likely will have already consumed some portion of the available PM–10 increments. Generally, the fact that the amount of available increments has decreased is indicative of the economic growth which has occurred in the PSD area.

In contrast, areas which were previously nonattainment for TSP did not have the same growth opportunities because of the requirement to reduce emissions to the degree needed to attain the TSP NAAQS. In such areas new major source growth could not occur without the application of very stringent emissions controls and offsetting emissions reductions being obtained from existing sources in the same area. In some cases, TSP nonattainment areas were under a federally-imposed construction ban which disallowed any major source growth for PM. Also, it should not be assumed that previous nonattainment areas for TSP, which are now unclassifiable for PM–10, will always have the full amount of PM–10 increments available. That is, in areas where the ambient concentrations in the area are just below the PM–10 NAAQS level, the NAAQS—not the PM–10 increments—serve as the effective constraint on further PM–10 emissions growth. Thus, EPA believes that it is inappropriate to perceive the retention of the original TSP baseline dates as "penalizing" areas that were previously attainment for TSP.

In response to the commenter who opposed EPA's proposing to retain a TSP minor source baseline date that would not have been triggered on the basis of potential PM–10 emissions, EPA is today announcing a different policy from that originally proposed. The EPA has reexamined its original position and now agrees that it would be inappropriate to retain a TSP minor source baseline date when it can be shown that the PM–10 emissions from the source triggering the baseline date were de minimis. In arriving at this conclusion, EPA considered existing policy concerning the triggering of the minor source baseline date. That policy, in part, provides that a minor source baseline date will no longer be considered set if the source which triggered the baseline date by submitting a complete permit application no longer qualifies for that permit as a result of changes to the PSD requirements (so as to make such source eligible to have the permit rescinded).[19]

The EPA believes that the situation involving a source whose emissions would no longer be considered significant closely follows the circumstances under which a permit rescission would enable the minor source baseline date to be changed. Section 169(4) of the Act establishes the submittal of a complete application as the baseline triggering mechanism on a pollutant-specific basis. In recognition of the pollutant-specific nature of the minor source baseline date, the PSD regulations stipulate that the minor source baseline date is established for a particular pollutant (1) on the date a complete application is received by the permitting authority, and (2) when the proposed source would have the potential to emit that pollutant in a significant amount. The EPA has concluded that, in terms of the effect on the minor baseline date, a source of PM whose emissions are no longer considered significant because of a regulatory change in the applicable pollutant indicator should be treated the same as a source that is no longer considered major.

In order to implement this new policy, EPA is modifying it's proposed revision of the definition of "minor source baseline date" at § 52.21(b)(14)(iv) to indicate that the Administrator will no longer consider the minor source baseline date to be triggered by a particular source when it can be shown, to the satisfaction of the Administrator, that such source did not have the potential to emit significant amounts of PM–10. Any State having an EPA-approved PSD program in its SIP may adopt a similar policy if it wishes to do so [new § 51.166(14)(iv)]. It should be noted, however, for purposes of determining the amount of available PM–10 increments, the source which triggered the original minor source baseline date still consumes PM–10

[19] It is EPA's longstanding policy to require generally that once a minor baseline date is set by a particular source via the submittal of a complete PSD permit application, such date will remain in effect even when the application is voluntarily withdrawn or the permit is denied. The policy as originally announced contained an exception, however, for any source originally defined as major under the June 1978 PSD regulations, but which was no longer considered major as a result of regulatory changes promulgated on August 7, 1980 (FR 52676, August 7, 1980, p. 52717).

increments, since it is a major stationary source whose PM–10 emissions have been increased after August 7, 1977 (the major source baseline date for PM) as a result of the construction or modification of the facility [§ 52.21(b)(13)(ii)(a)].

4. Implementation Date

a. *Background.* The EPA announced that the proposed PM–10 increments would be implemented under the State PSD programs as well as the Federal PSD program in accordance with the schedule set forth in section 166 of the Act. As discussed, section 166(b) specifically provides that new increments promulgated by EPA must be part of an approved State PSD program not later than 25 months from their date of promulgation.[20] In order to apply the same implementation schedule to the new increments in both the State and Federal PSD programs, EPA proposed that the new increments would become effective 1 year from their date of promulgation in § 51.166, and 25 months from their date of promulgation in § 52.21. Thus, States lacking an EPA-approved PSD program would have an opportunity to develop and submit to EPA an approvable program which includes the new PM–10 increments; alternatively, implementation of the new increments under the Federal PSD program could have begun 1 year from the date of promulgation in § 52.21.

b. *Public Comments.* Commenters basically expressed no opposition to the implementation schedule announced by EPA in the proposal notice. However, one commenter, concerned about the need to address area source emissions in the PM–10 increments analysis, requested that "the effective date of the regulations should not precede the publication and distribution of guidelines * * * to determine the increase or decrease of area source emissions from the baseline date."

c. *Decision and Response to Comments.* The EPA has given further consideration to the proposed implementation schedule and has concluded that implementation of the new PM–10 increments under the Federal PSD program should not be delayed for 25 months as originally announced. The Act is clear in its requirements that (1) new increments become effective 1 year from the date of promulgation, and (2) State PSD programs be allowed 25 months from the date of promulgation to implement any new PSD increments. The EPA has determined that, in the case of the PM–10 increments, where the new increments would be substituted for existing increments to replace a pollutant indicator that is no longer used to measure NAAQS compliance, it is in the best interests of the PSD program to expedite the implementation date wherever possible.

The EPA's original concern for uniformity in the implementation date from one State to another is overshadowed by the benefits to both the PSD applicant and the reviewing authority derived by expeditiously eliminating the requirement for a TSP ambient impact review under the PSD program. Moreover, since the implementation of the PM–10 increments involves the switching of indicators rather than the commencement of a completely new set of increments requirements (as was the case with the new NO_2 increments), no apparent inequity results from the early implementation of the PM–10 increments in one State as compared to another State.

Consequently, EPA is today announcing that the PM–10 increments promulgated under the Federal PSD program in § 52.21 will become effective 12 months from today. The EPA or its delegated State program will begin implementation of the increments at that time.[21] The PM–10 increments as promulgated today in § 51.166 will also become effective 12 months from today; however, the implementation date will be the date on which EPA approves each revised State PSD program containing the new PM–10 increments. States which fail to adopt the PM–10 increments within 9 months of the effective date could face sanctions and Federal implementation of that portion of the State's PSD permitting plan.

5. Grandfathering Provisions

a. *Background.* As part of the transition process for phasing in the new PM–10 increments, the EPA proposed to exempt certain PSD applicants from the new requirements for a PM–10 increments analysis. Specifically, EPA proposed to add grandfathering provisions to the PSD regulations under both part 51 and part 52, which would exempt from the PM–10 increments analysis any PSD application for which a final permit determination has not yet been made when (1) the application, including a TSP increments analysis, is submitted before the implementation date of the new PM–10 increments, and (2) the application is considered complete based on the existing requirements on the date of submittal. Instead, the proposed PSD project would be reviewed only for its ability to demonstrate compliance with the then existing TSP increments. It was not EPA's intent that the proposed exemption apply to other PSD requirements for PM–10 already in effect (e.g., PM–10 NAAQS compliance and the collection of ambient PM–10 monitoring data).

b. *Public Comments.* Two commenters responded to EPA's proposed grandfathering provisions. While both commenters supported the grandfathering concept, one requested that applicability of the proposed exemption be broadened to include any PSD applicant for which a TSP increments analysis has been completed, even if the remainder of the application is not yet complete. This commenter argued that it is often difficult to determine when an application is complete, and that an applicant might have to repeat the increments analysis for PM "simply because [the permitting agency] has a disagreement with the permit applicant over any minor element of the application."

c. *Decision and Response to Comments.* As proposed, EPA is adding the grandfathering provision to the PSD regulations in part 51 and part 52. In establishing this new provision, the EPA has chosen to rely upon the date of submittal of a complete PSD application, instead of the date of a complete increments analysis, for several reasons. First, EPA does not want to encourage applicants to submit applications containing a complete TSP increments analysis, while knowing that other portions of the application may be incomplete, simply to "lock in" the original increments analysis prior to the point where the entire proposed PSD project is ready to be processed and reviewed. Moreover, the increments analysis does not stand alone relative to other information contained in the permit application. In fact, the increments analysis is dependent upon the emissions and other source information contained elsewhere in the application.

