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WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC
(two briefings)

WHEN: July 15 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Contents

Federal Register

Vol. 58, No. 116

Friday, June 18, 1993

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
ATSDR-Community Public Health Assessment Workshop, 33634

Agriculture Department
See Federal Crop Insurance Corporation
See Forest Service

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
Prevention of HIV Infection Advisory Committee, 33634

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Runaway and homeless youth program, 33633

Commerce Department
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 33621, 33622

Defense Department
See Navy Department

Education Department
NOTICES
Agency information collection activities under OMB review, 33623

Employment and Training Administration
NOTICES
Adjustment assistance:
Chevron U.S.A. Production Co., 33671
Eddy Potash et al., 33672

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 33672

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Natural gas exportation and importation:
Inland Natural Gas Marketing Ltd., 33628

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Paraquat, 33554
PROPOSED RULES
Air programs:
Outer Continental Shelf regulations, 33589
Air quality implementation plans; approval and promulgation; various States:
Illinois, 33578
Clean Air Act:
Architectural and Industrial Maintenance Coatings Negotiated Rulemaking Advisory Committee; meetings, 33578
NOTICES
Agency information collection activities under OMB review, 33628, 33629
Confidential business information and data transfer to contractors, 33629
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 33630
Weekly receipts, 33630
Meetings:
Science Advisory Board, 33631
Pesticide, food, and feed additive petitions:
Rhone Poulenc Ag. Co., 33631

Export Administration Bureau
RULES
Export licensing:
Metric system conversion, 33509

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 33574
Short Brothers, plc, 33576

Federal Communications Commission
RULES
Television broadcasting:
Cable television systems—
Regulated cable services; rate freeze, 33560

Federal Crop Insurance Corporation
RULES
Crop insurance endorsements, etc.:
Forage production, etc., 33507
Rice, 33506

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Iowa et al., 33555
Nebraska et al., 33556
New York et al., 33558

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Potomac Electric Power Co. et al., 33624
Applications, hearings, determinations, etc.:
Arkla Energy Resources, 33625
Dow Intrastate Gas Co., 33625
Gas Research Institute, 33626
Iroquois Gas Transmission System, L.P., 33626
Louisiana State Gas Corp., 33626
Northern Illinois Gas Co., 33627
Questar Pipeline Co., 33627
Transwestern Pipeline Co., 33627
Williston Basin Interstate Pipeline Co., 33628

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Honolulu, HI, 33686

Federal Maritime Commission
NOTICES
Agreements filed, etc., 33631
Casualty and nonperformance certificates:
Princess Cruises, Inc., et al., 33632
Freight forwarder licenses:
Cargonauts, Inc., et al., 33632
Investigations, hearings, petitions, etc.:
Paramount Tariff Service Ltd., 33632

Federal Railroad Administration
PROPOSED RULES
Railroad police officers, 33593
Railroad safety enforcement procedures:
Remedial actions reporting, 33595

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 33688

Fish and Wildlife Service
RULES
Endangered and threatened species:
Tumamoc globeberry, 33562
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc., 33606

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Dietary supplement regulation, 33690
Food labeling—
Dietary supplements; health claims requirements, 33700
Dietary supplements of vitamins, minerals, herbs, etc.; nutrient content claim requirements, 33731
Dietary supplements of vitamins, minerals, herbs, etc.; nutrition labeling, 33715
NOTICES
Animal drugs, feeds, and related products:
Export applications—
Estradiol benzoate injection, 33636
Meetings:
Advisory committees, panels, etc., 33634

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Illinois—
Maytag Corp.; refrigerator/freezer manufacturing plant, 33609
Kansas—
Sanofi Winthrop L.P.; pharmaceutical plant, 33609

Forest Service
NOTICES
Environmental statements; availability, etc.:
Grand Mesa, Uncompahgre, and Gunnison National Forests, CO, 33608

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Public Health Service
See Social Security Administration

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 33624

Housing and Urban Development Department
NOTICES
Environmental statements; availability, etc.:
Oakland, CA, 33639
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 33640

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Arbitrage and related restrictions—
Tax-exempt bonds, 33510

International Trade Administration
NOTICES
Antidumping:
64K dynamic random access memory components from Japan, 33619
Barium carbonate from Germany, 33610
Brass sheet and strip from—
Canada, 33610
Carbon steel plate from—
Taiwan, 33618
Fresh cut flowers from—
Canada, 33616
Large power transformers from Italy, 33617
Nitrile rubber from Japan, 33618
Nitromethane from China, 33617
Oil country tubular goods from Taiwan, 33616
Stainless steel plate from Sweden, 33619
Sugar from—
Belgium, 33620