[20] In addition to the 1-year delay in the effective date of any new increments which EPA promulgates pursuant to section 166 of the Act, section 166(b) provides each State with 9 months to revise their current PSD plan and to submit it to EPA for approval. The EPA then has 4 months to review and issue a determination on the approval of the revised plan.

[21] States implementing an NSR program through a delegation of § 52.21 from EPA should, when necessary, modify that delegation agreement over the next 12 months to reflect the changes to that regulation promulgated today. If States fail to change the delegation agreement, EPA will become the permitting authority.

Also, EPA does not intend to disallow the grandfathering of a proposed project from the new PM–10 increments requirements merely because an unrelated or minor element of the overall application may be "incomplete." Nor does EPA believe that States would do so. A completeness determination generally acknowledges the receipt of an application containing sufficient information to enable the reviewing agency to begin the process of reviewing the contents of the application, but does not preclude the agency from requesting additional information which may be necessary as the review progresses. Finally, the new increments will not become effective for 1 year after their promulgation in the case of the part 52 PSD regulations (generally longer for SIP-approved PSD programs). Applicants for PSD permits will have ample time to plan the submittal of their applications, knowing when the effective date will occur.

6. Exclusions From Increments Consumption

a. *Background.* Section 163(c)(1)(C) of the Act provides that any State with an EPA-approved PSD plan may "issue orders or promulgate rules" to exclude concentrations of PM caused by "construction or other temporary emissions-related activities" from increments consumption. The owner must submit an order of rule to the Administrator, and the Administrator must determine that the order of rule is in compliance with the subsection. In its PM–10 increments proposal, EPA indicated it would consider any specific exclusion for PM–10 that a State may wish to add when it revises its SIP to adopt PM–10 increments, provided such exclusion would not result in permanent or long-term deterioration of air quality. "Prescribed burning" was given as an example of an activity which may oftentimes be regarded as temporary, but could also be considered to have longer lasting (intermittent) effects under certain circumstances (54 FR 41228).

In order to help make the appropriate determinations concerning activities whose temporary nature is an issue, EPA sought comments on (1) whether exclusions should be contingent upon the use of specific mitigation measures; (2) what, if any, accountability measures should be required regarding the temporary nature of air quality deterioration resulting from excluded activities; and (3) whether excluded activities should be "coordinated" or "scheduled" when occurring in a common air shed to minimize the ambient impact from all excluded activities on a given day.

Finally, EPA pointed out that, while certain exclusions from increments consumption are available to any State with an approved SIP, such exclusions should not be legally available under EPA's part 52 PSD regulations, even though a provision allowing such exclusion has been inadvertently retained in the Federal PSD program at § 52.21. The Act, at section 163(c)(1), provides that only in States with implementation plans approved by EPA may the Governor issue orders or promulgate rules providing for the applicable exclusions from increments consumption. The EPA originally allowed States to request the implementation of the exclusion provisions under the Federal PSD program while States were developing their own initial PSD program (45 FR 52676, August 7, 1980; p. 52677).

After May 7, 1981, exclusions were to be no longer applicable under the Federal PSD program; therefore, the provision under § 52.21(f) should have been rescinded at that time. Consequently, EPA proposed to delete the obsolete provision at § 52.21(f) to avoid any confusion as to its potential future use by States without approved PSD plans. In a related action, EPA also proposed to delete an erroneous provision from paragraph (f)(3) in § 51.166, which would have limited a State's use of the exclusion provision under § 51.166 beyond May 7, 1981—the date after which a State lacking an approved PSD plan could not implement the exclusions from increments consumption.

b. *Public Comments.* The respondents to this issue focused their comments on prescribed burning activities rather than temporary activities in general. In all, six commenters expressed support for the exclusion of PM–10 emissions caused by prescribed burning. The commenters' support was based on several factors including: Prescribed burning is a temporary activity, it typically reduces the overall amount of PM that might otherwise occur from wildfires, and it serves an essential ecological function. Two of the commenters recommended that the exclusion of prescribed burning activities should be contingent upon such fires being conducted in accordance with a prescribed fire plan and best management practices. Another commenter expressed concern that the proposed rule leaves to the States' discretion whether or not emissions from prescribed fire will consume increments.

One commenter cautioned that EPA lacked the authority to impose conditions on the required approval of exclusions from increments consumption adopted by the States. This commenter noted that the Act directs the Administrator only to determine whether a State's exclusion is in compliance with the provisions of § 163 of the Act.

c. *Decision and Response to Comments.* The EPA supports the concept of allowing States to exclude emissions caused by temporary prescribed burning activities from the PM–10 increments. It also agrees that there are important considerations to be made as to how and when prescribed burning activities are carried out. However, EPA does not intend to impose specific conditions as to the type and nature of the prescribed burning or other pollutant-emitting activities as long as the activity itself is of a temporary nature. Consequently, EPA expects States to consider the extent to which a particular type of prescribed burning activity is truly temporary, as opposed to those activities which can be expected to occur in a particular area with some regularity over a period of time. The Act provides that "construction and other temporary emissions-related activities" shall be excluded from increments consumption pursuant to a State rule or order upon which the public has been afforded an opportunity to comment.

As proposed, EPA is deleting the superfluous provision contained in § 52.21(f) concerning the opportunity for States to exclude temporary emissions from increments consumption under the Federal PSD program. The States' eligibility for this exclusion under the Federal PSD program ended on May 7, 1981. The EPA is also deleting paragraph (f)(3) of § 51.166 which states that no exclusion under paragraph (f) of this section shall occur later than 9 months after August 7, 1980, unless a SIP revision meeting the requirements of 40 CFR 51.166 has been submitted to the Administrator.

The original purpose of this provision was to restrict the implementation of the exclusion provisions under EPA's part 52 PSD regulations beyond May 7, 1981. Therefore, in order to avoid any confusion concerning the States' continuing authority to adopt new exclusion provisions pursuant to § 51.166, EPA is today deleting paragraph (f)(3) of § 51.166.

7. Prevention of Significant Deterioration Monitoring

a. *Background.* The PSD regulations require that any application for a permit

must contain an analysis of ambient air quality, including air quality monitoring data as appropriate, in the area surrounding the proposed project. As a guide for determining whether it is necessary to include monitoring data for a particular pollutant, EPA has defined specific ambient concentration thresholds [§ 52.21(i)(8)(i)]. When EPA amended the PSD regulations to account for the revised PM–10 NAAQS in 1987, it added a significant ambient concentration for PM–10 (10 μg/m³, 24-hour average) to the list of significance levels, which already included a significant ambient concentration for TSP. In the October 5, 1989 proposal for PM–10 increments, EPA proposed to eliminate the requirements for ambient TSP monitoring data in conjunction with the replacement of the TSP increments. Accordingly, the significant ambient concentration for TSP was proposed to be deleted from the PSD regulations. Thus, with respect to PM, only PM–10 would be subject to the requirement for ambient monitoring data.

b. *Public Comments.* Only a few comments were received concerning this issue. Those who responded agreed that the ambient data requirements for TSP should be eliminated once EPA promulgates new PM–10 increments replacing the existing TSP increments. One commenter went a step further stating that EPA had overstepped the applicable regulations by continuing to require TSP monitoring data beyond the time when the PM–10 NAAQS were adopted. This commenter stated that "[m]onitoring is required only for pollutants for which there are NAAQS."