France, 33620
Germany, 33620

Labor Department
See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Wyoming, 33669
Survey plat filings:
Oregon and Washington, 33670

National Aeronautics and Space Administration
NOTICES
Meetings:
Wage Committee, 33673

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic swordfish, 33568
Tuna, South Pacific fisheries, 33565
PROPOSED RULES
Endangered and threatened species:
Central California coho salmon; status review, 33605
NOTICES
Permits:
Marine mammals, 33621

National Science Foundation
NOTICES
Privacy Act:
Systems of records, 33673

Navy Department
NOTICES
Environmental statements; availability, etc.:
Marine Corps Base, Camp Lejeune, NC; wastewater treatment system upgrade, 33622

Nuclear Regulatory Commission
PROPOSED RULES
Radiation protection standards:
NRC-licensed facilities; radiological criteria for decommissioning; generic environmental impact statement, 33570
NOTICES
Environmental statements; availability, etc.:
Bingham Engineering, 33675
Tennessee Valley Authority, 33676
Regulatory guides; issuance, availability, and withdrawal, 33675

Personnel Management Office
RULES
Allowances and differentials:
Cost-of-living allowances and post differentials (nonforeign areas), 33501
Pay Administration:
Payments during evacuations caused by natural disasters, 33501
Pay under General Schedule:
Metropolitan area definition; changes, 33497
Prevailing rate systems, 33499

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 33688

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
National prevention education program, 33637
Meetings:
National Vaccine Advisory Committee, 33639

Resolution Trust Corporation
NOTICES
Coastal Barrier Improvement Act; property availability:
Moon River, FL, 33677
Mountain Lakes Estates, NJ, 33678
Tract 17413-4 and Parcel 14 of PM 23910, Riverside County, CA, 33678

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., et al., 33679
Midwest Stock Exchange, Inc., 33681
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 33684
Applications, hearings, determinations, etc.:
Beverage Group Acquisition Corp. et al., 33685

Small Business Administration
NOTICES
Disaster loan areas:
Oklahoma, 33685
Texas, 33685
License surrenders:
Walnut Street Capital Co., 33685

Social Security Administration
NOTICES
Agency information collection activities under OMB review, 33636

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Montana, 33553
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 33578
NOTICES
Agency information collection activities under OMB review, 33671

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 33686

Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 33686

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 33686

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Joan Miro, 33687

Separate Parts In This Issue

Part II
Department of Health and Human Services, Food and Drug Administration, 33690

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.

5 CFR
531.....33497
532 (2 documents).....33499
550 (2 documents).....33497, 33501
591.....33501

7 CFR
401 (2 documents).....33506, 33507
406.....33507
415.....33507
422.....33507

10 CFR
Proposed Rules:
20.....33570

14 CFR
Proposed Rules:
39 (2 documents).....33574, 33576

15 CFR
776.....33509
785.....33509
786.....33509
799.....33509

21 CFR
Proposed Rules:
Ch. I.....33690
101 (3 documents).....33700, 33715, 33731

26 CFR
1.....33510
6a.....33510
602.....33510

30 CFR
926.....33553
Proposed Rules:
920.....33578

40 CFR
180.....33554
Proposed Rules:
Ch. I.....33578
52.....33578
55.....33589

44 CFR
64 (3 documents).....33555, 33556, 33558

47 CFR
0.....33560
76.....33560

49 CFR
Proposed Rules:
207.....33593
209.....33595

50 CFR
17.....33562
204.....33565
282.....33565
630.....33568
Proposed Rules:
17.....33606
227.....33605

Rules and Regulations

Federal Register
Vol. 58, No. 116
Friday, June 18, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 550

RIN 3206–AF49

Changes in Metropolitan Area Definitions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM), in conformance with OMB Bulletin No. 93–05 of December 28, 1992, is issuing final regulations to (1) amend the definition of "Interim geographic adjustment area" for the purpose of interim geographic adjustments under section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), and (2) amend the definition of "Special pay adjustment area" for the purpose of special pay adjustments for law enforcement officers under section 404 of FEPCA. These regulations also correct an unintended limitation on the crediting of nonappropriated fund service for severance pay purposes.

EFFECTIVE DATES: The amendments to 5 CFR part 531 are effective on the first day of the first pay period beginning on or after December 31, 1992. The amendment to 5 CFR part 550 is effective on January 1, 1987.

FOR FURTHER INFORMATION CONTACT: James Weddel, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On December 28, 1992, the Office of Management and Budget (OMB) published new metropolitan area definitions in OMB Bulletin No. 93–05. The new definitions changed the titles and geographic coverage of some metropolitan areas, effective December 31, 1992. These changes affected the entitlement of certain Federal employees to the payment of interim geographic adjustments (IGA's) under section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) and special pay adjustments for law enforcement officers under section 404 of FEPCA.

The title and geographic coverage of the San Francisco Consolidated Metropolitan Statistical Area (CMSA) and the San Diego Metropolitan Statistical Area (MSA) have not been changed. Although the title of the Los Angeles CMSA has been changed to the Los Angeles-Riverside-Orange County, CA CMSA, the geographic coverage has not been changed. Changes in metropolitan area definitions that affect entitlement to IGA's and special pay adjustments for law enforcement officers are summarized below.

Both the title and geographic coverage of the New York CMSA have been changed. The new title of this area is the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA. Counties and towns that have been added to this area are:

- In New York State—Dutchess County;
- In New Jersey—Mercer and Warren Counties (Mercer County previously was part of the Philadelphia CMSA);
- In Connecticut—(a) in Litchfield County, the town of Washington; (b) in Middlesex County, the towns of Clinton and Killingworth; and (c) in New Haven County, the towns of Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, North Branford, North Haven, Orange, Southbury, Wallingford, and Woodbridge, and the cities of Meriden, New Haven, and West Haven; and
- In Pennsylvania—Pike County.

It should be noted that OPM had previously exercised its authority under section 404(b) of FEPCA, as amended by the Technical and Miscellaneous Civil Service Amendments Act of 1992 (Pub. L. 102–378, October 2, 1992), to extend the payment of special pay adjustments for law enforcement officers to individuals meeting the definition of "law enforcement officer" in 5 U.S.C. 5541(3) whose duty stations are in New Haven County, Connecticut, effective on the first day of the first pay period beginning on or after December 18, 1992.

Both the title and geographic coverage of the Boston CMSA have been changed. The new title of this area is the Boston-Brockton-Nashua, MA–NH–ME–CT CMSA. Towns and cities that have been added to this area are:

- In Massachusetts—(a) In Bristol County, the towns of Acushnet, Berkeley, Dartmouth, Dighton, Fairhaven, and Freetown, and the cities of New Bedford and Taunton; (b) in Hampden County, the town of Holland; (c) in Middlesex County, the town of Ashby; (d) in Norfolk County, the town of Plainville; (e) in Plymouth County, the towns of Marion, Mattapoisett, Rochester, and Wareham; and (f) in Worcester County, the towns of Ashburnham, Auburn, Barre, Blackstone, Boylston, Brookfield, Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton, Holden, Leicester, Lunenburg, Millbury, Millville, Northboro, Northbridge, North Brookfield, Oakham, Oxford, Paxton, Princeton, Rutland, Shrewsbury, Southbridge, Spencer, Sterling, Sturbridge, Sutton, Templeton, Uxbridge, Webster, Westboro, West Boylston, West Brookfield, Westminster, and Winchendon, and the cities of Fitchburg, Gardner, Leominster, and Worcester;
- In New Hampshire—(a) in Hillsborough County, the towns of Bedford, Goffstown, Greenville, Mason, New Ipswich, and Weare, and the city of Manchester; (b) in Merrimack County, the towns of Allenstown and Hooksett; (c) in Rockingham County, the towns of Auburn, Candia, Chester, Epping, Exeter, Fremont, Greenland, Hampton, Hampton Falls, Kensington, New Castle, Newfields, Newington, Newmarket, North Hampton, Raymond, Rye, South Hampton, and Stratham, and the city of Portsmouth; and (d) in Strafford County, the towns of Barrington, Durham, Farmington, Lee, Madbury, Milton, and Rollinsford, and the cities of Dover, Rochester, and Somersworth;
- In Maine—in York County, the towns of Berwick, Eliot, Kittery, South Berwick, and York; and
- In Connecticut—in Windham County, the town of Thompson.

Both the title and the geographic coverage of the Chicago CMSA have been changed. The new title of this area is the Chicago-Gary-Kenosha, IL–IN–WI CMSA. DeKalb and Kankakee Counties in Illinois have been added to the Chicago CMSA.

Both the title and the geographic coverage of the Philadelphia CMSA

have been changed. The new title of this area is the Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA. Atlantic and Cape May Counties in New Jersey have been added to the Philadelphia CMSA. In addition, Mercer County, New Jersey, has been moved from the Philadelphia CMSA to the New York CMSA.