One commenter representing the mining industry claimed that "models and emission factors are not accurate enough to permit surface coal mines to demonstrate that short-term 24-hour increments will not be exceeded." This commenter thus recommended that, pending refinement of existing air quality dispersion models, the PSD regulations should allow surface coal mines to demonstrate compliance with short-term PM–10 increments via ambient monitoring data.

c. *Decision and Response to Comments.* Consistent with its proposed action, EPA is today deleting the significant ambient concentration for TSP from paragraph (i)(8)(i) in both the part 52 PSD regulations and the part 51 SIP requirements for PSD. The EPA will no longer require PSD applicants filing for a Federal PSD permit to submit preapplication monitoring data for TSP, nor will EPA require postconstruction TSP data. With the replacement of the TSP increments, EPA considers only PM–10 to be regulated with respect to ambient indicators for PM. Thus, only ambient PM–10 data will be required where applicable.

States will not be required to request ambient TSP data either. However, if a State wishes to continue requiring the submittal of such data, it has the authority to do so. Some States continue to define ambient air quality standards in terms of TSP (in addition to the national standards based on PM–10), and may elect to continue requiring the submittal and evaluation of ambient TSP data to determine compliance with such standards.

Concerning the comment that EPA incorrectly required the submittal of ambient TSP data after the date when the PM–10 NAAQS were promulgated, EPA wishes to point out that its policy has been to regard TSP as a noncriteria pollutant (with PM–10 being the criteria pollutant) with respect to PM for any area where the PM–10 NAAQS have been in effect. Under the PSD requirements, the submittal of ambient data for a noncriteria pollutant is discretionary on the part of the permit reviewing authority [§ 52.21(m)(1)(b)(ii)]. Only in cases where the State PSD program continued to implement the TSP NAAQS (pending adoption of the PM–10 NAAQS) was TSP regarded as the criteria pollutant and still subject to the PSD monitoring data requirements.

The commenter who alleged inaccuracies with a specific EPA model and PM emissions factors for determining surface coal mine compliance with the 24-hour increments focused on the use of the dispersion model, known as the Industrial Source Complex Model (ISC), with AP–42 emissions factors. Section 234 of the 1990 Amendments (104 Stat. 2399, 2530) provides that prior to use of the ISC model using AP–42 emissions factors to determine the effect on air quality of fugitive particulate emissions from surface coal mines, for purposes of new source review or for purposes of demonstrating compliance with the NAAQS applicable to periods of 24 hours or less, EPA is to assess the accuracy of such model and emissions factors. Section 234 further provides that, in the meantime, States may use alternative empirical based modeling approaches, based on guidance provided by EPA, to determine the effects on air quality of fugitive particulate emissions from surface coal mines.

The EPA is undertaking a joint study with the mining industry to determine the ability of EPA's ISC model using AP–42 emissions factors to accurately predict short term ambient concentrations of PM–10 from surface coal mining activities. Until EPA completes the study as called for under section 234, EPA intends to allow estimates of 24-hour increment impacts caused by fugitive emissions from surface coal mines to be made on a case-by-case basis with current EPA models.[22] If such estimates predict ambient violations of the 24-hour PM–10 increments, alternative methods, including empirical based modeling, may be applied on a case-by-case basis. Section 3.2 of EPA's Guideline on Air Quality Models (Revised), (EPA 450/2–78–027R, July 1986), sets out the procedures for case-by-case approval of non-guideline EPA models. These procedures should be observed in using any non-guideline model, including empirical based techniques, to determine the prospective impact on the 24-hour increments of fugitive particulate emissions from those new or modified surface coal mines subject to PSD.[23]

Any monitoring data which are used for purposes of demonstrating the ambient impacts of surface coal mining activities should be based on monitors which are operated in accordance with EPA regulations and guidelines, including requirements for quality assurance for air quality data as contained in Appendix B of 40 CFR part 58.

8. Area Source Impacts

a. *Background.* After the minor source baseline date has been established for a particular area, emissions changes occurring at area sources, including mobile sources, will affect the amount of available increments within that baseline area. Consequently, PSD applicants will be required to determine the extent to which PM–10 emissions increases or decreases from area sources have occurred in the area of the proposed new source or modification. In the proposal notice, EPA indicated that emissions from motor vehicles and residential wood combustion will have a greater impact on the PM–10 increments than such emissions had on the original TSP increments.

[22] Section 234 references the use of the ISC model with AP–42 emissions factors to "determine" the effect on air quality. This provision does not prohibit less than finally determinative uses.

[23] During this interim period States are not required to, but "may" use, alternative empirical based modeling approaches consistent with the guidance described above. States retain discretion to use or require reasonable assessment tools, so long as the minimum Federal requirements are satisfied [*Wisconsin Public Intervenor* v. *Mortier*, 111 S.Ct. 2476 (1991)].

b. *Public Comments.* One commenter expressed concern about the lack of EPA guidance related to the determination of area source impacts on the PM–10 increments. The commenter recommended that EPA issue such guidance prior to the effective date of the PM–10 increments.

c. *Decision and Response to Comments.* The kinds of area sources that will consume PM–10 increments are essentially the same sources that have been affecting the TSP increments. Since EPA's promulgation of PM–10 NAAQS in 1987, EPA has been reviewing the available PM emissions factors, including those for certain types of open area dust sources, and developing PM–10 emissions factors to enable States to review their PM emissions inventories and SIP's. Applicable guidance is contained in an EPA document entitled "Gap Filling PM–10 Emissions Factors for Selected Open Area Dust Sources" (February 1988, EPA–450/4–88–003). In addition, other PM–10 emissions factors for area sources can be found in EPA's "Compilation of Air Pollutant Emissions Factors, AP–42," (Supplement D, September 1991). Interested persons should contact EPA to determine whether other PM–10 emissions factors may be available for specific types of activities.

In addition to the development of specific PM–10 emissions factors, EPA is presently developing special guidance to assist in the calculation of increments consumption resulting from mobile source emissions. This guidance began with a focus on the impacts on the NO_2 increments, however, EPA intends to expand this effort to address the PM–10 increments as well. This and other forms of PSD increments guidance will continue to be prepared as needed.

E. Other Issues

1. TSP Area Designations

The replacement of the TSP increments with PM–10 increments which operate independently from the section 107 area designations for TSP will negate the need for the TSP designations to be retained any longer. In the proposal, EPA stated that it would automatically delete the TSP area designations from the listings under subpart C of 40 CFR part 81 as each State replaced the TSP increments with the new PM–10 increments. Specifically, EPA stated that the actual deletion of the TSP designations for each State would occur at the same time that EPA either (1) approves a State's revised PSD program containing the PM–10 increments, (2) promulgates the PM–10 increments into a State's SIP where the State chooses not to adopt the increments on their own, or (3) approves a State's request for delegation of PSD responsibility under § 52.21(u).