Both the title and the geographic coverage of the Washington, DC–MD–VA MSA have been changed. The new title of this area is the Washington, DC–MD–VA–WV Primary Metropolitan Statistical Area (PMSA). Counties and a city that have been added to this area are:

- In Virginia—the counties of Clarke, Culpeper, Fauquier, King George, Spotsylvania, and Warren, and the city of Fredericksburg; and
- In West Virginia—Berkeley and Jefferson Counties.

Accordingly, the definition of the term "Interim geographic adjustment area" has been revised in OPM regulations on IGA's by deleting the previously established titles of the metropolitan areas whose titles have changed and inserting the new titles established by OMB Bulletin No. 93–05. (See the revision of 5 CFR 531.101, below.) Also, the definition of the term "Special pay adjustment area," and a related section that includes a list of the covered areas, have been revised in OPM regulations on special pay adjustments for law enforcement officers by deleting the previously established titles of the metropolitan areas whose titles have changed and inserting the new titles established by OMB Bulletin No. 93–05. (See the revisions of 5 CFR 531.301 and 5 CFR 531.302(a), below.) Finally, a section of OPM regulations that provides requirements for establishing the effective date of an employee's entitlement to a special pay adjustment for law enforcement officers due to a change in the geographic area covered by a metropolitan area has been revised by adding that the requirements apply to changes in the geographic coverage of PMSA's. The current regulation refers only to CMSA's and MSA's. (See the revision of 5 CFR 531.304(g), below.)

None of the changes in metropolitan area definitions resulted in a loss or reduction of entitlement to interim geographic adjustments or special pay adjustments for law enforcement officers. The amendments to 5 CFR part 531 are being made effective on the first day of the first pay period beginning on or after December 31, 1992, because the revised names of the CMSA's, MSA's, and PMSA's cited in the regulations were made effective by OMB on December 31, 1992.

In addition, OPM is making a technical change in 5 CFR 550.708 at the request of an agency. This change corrects an unintended effect of the final regulations implementing the Portability of Benefits for Nonappropriated Fund Employees Act of 1990 (Pub. L. 101–508, November 5, 1990). Under the current regulations, the service of a nonappropriated fund employee of the Department of Defense or the Coast Guard may be credited for severance pay purposes under title 5, United States Code, when the employee moves to a General Schedule position in the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days. An agency has identified additional categories of nonappropriated fund employees who may be moved to appropriated fund positions and, therefore, has requested that OPM provide a more generic description of the types of positions to which a former nonappropriated fund employee may move and receive credit for former nonappropriated fund service for severance pay purposes. This change will be retroactive to January 1, 1987, the effective date of the regulations implementing the Portability of Benefits for Nonappropriated Fund-Employees Act of 1990.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making these rules effective in less than 30 days. The amendments to 5 CFR part 531 are being made effective on the first day of the first pay period beginning on or after December 31, 1992, because the names and definitions of certain Consolidated Metropolitan Statistical Areas (CMSA's), Metropolitan Statistical Areas (MSA's), and Primary Metropolitan Statistical Areas (PMSA's) cited in the regulations have been changed by the Office of Management and Budget, effective on December 31, 1992. OPM regulations specify that in the event of a change in the geographic area covered by a metropolitan area described in the regulations on IGA's or special pay adjustments for law enforcement officers, the effective date of a change in an employee's entitlement to an IGA or a special law enforcement adjusted rate of pay shall be the first day of the first pay period beginning on or after the date on which a change in the definition is effective. (See 5 CFR 531.103(g) and 5 CFR 531.304(g).)

The amendment to 5 CFR part 550 is effective retroactively to January 1, 1987, the effective date of the final regulations implementing the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees and agencies.

List of Subjects

5 CFR Part 531

Government employees, Wages.

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending parts 531 and 550 of title 5 of the Code of Federal Regulations as follows:

PART 531–PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, 5338, and chapter 54; E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991, Comp., p. 316;

Subpart A issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462, and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), 5402, and 7701(b)(2);

Subpart C issued under section 404 of Pub. L. 101–509, 104 Stat. 1466, and section 3(7) of Pub. L. 102–378 (October 2, 1992);

Subpart D also issued under 5 U.S.C. 7701(b)(2) and 5 U.S.C. 5335(g);

Subpart E also issued under 5 U.S.C. 5336.

2. In § 531.101, the definition of "Interim geographic adjustment area" is revised to read as follows:

§ 531.101 Definitions.

* * * * *

Interim geographic adjustment area means any of the following Consolidated Metropolitan Statistical Areas (CMSA's), as defined by the Office of Management and Budget (OMB):

(a) New York-Northern New Jersey-Long Island, NY–NJ–CT–PA;

(b) San Francisco-Oakland-San Jose, CA; or

(c) Los Angeles-Riverside-Orange County, CA.

* * * * *

3. § 531.301, the definition of "Special pay adjustment area" is revised to read as follows:

§ 531.301 Definitions.

* * * * *

Special pay adjustment area means any of the following Consolidated Metropolitan Statistical Areas (CMSA's), Primary Metropolitan Statistical Areas (PMSA's), or Metropolitan Statistical Areas (MSA's), as defined by the Office of Management and Budget (OMB):

(a) Boston-Brockton-Nashua, MA–NH–ME–CT CMSA;

(b) Chicago-Gary-Kenosha, IL–IN–WI CMSA;

(c) Los Angeles-Riverside-Orange County, CA CMSA;

(d) New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA;

(e) Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA;

(f) San Francisco-Oakland-San Jose, CA CMSA;

(g) San Diego, CA MSA; or

(h) Washington, DC–MD–VA–WV PMSA.

4. In § 531.302, paragraph (a) is revised to read as follows:

§ 531.302 Determining special law enforcement adjusted rates of pay.

(a) To determine the special law enforcement adjusted rate of pay, the scheduled annual rate of pay for a law enforcement officer whose official duty station is in one of the special pay adjustment areas listed below shall be multiplied by the factor shown for that area:

Special pay adjustment area	Factor
Boston-Brockton-Nashua, MA–NH–ME–CT CMSA	1.16
Chicago-Gary-Kenosha, IL–IN–WI CMSA	1.04
Los Angeles-Riverside-Orange County, CA CMSA	1.16
New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA	1.16
Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA	1.04
San Francisco-Oakland-San Jose, CA CMSA	1.16
San Diego, CA MSA	1.08
Washington, DC–MD–VA–WV PMSA	1.04

* * * * *

5. In § 531.304, paragraph (g) is revised to read as follows:

§ 531.304 Administration of special law enforcement adjusted rates of pay.

* * * * *

(g) In the event of a change in the geographic area covered by a CMSA, PMSA, or MSA described in § 531.301 of this chapter, the effective date of a change in an employee's entitlement to a special law enforcement adjusted rate of pay under this subpart shall be the first day of the first pay period beginning on or after the date on which a change in the definition of the CMSA, PMSA, or MSA is made effective.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart G—Severance Pay

6. The authority citation for Subpart G continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257.

7. In § 550.708, paragraph (d) is revised to read as follows:

§ 550.708 Creditable service.

* * * * *

(d) Service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, as defined in 5 U.S.C. 2105(c), who moves to a position within the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days.

[FR Doc. 93–14358 Filed 6–17–93; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 532

RIN: 3206–AF12

Prevailing Rate Systems; Definition of Otero County, CO, to a Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to add Otero County, Colorado, as an area of application to the El Paso, Colorado, Federal Wage System (FWS) Nonappropriated Fund (NAF) wage area. The Department of the Air Force anticipates hiring FWS NAF employees at Detachment 1, in La Junta, Colorado. Detachment 1 is located in Otero County, which is not currently defined for NAF pay-setting purposes. The purpose of this action is to assign Otero County to the proper NAF wage area for pay-setting purposes.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Brenda L. Roberts (202) 606–2848.

SUPPLEMENTARY INFORMATION: On November 12, 1992, OPM published a proposed rule to add Otero County, Colorado, to the El Paso, Colorado, wage area as an area of application (57 FR 53607). No comments were received during the 30-day comment period. The proposed rule, therefore, is being adopted as a final rule without any changes.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix D to subpart B is amended by revising the area of application listing for the El Paso, Colorado, wage area to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Colorado

* * * * *

El Paso

* * * * *

Area of Application. Survey area plus:

Colorado: Bent, Otero and Pueblo

* * * * *

[FR Doc. 93–14361 Filed 6–17–93; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 532

RIN 3206–AF48

Prevailing Rate Systems; Macomb, Michigan, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to add Ottawa County, Michigan, as an area of application to the Macomb, Michigan, Federal Wage System (FWS) Nonappropriated Fund (NAF) wage area for pay-setting purposes. Ottawa County is not presently defined to a NAF wage area. However, OPM recently learned that there is now one NAF employee working at the Coast Guard Exchange, Grand Haven, located in Ottawa County, Michigan. The intent of this action is to officially assign Ottawa County to the proper NAF wage area for pay-setting purposes.