The EPA received no comments concerning this particular action. At the appropriate time, EPA intends to proceed with the elimination of the TSP area designations. Generally, the first TSP area designations to be deleted will be those in States where EPA has the legal responsibility for implementing the PSD program pursuant to § 52.21. In those cases, EPA will eliminate the TSP designations when the PM–10 increments become effective under § 52.21 on June 3, 1994. For those States with approved PSD programs, EPA will eliminate the TSP designations for a particular State at the same time that EPA approves the revision to that State's PSD rule, which should occur no later than July 3, 1995. If a State with an approved PSD program wishes to receive delegated authority as an interim measure to implement the PM–10 increments prior to the date when its own PSD rules are revised, EPA will delete the TSP areas for that State at the same time that it approves such delegation of authority. However, the date on which these events may occur cannot precede the effective date of the PM–10 increments in the PSD regulations under § 52.21.

2. Regulatory Impact Analysis (RIA)

The E.O. 12291 requires EPA to judge whether a proposed regulation is "major" and therefore subject to the requirement for a RIA. A regulation is defined as major if either (1) the net annualized cost of control (including capital charges) exceeds $100 million per year, or (2) firms affected by the regulation incur a significant (greater than 5 percent) increase in the price of goods. Using worst-case assumptions and conservative costing methods, EPA analyzed the effects of the proposed PM–10 increments and found that the total annualized fifth-year costs will be well under $100 million, and product price increases will be insignificant for any affected firm. Based on these findings, EPA concluded that the proposed regulations would not be considered major.

One commenter took issue with EPA's conclusion that the proposed increments do not constitute a major regulation. The commenter called EPA's determination "fundamentally flawed," claiming that it was based only on a "cursory analysis of 12 individual plants, and failed to extrapolate these results to industry as a whole."

The EPA disagrees with the commenter's claim that the analysis was flawed because it failed to consider "industry as a whole." The analysis performed by EPA considered only that portion of industry which was projected to be adversely affected by the proposed rule. The EPA is not obligated to consider control costs that would be required independently from the proposed regulatory requirements. Under the existing PSD regulations, each new or modified major stationary source is already required to apply the BACT for PM–10 emissions when they would be emitted in significant amounts. This regulation will generate costs only when the proposed new PM–10 emissions from a particular stationary source (after application of BACT) are predicted to cause a violation of the PM–10 increments, and the PM emissions increase did not cause a violation of the TSP increments. Therefore, in the analysis performed by EPA, it was only necessary to consider the additional control costs which could be incurred directly as a result of the new requirements.

As part of its cost analysis, EPA initially identified those sources in the NSR data base that demonstrated compliance with the TSP increments, but were estimated to have PM–10 air quality impacts exceeding the levels of the PM–10 increments. Next, based on the number of affected sources in each source category, EPA projected the number of new facilities within that source category that would potentially exceed the PM–10 increments in the fifth year (EPA typically uses a 5-year timeframe for cost estimates associated with the RIA). The estimated cost associated with applying the additional level of control to each such source was determined to arrive at the total costs attributable to the proposed PM–10 increments.

The predicted equipment costs and price increases resulting from the 1988 economic impact analysis fell considerably short of the critical values used to determine whether the rulemaking constitutes a major action. Nevertheless, because of the amount of time that has elapsed since the analysis was completed, EPA reexamined the original analysis to determine whether the assumptions made therein and the associated dollar values changed substantially over the period of time since the analysis was performed. Based on that reexamination, EPA estimates that the equipment costs in the report would increase by roughly 15–20 percent if they were updated to current dollars. Similarly, annual operating costs stated in the report could increase

by a similar amount. However, this level of increase would not alter the status of the rulemaking.

IV. Administrative Requirements

A. Reference Documents

1. Radian Corporation. Technical Report—Equivalency of Alternative PM–10 Increments. Prepared for U.S. EPA. Office of Air Quality Planning and Standards. Research Triangle Park, North Carolina. March 1988.

2. Radian Corporation. Cost and Economic Impact Assessment for PM–10 Increment Options. Prepared for U.S. EPA. Office of Air Quality Planning and Standards. Research Triangle Park, North Carolina. April 1988.

3. Shumaker, J. L., Radian Corporation (1988). Evaluation of Source Impacts Associated With PM–10 Increment Options. Memorandum to Daniel J. deRoeck. February 15, 1988.

4. Pandullo, R. F., Radian Corporation (1988). Protection Against Adverse Class I TSP Impacts Afforded by PM–10 Increments. Memorandum to Daniel J. deRoeck. September 28, 1988.

5. Frank, Neil H., U.S. EPA, Monitoring and Reports Branch. Difference Between Arithmetic Mean and Geometric Mean TSP. Memorandum to John Bachman and Henry Thomas. June 2, 1980.

6. Frank, Neil H., U.S. EPA, Data Analysis Section (1984). Update on the Difference Between Arithmetic and Geometric Means for TSP. Memorandum to John Bachman. September 1, 1983.

7. Tikvart, Joseph A., U.S. EPA, Source Receptor Analysis Branch (1989). Comparison of Model Estimates for Deterministic vs. Statistical Standards. Memorandum to Edward J. Lillis. April 4, 1989.

8. Radian Corporation. PM–10 Area Sources Paper. Prepared for U.S. EPA. Office of Air Quality Planning and Standards. Research Triangle Park, North Carolina. February 1988.

9. Vatavuk, William, U.S. EPA, Cost and Economic Impact Section (1983). Review of Cost and Economic Impact Assessment for PM–10 Increment Options. Memorandum to Daniel J. deRoeck. March 11, 1993.

10. Vatavuk, William, U.S. EPA. Follow-up to March 11, 1993 Memorandum to Daniel J. deRoeck. March 16, 1993.

B. (Executive Order 12291)

Under E.O. 12291, EPA must judge whether a regulation is a "major rule" and therefore subject to the requirement for preparation of a RIA. This ruling is not a major rule because it would result in none of the adverse economic effects set forth in section 1 of E.O. 12291 as grounds for finding a regulation to be major.

This regulation was submitted to the Office of Management and Budget (OMB) for review. Written comments from OMB to EPA and any EPA response are included in Docket A–88–19.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 35.01) Federal agencies must obtain OMB clearance for collection of information from ten or more non-Federal respondents. This rule does not contain any information collection requirements, and so does not require OMB clearance.

D. Economic Impact Assessment

Section 317 of the Act requires the Administrator to prepare an economic impact assessment for any regulations under part C of title I (relating to PSD of air quality). An economic impact assessment was prepared for the proposed PM–10 increments levels and also for other alternative levels. The requirements of this section were considered in the formulation of the proposed increments to ensure that they would represent the best system for preventing air quality deterioration, considering costs. The economic impact assessment is included in the docket.

E. Regulatory Flexibility Act Certification

Pursuant to the provisions of U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities (46 FR 8709). In accordance with the PSD requirements set forth under part C of the Act, the preconstruction review requirements of this rule apply only to major new and modified stationary sources of air pollution.

F. Effective Date

These rules are effective June 3, 1994.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 52

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

Dated: May 14, 1993.

Carol M. Browner,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

For the reasons set forth in the preamble, part 51, chapter 1, title 40 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 51.166, paragraphs (b)(3)(iv) and (i)(8)(i)(c), the tables in paragraph (c) and paragraph (p)(4) are revised; paragraph (f)(3) is removed and reserved; and paragraphs (b)(14)(iv), (b)(15)(iii), and (i)(12) are added to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(3) * * *

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM–10 emissions can be used to evaluate the net emissions increase for PM–10.

* * * * *

(14) * * *

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM–10 increments, except that the reviewing authority may rescind any such minor source baseline date where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM–10 emissions.