DATES: This interim rule becomes effective on June 18, 1993. Comments must be received by July 19, 1993.

ADDRESSES: Send or deliver comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense notified OPM that the United States Coast Guard employs one NAF FWS worker at the Coast Guard Exchange, Grand Haven, Ottawa County, Michigan. As Ottawa County does not meet the regulatory criteria for establishing a new NAF wage area under 5 CFR 532.219, it must be defined as an area of application to an existing wage area.

The provisions of 5 CFR 532.219 list the following criteria for consideration when two or more counties are to be combined to constitute a single wage area:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

Ottawa County, along with Allegan, Kent, and Muskegon Counties, forms the Grand Rapids-Muskegon-Holland, MI, Metropolitan Statistical Area, an MSA not contiguous to any existing NAF wage area. Grand Haven is approximately 290 km (180 miles) from the host activity for the Macomb, Michigan, survey area (Selfridge Air National Guard Base, near Detroit). The distance is significantly greater (370 km (230 miles)) from Grand Haven to K.I. Sawyer Air Force Base, the survey host activity for Marquette, the only other NAF wage area in Michigan. The survey areas of both the Cook, Illinois, and Lake, Illinois, wage areas are about the same distance by road from Grand Haven as is Macomb, but are separated from Grand Haven by Lake Michigan and are, by road, two states away—through Indiana to Illinois.

Our analysis reveals that Ottawa County differs significantly from the survey areas of both NAF FWS wage areas in Michigan (Macomb and Marquette). For example, the Ottawa population is 171,300, compared to 71,300 in Marquette and 697,200 in Macomb. Total private employment in Ottawa is 70,535, compared to 17,482 in Marquette and 283,277 in Macomb. There are 4,287 business establishments in Ottawa, compared to 1,577 in Marquette and 16,446 in Macomb. These measures show Ottawa County to be much larger than Marquette County in terms of both population and employment. All of the other NAF area of application counties in the lower peninsula of Michigan are included in the Macomb wage area.

Our review brought to light no factors that would outweigh the considerations of geographic location in favoring the assignment of Ottawa County to the Macomb wage area. Based on this review, Ottawa County, Michigan, should be defined as an area of application to the Macomb, Michigan, wage area. Thus, the one Coast Guard employee in Grand Haven will continue to be paid from the Macomb, Michigan, wage schedule the Cost Guard has been using. It should be noted that with this change the Macomb, Michigan, wage area will include both Ottawa County, Michigan, and Ottawa County, Ohio.

The Federal Prevailing Rate Advisory Committee (FPRAC) reviewed this request and by consensus recommended approval.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because the wage survey for the Macomb wage area was recently completed and the new wage schedule was issued with a delayed effective date of June 1993.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix D to subpart B of part 532 is amended by revising the wage area listings for Macomb, Michigan, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Michigan

Macomb

Survey Area

Michigan:
  Macomb

Area of Application. Survey area plus

Michigan:
  Alpena
  Calhoun
  Crawford
  Grand Traverse
  Huron
  Iosco
  Leelanau
  Ottawa
  Saginaw
  Washtenaw
  Wayne
Ohio:
  Ottawa

* * * * *

[FR Doc. 93–14359 Filed 6–17–93; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 550

RIN 3206–AF25

Pay Administration (General); Payments During an Evacuation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting as final the interim rule published in the **Federal Register** (57 FR 40070) on September 1, 1992. The interim rule removed the regulatory restriction on payments during an evacuation authorized under statute to permit Federal agencies to make such payments when the evacuation is occasioned by a natural disaster.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Jane Kuhl, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On September 1, 1992, OPM published interim regulations removing and reserving section 550.405 of title 5, Code of Federal Regulations. When an evacuation had been occasioned by a natural disaster within the 48 contiguous States or the District of Columbia, section 550.405 had restricted (1) advance payments of up to 30 days pay, allowances, and differentials during an evacuation; (2) continued payment of pay, allowances, and differentials for certain periods; and (3) additional allowances necessary to offset direct added expenses.

Three subunits of one agency commented that the restriction on such payments should be removed when an evacuation occasioned by a natural disaster occurs within any of the 50 States, the District of Columbia, the Pacific Trust Territory, American Samoa, Guam, Puerto Rico, or the Virgin Islands. Since the interim rule removed *all* geographical restrictions for emergencies occasioned by a natural disaster, no other change in the regulations is needed.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, under the authority of 5 U.S.C. 5527, the interim rule amending 5 CFR part 550, published at 57 FR 40070 on September 1, 1992, is adopted as a final rule without change.