(15) * * *

(iii) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM–10 increments, except that such baseline area shall not remain in effect if the permit authority rescinds the corresponding minor source

baseline date in accordance with paragraph (b)(14)(iv) of this section.

* * * * *

(c) * * *

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I	
Particulate matter:	
PM–10, annual arithmetic mean	4
PM–10, 24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide: Annual arithmetic mean	2.5
Class II	
Particulate matter:	
PM–10, annual arithmetic mean	17
PM–10, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III	
Particulate matter:	
PM–10, annual arithmetic mean	34
PM–10, 24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide: Annual arithmetic mean	50

* * * * *

(f) * * *

(3) [Reserved]

* * * * *

(i) * * *

(8) * * *

(i) * * *

(c) Particulate matter—10 $\mu g/m^3$ of PM–10, 24-hour average.

* * * * *

(12) The plan may provide that the permitting requirements equivalent to those contained in paragraph (k)(2) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM–10 if (i) the owner or operator of the source or modification submitted an application for a permit under the applicable permit program approved under the Act before the provisions embodying the maximum allowable increases for PM–10 took effect as part of the plan, and (ii) the permitting authority subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements equivalent to paragraph (k)(2) shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

* * * * *

(p) * * *

(4) * * *

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
PM–10, annual arithmetic mean	17
PM–10, 24-hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide: Annual arithmetic mean	25

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

For the reasons set out in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

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

Authority: 42 U.S.C. 7401–7642 as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101–549, 104 Stat. 2399 (Nov. 15, 1990), unless otherwise noted.

2. In 52.21, paragraph (b)(3)(iv), the tables in paragraph (c) and paragraph (p)(5), and the third item in paragraph (i)(8)(i) are revised; paragraph (f) is removed and reserved; and paragraphs (b)(14)(iv), (b)(15)(iii), and (i)(13) are added to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(3) * * *

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxide, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM–10 emissions can be used to evaluate the net emissions increase for PM–10.

* * * * *

(14) * * *

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM–10 increments, except that the Administrator shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Administrator, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM–10 emissions.

(15) * * *

(iii) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM–10 increments, except that such baseline area shall not remain in effect if the Administrator rescinds the corresponding minor source baseline date in accordance with paragraph (b)(14)(iv) of this section.

* * * * *

(c) * * *

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I	
Particulate matter:	
PM–10, annual arithmetic mean	4
PM–10, 24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate matter:	
PM–10, annual arithmetic mean	17
PM–10, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III	
Particulate matter	
PM–10, annual arithmetic mean	34
PM–10, 24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40

Pollutant	Maximum allowable increase (micrograms per cubic meter)
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

* * * * *

(f) [Reserved]

* * * * *

(i) * * *

(8) * * *

(i) * * *

Particulate matter—10 $\mu g/m^3$ of PM–10, 24-hour average;

* * * * *

(13) The requirements in paragraph (k)(2) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM–10 if (i) the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM–10 took effect in an implementation plan to which this section applies, and (ii) the Administrator subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in paragraph (k)(2) shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

* * * * *

(p) * * *

(5) * * *

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
PM–10, annual arithmetic mean	17
PM–10, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

* * * * *

[FR Doc. 93–12372 Filed 6–2–93; 8:45 am]

BILLING CODE 6560–50–P

federal register

Thursday
June 3, 1993

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Special Federal Aviation Regulation No. 64; Special Flight Authorizations for Noise Restricted Aircraft; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27314, Amendment No. 91–232]

RIN 2120–AE 49

Special Federal Aviation Regulation No. 64; Special Flight Authorizations for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This final rule establishes a new Special Federal Aviation Regulation (SFAR) that will allow persons to bring a noise-restricted aircraft into the United States under certain conditions without requesting an exemption. The SFAR allows for the issuance of special flight authorizations for one-time flights of noise-restricted aircraft when they are entering the country to be noise retrofitted or sold for scrap. The SFAR is intended to reduce the paperwork burden on both applicants and the FAA, to reduce the processing time for routine actions, to implement certain provisions of the Airport Noise and Capacity Act of 1990, and to restore certain provisions of a similar SFAR that expired December 31, 1991.

DATES: Effective June 3, 1993. Comments must be received on or before October 1, 1993.

ADDRESSES: Send comments on this final rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 27314, 800 Independence Avenue SW., Washington, DC. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

Commenters who wish the FAA to acknowledge the receipt of their comments must submit with their comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27314." The postcard will be date-stamped by the FAA and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Ms. Laurette Fisher, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–3561.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or be calling (202) 267–3484. Requests should be identified by the docket number of this rule.

Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11–2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Section 91.805 of the Federal Aviation Regulations (FAR) prohibits any person from operating a civil subsonic turbojet airplane with a maximum weight of more than 75,000 pounds to or from an airport in the United States on or after January 1, 1985, unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels as contained in 14 CFR part 36. This restriction applies to U.S.-registered aircraft that have standard airworthiness certificates and foreign-registered aircraft that would be required to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States.

SFAR 47 (50 FR 7751) was effective on February 26, 1985, and permitted certain operations of noise-restricted aircraft without a formal grant of exemption under 14 CFR part 11. The Federal Aviation Administration (FAA) has determined that this process is cost-beneficial and time-efficient both to the government and affected aircraft operators. SFAR 47 was extended three times (51 FR 47219, December 31, 1986; 52 FR 35052, September 16, 1987; and 54 FR 52900, December 22, 1989).

The Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2157, 2158), provides for the operation in the United States of otherwise restricted Stage 2 aircraft to obtain modifications to meet Stage 3 noise levels. In its regulation codifying this provision of the legislation, the FAA stated that it would issue a SFAR to provide procedures for special flight authorizations to facilitate these operations.

This special flight authorization is available to any U.S.-owned Stage 2 airplane otherwise prohibited from operating into the contiguous United States by FAR § 91.855.

Maintenance Flights

Special flight authorizations for maintenance flights are obtained from FAA's Flight Standards Division and are not covered by this SFAR. Section 91.857(b) of the recently adopted noise regulations permits an operator of a Stage 2 airplane with a certificated weight of more than 75,000 pounds that was imported into a noncontiguous State, territory, or possession of the United States on or after November 5, 1990, to obtain a special flight authorization to operate that airplane into the contiguous United States for the purpose of maintenance. The maintenance flight must be a nonrevenue or "ferry" flight. Special flight authorizations for maintenance are provided for by § 91.857(b) itself and do not require a separate request under this SFAR.

Notwithstanding the exact language of the regulation, a special flight authorization for maintenance may also be requested under § 91.857 for Stage 2 airplanes with a certificated weight of more than 75,000 pounds that were purchased by a U.S. entity after November 5, 1990, but have not been operated into a noncontiguous state or territory.

Airplanes entering the United States for modifications to comply with a Stage 2 or Stage 3 noise level are not considered to be obtaining maintenance. Special flight authorizations for modification flights must be obtained pursuant to § 91.859 or this SFAR.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the reporting requirements associated with this rule are being submitted for approval to the Office of Management and Budget (OMB). Upon approval, the FAA will publish the assigned OMB Control number in the **Federal Register.**

Economic/Regulatory Impact Evaluation

This SFAR provides an alternative from the exemption process for certain oeprations, reducing the administrative costs to aircraft operators and to the FAA. While the operations are not without some noise costs, these costs can be characterized as minimal, since the number of operations at any one local airport are anticipated to be both infrequent and extremely low in number.

Environmental Analysis

The procedures implemented by the SFAR have been determined to not significantly affect the quality of the

human environment. Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact is being prepared and will be placed in the docket.