[FR Doc. 93–14362 Filed 6–17–93; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 591

RIN 3206–AF13

Cost-of-Living Allowances (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to increase certain cost-of-living allowance (COLA) rates paid to General Schedule, U.S. Postal Service, and certain other Federal employees in several nonforeign areas—namely, Guam, the Commonwealth of the Northern Mariana Islands, parts of Hawaii, and part of the Virgin Islands. The increases are based on living cost surveys conducted by Runzheimer International, under contract with OPM, during the summer of 1991.

EFFECTIVE DATES: These regulations are effective on the first day of the first pay period beginning on or after June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, (202) 606–3710.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 5941, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances (COLA's) when living costs are substantially higher than in the Washington, DC, area. Currently, COLA's are paid in the following areas: Alaska, Hawaii, Puerto Rico, the Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

OPM contracted with Runzheimer International to conduct living cost surveys in the various allowance areas in 1991 and 1992. Alaska was surveyed during the winter of 1992, and all other allowance areas were surveyed in the summer of 1991. The Runzheimer surveys showed that adjustments in various COLA rates were warranted. This included reductions in 10 COLA rates in 7 allowance areas. However, a provision in the Treasury, Postal Service, and General Government Appropriations Act of 1992 (Public Law 102–141) bars OPM from reducing any COLA rate through December 31, 1995. Therefore, only the increases in COLA rates can be implemented.

The increases in COLA rates being implemented by this rulemaking are summarized in the table below:

INCREASES IN COLA RATES

Allowance area/category	Current rate	Proposed rate
City and County of Honolulu, Hawaii:		
Commissary/Exchange	12.5	15.0
County of Maui and County of Kalawao, Hawaii:		
All Employees	20.0	22.5
Territory of Guam and Commonwealth of the Northern Mariana Islands:		
Local Pricing	12.5	15.0
Commissary/Exchange	0	7.5
St. Thomas and St. John, The Virgin Islands:		
All Employees	12.5	15.0

On December 10, 1992, OPM published proposed regulations (57 FR 58554) to effect the above increases in COLA rates. On the same day, it published a notice (57 FR 58556) that included Runzheimer's "Report to OPM on Living Costs in Selected Nonforeign Areas and in Washington, DC Area, June 1992." In response to the proposed regulations and notice, OPM received comments from over 200 persons. An overview and evaluation of significant comments follows.

General Comments

A number of individual commenters raised concerns about whether the Runzheimer surveys accurately reflected their personal living costs. Many commenters stated that current COLA rates are too low.

Many of the goods and services cited by commenters as examples of high costs were among the items surveyed by Runzheimer. Many commenters focused on certain expenditure categories but not others. The overall COLA rate reflects the combining of average cost differences in a variety of expenditure categories.

In late 1992, OPM initiated a housing and living pattern survey of employees in the allowance areas and in the Washington, DC, area. This employee

survey will be used to evaluate many issues raised by commenters regarding the COLA model. Based on a review of employee survey results, OPM will consider changes to survey procedures and model assumptions.

Some commenters noted that inflation was high in their areas in recent years. They expressed the view that the cost comparisons are outdated. One commenter objected to the amount of time between living cost surveys and the proposed COLA rate increases and asked that the COLA increases be made effective retroactively to June 1991. (The commenter apparently believes that the surveys in the areas for which increases are being proposed were conducted in June 1991. In actuality, they were conducted from August to October 1991.)

OPM acknowledges the lag in time between the time and surveys were conducted and the publication of proposed adjustments. While some lag is inevitable, OPM will strive in the future to reduce the amount of time between survey completion and rate adjustments. OPM knows of no authority by which it could adjust COLA rates retroactively. Furthermore, OPM believes the practice of implementing COLA rate adjustments—both increases and decreases—prospectively, after review of survey results and public notice of proposed changes, is a sound one. Thus, these final regulations are being made effective on the first day of the first pay period beginning on or after the date of publication.

A number of commenters objected to the fact that their COLA rate was less than the rate in another allowance area. For example, a number of commenters in Guam asserted that their COLA rate should be at least as high as the rate payable in Honolulu, HI. Also, approximately 200 employees in St. Croix, Virgin Islands (VI), signed letters objecting to the fact that the COLA rate for St. Thomas, VI, and St. John, VI, was being increased above the rate for St. Croix.