Federalism Implications

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

Need for Immediate Adoption

Since the expiration of SFAR 47, the FAA has received several requests for special flight authorizations that would have been covered by SFAR 47. Each of these applicants was instructed to file its request as a petition for exemption, and each expressed a desire to see SFAR 47 or some replacement institute as quickly as possible because of the length of time and paperwork required to process routine requests as exemptions under 14 CFR part 11.

The FAA stated its intention to replace SFAR 47 in its final rule codifying certain provisions of the Airport Noise and Capacity Act of 1990 (56 FR 48628, September 25, 1991). Section 9309 of the Act (49 U.S.C. App. 2158) includes a provision for allowing otherwise noise-restricted aircraft to enter the United States to obtain modification to meet Stage 3 noise levels. The FAA's experience with this type of action has shown that the most efficient means of granting this permission is by a special flight authorization requests through an SFAR. The only alternative is for an applicant to apply for an exemption under 14 CFR part 11, a process that involves considerably more administrative work for the agency and the petitioner, and the additional time associated with processing that paperwork. Accordingly, the FAA determined that this new SFAR, incorporating the applicable provisions of expired SFAR 47 and the new provisions of the 1990 Act, be developed.

The FAA has determined that prior notice and public comment on this SFAR is unnecessary and contrary to the public interest. The provisions relating to the application for a special flight authorization that were contained in previous SFAR as well known and well regarded by industry. The new SFAR does not change any of the familiar procedures; it expands the applicability of the previous SFAR to include those aircraft affected by the 1990 Act, and to facilitate the movement of airplanes necessitated by the transition to an all Stage 3 fleet, also required by the 1990 Act.

Although this SFAR is being adopted without prior notice and public comment, interested persons may submit comments in triplicate to the address listed under the **ADDRESSES** caption above. All comments will be available for examination in the Rules Docket. This SFAR may be amended in response to such comments.

Conclusion

For the reasons stated above, I certify that this amendment: (1) Is not a major rule under Executive Order 12291; (2) is considered a significant rule, but does not require a Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this SFAR will have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States, since all affected operators are treated equally by this regulation.

The Final Rule

Accordingly, the FAA amends 14 CFR part 91 of the Federal Aviation Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. App. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, 2121 through 2125, 2157 and 2158, Articles 12, 28, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*: E.O. 11514; 49 U.S.C. 106(g).

2. Part 19 is amended by adding the following Special Federal Aviation Regulation:

SFAR No. 64—Special Flight Authorizations for Noise Restricted Aircraft

Contrary provisions of part 91, subpart I notwithstanding, an operator of a civil subsonic turbojet airplane with maximum weight of more than 75,000 pounds may conduct an approved limited nonrevenue operation of that airplane to or from a U.S. airport when such operation has been authorized by the FAA under paragraph 3 of this SFAR; and

(a) The operator complies with all conditions and limitations established by this SFAR and the authorization;

(b) A copy of the authorization is carried aboard the airplane during all operations to or from a U.S. airport;

(c) The airplane carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that country; and

(d) Whenever the application is for operation to a location at which FAA-approved noise abatement retrofit equipment is to be installed to make the aircraft comply with Stage 2 or Stage 3 noise levels as defined in part 36 of this chapter, the applicant must have a valid contract for such equipment.

3. Authorization for the operation of a Stage 1 or Stage 2 civil turbojet airplane to or from a U.S. airport may be issued by the FAA for the following purposes:

Stage 1 Airplanes

(a) For a Stage 1 airplane owned by a U.S. owner/applicant on and since November 4, 1990:

(i) Obtaining modifications necessary to meet Stage 2 noise levels as defined in part 36 of this chapter;

(ii) Obtaining modifications necessary to meet Stage 3 noise levels as defined in part 36 of this chapter; or

(iii) Scrapping the airplane, as deemed necessary by the FAA, to obtain spare parts to support U.S. programs for the national defense or safety.

(b) For a Stage 1 airplane owned by a non-U.S. owner/applicant:

(i) Obtaining modifications necessary to meet Stage 2 noise levels as defined in part 36 of this chapter;

(ii) Obtaining modifications necessary to meet Stage 3 noise levels as defined in part 36 of this chapter; or

(iii) Scrapping the airplane, as deemed necessary by the FAA, to obtain spare parts to support U.S. programs for the national defense or safety.

(c) For a Stage 1 airplane purchased by a U.S. owner/applicant on or after November 5, 1990:

(i) Obtaining modifications necessary to meet Stage 2 noise levels as defined in part 36 of this chapter, provided that the airplane does not subsequently operate in the contiguous United States;

(ii) Obtaining modifications necessary to meet Stage 3 noise levels as defined in part 36 of this chapter; or

(iii) Scrapping the airplane, as deemed necessary by the FAA, to obtain

spare parts to support U.S. programs for the national defense or safety.

Stage 2 Airplanes

(d) For a Stage 2 airplane purchased by a U.S. owner/applicant on or after November 5, 1990, obtaining modification to meet Stage 3 noise levels as defined in part 36 of this chapter.

(e) For Stage 2 airplanes that were U.S.-owned on and since November 4, 1990, and that have been removed from service to achieve compliance with § 91.865 or § 91.867 of this part:

(i) Obtaining modifications to meet Stage 3 noise levels as defined in part 36 of this chapter;

(ii) Prior to January 1, 2000, exporting an airplane, including flying the airplane to or from any airport in the contiguous United States necessary for the exportation of that airplane; or

(iii) Prior to January 1, 2000, operating the airplane as deemed necessary by the FAA for the sale, lease, storage, or scrapping of the airplane.

4. An application for a special flight authorization under this Special Federal Aviation Regulation shall be submitted to the FAA, Director of the Office of Environment and Energy, received no less than five days prior to the requested flight, and include the following:

(a) The applicant's name and telephone number;

(b) The name of the airplane operator;

(c) The make, model, registration number, and serial number of the airplane;

(d) The reason why such authorization is necessary;

(e) The purpose of the flight;

(f) Each U.S. airport at which the flight will be operated and the number of takeoffs and landings at each;

(g) The approximate dates of the flights;

(h) The number of people on board the airplane and the function of each person;

(i) Whether a special flight permit under FAR part 21.199 or a special flight authorization under FAR part 91.715 is required for the flight;

(j) A copy of the contract for noise abatement retrofit equipment, if appropriate; and

(k) Any other information or documentation requested by the Director, Office of Environment and Energy, as necessary to determine whether the application should be approved.

5. The Special Federal Aviation Regulation terminates on December 31, 1999, unless sooner rescinded or superseded.

Issued in Washington, DC, on May 25, 1993.

Joseph M. Del Balzo,

Acting Administrator.

[FR Doc. 93–13045 Filed 6–2–93; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
June 3, 1993

Part VII

Department of the Interior

Bureau of Indian Affairs

Wind River Irrigation Project O&M Rate Increase; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Wind River Irrigation Project O&M Rate Increase

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice

SUMMARY: The Bureau of Indian Affairs published, in the **Federal Register** on Wednesday, February 10, 1993, (FR Doc 93–3174), a proposal to increase the Operation and Maintenance Assessment Rate from $10.90 to $12.00 per assessable acre for calendar year 1993. For logistical reasons, the Operation and Maintenance Assessment Rate Increase will not be implemented in calendar year 1993. By this Notice, the Bureau is proposing the Operation and Maintenance Rate Increase to $12.00 per assessable acre be implemented in calendar year 1994. Because the proposed implementation date is being changed from calendar year 1993 to 1994, the Billings Area Director is again soliciting public comments on the proposed action. The Superintendent of the Wind River Agency will announce a public meeting, via the local news media, if the comments received warrant such action.

DATES: Comments must be received at the address below within 30 days after this notice is published in the **Federal Register**.

ADDRESSES: All comments concerning the proposed Operation and Maintenance Assessment Rate for the Wind River Irrigation Project must be in writing and addressed to the Superintendent, Wind River Agency, Bureau of Indian Affairs, Fort Washakie, Wyoming 82514.

FOR FURTHER INFORMATION CONTACT: Area Director, Billings Area Office, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101–1397, telephone number (406) 657–6315.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Assistant Secretary of Indian Affairs by 5 U.S.C. 301 and the Act of August 15, 1914 (38 Stat. 583, 25 U.S.C. 385).

This Notice of Operation and Maintenance Rates and related information is published under the authority delegated to the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order Number 3150, Section 7b, and in accordance with the Code of Federal Regulations, title 25, § 171.1 which authorizes the Area Director to fix and announce irrigation operation and maintenance assessment rates for the Wind River Irrigation Project for calendar year 1994 and subsequent years.

Dated: May 24, 1993.

Woodrow W. Hopper, Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–12980 Filed 6–2–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
June 3, 1993

Part VIII

Environmental Protection Agency

Pesticides in Ground Water Database; Notice of Availability

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00357; FRL–4587–8]

Pesticides in Ground Water Database; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of The Pesticides in Ground Water Database a Compilation of Monitoring Studies: 1971–1991, (Running title: 1992 Pesticides in Ground Water Database Report). The report presents summary results on pesticide monitoring of ground water from 1971 to 1991. It was compiled from ground water monitoring projects performed primarily by Federal agencies, State agencies, and research institutions. The data are well and sample specific. The report is divided into a National Summary volume and 10 EPA Regional volumes. Information contained in the report is presented as text, maps, graphs, and tables on a national, EPA regional and State/county scale of resolution. This report supersedes the Pesticides In Ground Water Database: 1988 Interim Report.

DATES: The report is available as of June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Constance A. Hoheisel, Chief, Pesticide Monitoring Program Section, Office of Pesticide Programs (H7507C), Environmental Protection Agency, 401 M St., Washington, DC 20460. Telephone: 703–305–5455.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with The 1992 Pesticides In Ground Water Database FYI sheet and Question and Answer sheet are available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202–512–1387 or call 202–512–1530 for disks or paper copies. This document is available in Postscript, Wordperfect and ASCII. The 1992 Pesticides In Ground Water Database FYI sheet and Question and Answer sheet are available in Wordperfect and ASCII.

I. Introduction

The 1992 Pesticides in Ground Water Database Report was created to provide a more complete picture of ground-water monitoring for pesticides in the United States. The report is a summary and analysis of the data that the Office of Pesticide Programs currently has available, both computerized and in hardcopy, in the Pesticides in Ground Water Database (PGWDB). The report consists of data from 153 ground-water monitoring projects located in 45 States. Information for the report was solicited from State environmental and/or agricultural agencies, other Federal agencies, and research institutions. The report does not contain data from the National Survey of Pesticides in Drinking Water Wells (NPS).

The report is divided into a National Summary volume and 10 EPA Regional volumes. In the National Summary volume, pesticide and well data are presented by State. In the regional volumes, pesticide and well data are presented by State/county.

II. Ordering Information

The Pesticides In Ground Water Database; A Compilation of Monitoring Studies: 1971–1991; National Summary, may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Telephone: 202–783–3238. The order number is 055–000–00413–7; the price $13.00.

The National Summary volume, along with each of the regional volumes, may also be purchased from NTIS. They are available in both paper copy (pc) and microfiche (mf). Please specify the format when ordering. Contact: Order Desk, National Technical Information Center (NTIS), 5285 Port Royal Road, Springfield, VA 22161, Telephone: 703–487–4650 or 800–557–NTIS.

Volume	NTIS Order Number	Price (pc)	Price (mf)
National Summary	PB93–163715	$ 36.50	$ 17.50
Region 1	PB93–163723	27.00	12.50
Region 2	PB93–163731	27.00	12.50
Region 3	PB93–163749	27.00	12.50
Region 4	PB93–163756	112.00	50.00
Region 5	PB93–163764	61.00	19.50
Region 6	PB93–163772	27.00	12.50
Region 7	PB93–163780	52.00	19.50
Region 8	PB93–163798	27.00	12.50
Region 9	PB93–163806	61.00	19.50
Region 10	PB93–163814	19.50	12.50

Dated: May 24, 1993.

Daniel Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–13061 Filed 6–2–93; 8:45 am]

BILLING CODE 6560–50–F

Reader Aids

Federal Register

Vol. 58, No. 105

Thursday, June 3, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

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

FEDERAL REGISTER PAGES AND DATES, JUNE

31147–31330.....1
31331–31460.....2
31461–31646.....3

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6566.....31325
Executive Orders:
10582 (See DOL notice of June 1).....31220
12073 (See DOL notice of June 1).....31220
12850.....31327
Administrative Orders:
Presidential Determinations:
No. 92–23 of May 28, 1993.....31329
No. 93–21 of May 12, 1993.....31461
No. 93–22 of May 19, 1993.....31463

5 CFR

1201.....31234
1633.....31331

7 CFR

905.....31465

8 CFR

103.....31147

10 CFR

26.....31467
70.....31467
73.....31467
Proposed Rules:
2.....31478
72.....31478

12 CFR

327.....31150
363.....31332

14 CFR

39.....31159, 31160, 31342
91.....31640
Proposed Rules:
39.....31347, 31348, 31350, 31352, 31354, 31356, 31481
71.....31483, 31484, 31485, 31486

17 CFR

1.....31162
156.....31167

19 CFR

Proposed Rules:
151.....31487
152.....31487

20 CFR

366.....31343
626.....31471
627.....31471
628.....31471
629.....31471
630.....31471
631.....31471
637.....31471

21 CFR

310.....31236
1301.....31171
1304.....31171
Proposed Rules:
1301.....31180

22 CFR

Proposed Rules:
308.....31181

26 CFR

301.....31343

33 CFR

117.....31473
165.....31473
Proposed Rules:
100.....31488

36 CFR

242.....31175, 31252

39 CFR

111.....31177

40 CFR

51.....31622
52.....31622
131.....31177
271.....31344, 31474
Proposed Rules:
51.....31358

43 CFR

Public Land Orders:
6975.....31475
6976.....31475

47 CFR

73.....31178
90.....31345, 31476, 31477
Proposed Rules:
Ch. I.....31182
2.....31183
15.....31183
22.....31183
73.....31183, 31184
80.....31185
87.....31185
99.....31183

49 CFR

Proposed Rules:
1312.....31490

1314.....31490

50 CFR

100.....31175, 31252
625.....31234
663.....31179, 31345

Proposed Rules:

20.....31244
21.....31247
216.....31186
227.....31490

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List May 28, 1993

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

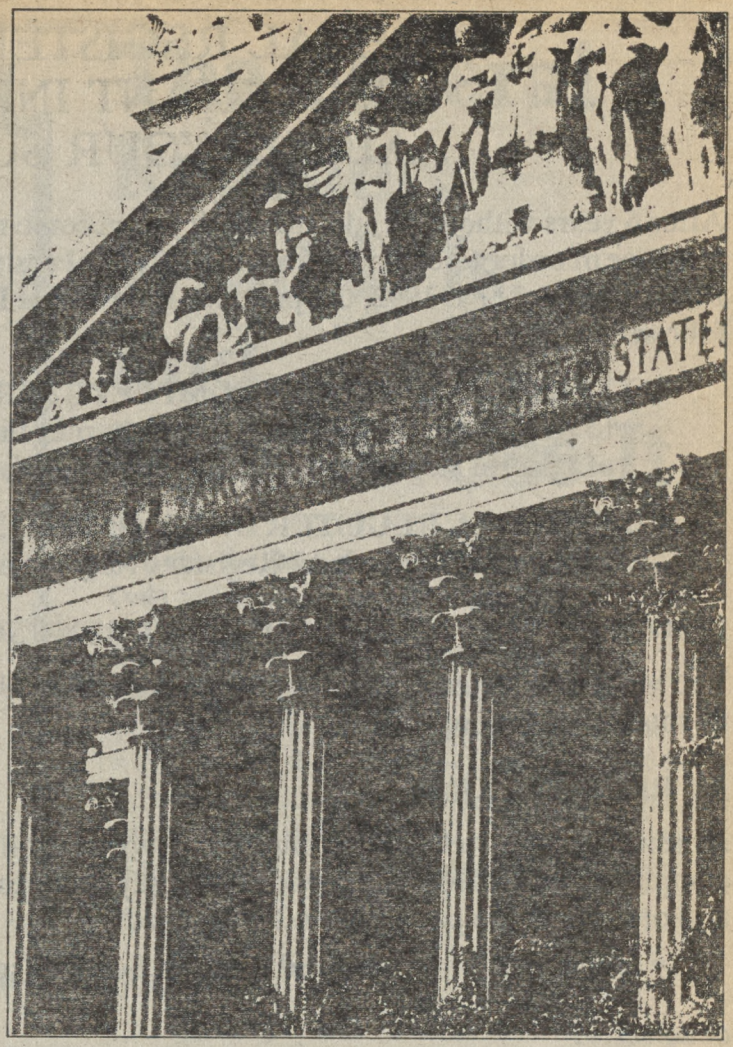
LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $21.00 per year

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $19.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*5351

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

☐ **YES,** please send me the following indicated subscriptions:

☐ LSA • List of CFR Sections Affected—one year as issued—$21.00 (LCS)

☐ Federal Register Index—one year as issued—$19.00 (FRSU)

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev. 10/92)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371

FEDERAL REGISTER SUBSCRIBERS: IMPORTANT INFORMATION ABOUT YOUR SUBSCRIPTION

After 6 years without an adjustment, it has become necessary to increase the price of the **Federal Register** in order to begin recovering the actual costs of providing this subscription service. Effective October 1, 1992, the price for the **Federal Register** will increase and be offered as follows:

(1) FEDERAL REGISTER COMPLETE SERVICE—Each business day you can continue to receive the daily **Federal Register**, plus the monthly **Federal Register Index** and **Code of Federal Regulations List of Sections Affected (LSA)**, all for **$415.00** per year.

(2) FEDERAL REGISTER DAILY ONLY SERVICE—With this subscription service, you will receive the **Federal Register** every business day for **$375.00** per year.

HOW WILL THIS AFFECT YOUR CURRENT SUBSCRIPTION?

You will receive your current complete **Federal Register** service for the length of time remaining in your subscription.

AT RENEWAL TIME

At renewal time, to keep this important subscription coming—you can continue to receive the complete **Federal Register** service by simply renewing for the entire package, or you can select and order only the parts that suit your needs:

- renew your entire **Federal Register Service** (complete service)

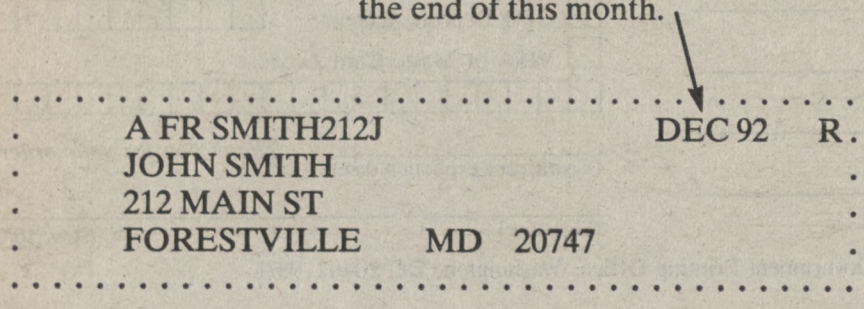
or select. . .

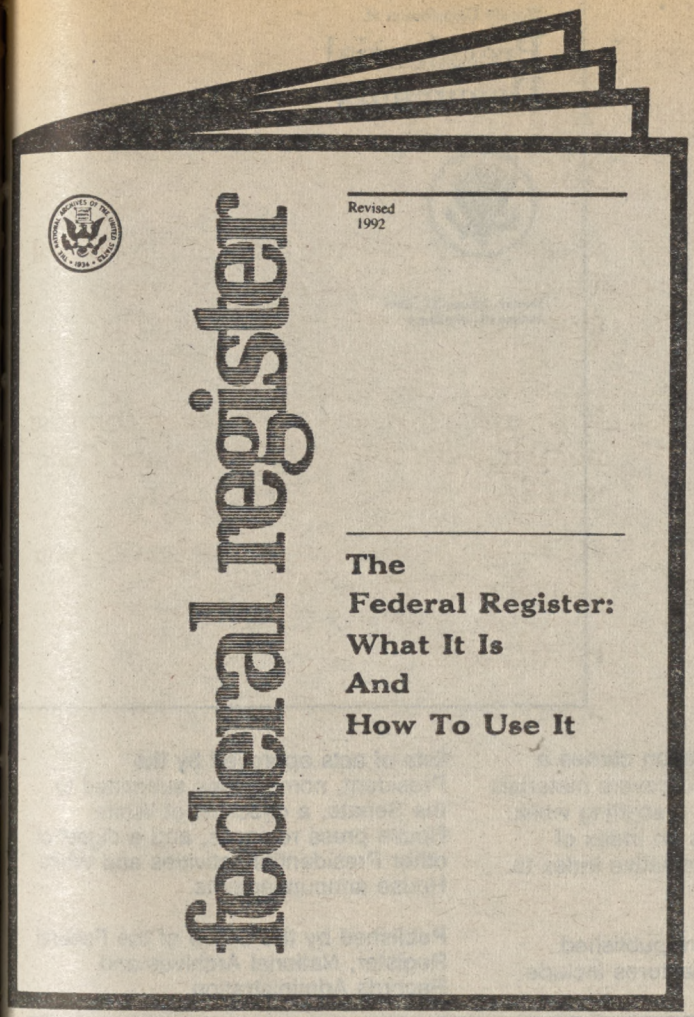
- the daily only **Federal Register** (basic service)
- and complement the basic service with either of the following supplements: the monthly **Federal Register Index** or the monthly **LSA**

When your current subscription expires, you will receive a renewal notice to continue the complete **Federal Register** service. At that time, you will also receive an order form for the daily **Federal Register** basic service, the **Federal Register Index**, and the **LSA**.

To know when to expect the renewal notice, check the top line of your subscription mailing label for the month and year of expiration as shown in this sample:

A renewal notice will be sent approximately 90 days before the end of this month.





Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
*6173

Charge your order. It's Easy!

MasterCard VISA

To fax your orders (202)-512-2250

☐ **YES**, please send me the following:

_____ copies of **The Federal Register-What it is and How To Use It**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

The authentic text behind the news . . .

The Weekly Compilation of Presidential Documents

Weekly Compilation of
Presidential Documents

Monday, January 23, 1989
Volume 25—Number 4

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*6466

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $58.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev. 1/93)

4. Mail To: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954



Printed on recycled paper