Differences in the living cost indices computed by Runzheimer are based upon the results of annual surveys of the areas compared to a survey of the common reference area of Washington, DC. In comparing COLA rates for different allowance areas, it must be kept in mind that, because of the law barring COLA rate reductions through 1995, certain COLA rates currently do not correspond to the living cost indices, but are artificially high.

On commenter raised questions regarding the validity of the price data collected in St. Croix. OPM staff reviewed all COLA survey data for St. Croix and were satisfied that Runzheimer had followed appropriate procedures in collecting data in St. Croix.

A number of commenters from the Virgin Islands cited a recent living cost index produced by the American Chamber of Commerce Research Association (ACCRA), which showed high living cost indices for both St. Thomas and St. Croix (although the St. Thomas index was significantly higher than the St. Croix index).

For a variety of reasons, the ACCRA indices are not directly comparable to the Runzheimer indices. The ACCRA survey at issue was conducted in the third quarter of 1992, while the OPM-sponsored Runzheimer survey was conducted in the summer of 1991. The ACCRA survey was designed for "midmanagement" households (i.e., to reflect midmanagement standards of living and spending patterns), while the Runzheimer survey was designed to reflect three income levels with appropriate weights based on Federal employee distribution. The ACCRA survey has fewer and different survey items than the Runzheimer survey. The ACCRA survey compares each area's prices to the average price level for all participating areas, while the Runzheimer survey compares each allowance area's prices to prices in the Washington, DC, area. We note that, even if the ACCRA indices were used to compare St. Croix to Washington, DC, it would not result in an increase in the COLA rate from the current level of 12.5 percent.

Some commenters from St. Croix cited a local Department of Labor office December 1991 "food basket" survey, which showed that food costs were 25 percent higher in St. Croix compared to the Washington, DC, area. The OPM-sponsored Runzheimer survey for the summer of 1991 showed that the costs of "food at home" in St. Croix were about 33 percent higher than in the Washington, DC, area. (In contrast, the "food at home" costs were about 43 percent higher in St. Thomas than in the Washington, DC, area.) However, food at home is only one of the living cost categories in the COLA model. Due to the impact of other cost categories, OPM's total living costs index for St. Croix showed a differential of only about 8 percent.

Several commenters noted that employees in the allowance areas face extreme weather disturbances—in particular, typhoons or hurricanes. They noted that these weather disturbances create higher costs in home maintenance, home insurance, and/or utilities. Since many of the costs cited by commenters are of a type included in the living cost survey, OPM believes that the effects of weather disturbances on living costs will be reflected in the survey results. We note that Typhoon Omar, which hit Guam in August 1992, and Hurricane Iniki, which hit Kauai, Hawaii, in September 1992, occurred after the 1991 survey at issue. Cost increases associated with these two weather disturbances should be reflected in future surveys. In certain areas, such as home maintenance, OPM is seeking to improve survey assumptions regarding the frequency of various repairs or maintenance services (e.g., painting, roof replacement). OPM anticipates that data from its employee survey will be useful in this regard.

A number of employees from Puerto Rico and St. Croix expressed concern about the possible immediate reduction of their COLA's. As the proposed regulations explained, OPM is barred from reducing COLA rates through December 31, 1995. Individual letters were sent to a number of employees to clarify that OPM was proposing only increases in COLA rates at this time.

One commenter suggested that the COLA model and survey methodologies should be more specifically described in OPM regulations and that all of the data collected should be made public. The commenter objected to the use of assumptions not spelled out in the regulations. OPM believes its COLA regulations are adequately detailed and that any attempt to subject the complex COLA survey process to a set of overly detailed and inflexible rules would impair rather than improve the COLA program. The flexibility to make procedural adjustments as conditions warrant, or to make new or revised assumptions as new data are obtained, results in a more accurate COLA model. Before COLA rates are actually adjusted, OPM publishes in the Federal Register a detailed report on the survey results, including a description of the procedures followed, the key assumptions made, and survey data summaries.

Comments on Overall Living Cost Model

Some commenters stated that OPM's COLA model was inconsistent with Public Law 102–141, the Treasury, Postal, and General Government Appropriations Act of 1992, which was enacted on October 28, 1991. This law bars COLA rate reductions through 1995 and requires that OPM conduct a study and submit a report to Congress, by March 1995, on possible changes in the methodology for calculating COLA

rates, taking into account all costs of living. OPM does not believe it is required by Public Law 102–141 to make changes in the survey methodology prior to its report to Congress. In fact, the clear language of the law is that OPM shall submit a report "proposing" adjustments in the COLA methodology. Nevertheless, OPM will continue to consider immediate adoption of any methodology improvements that enhance the integrity of the COLA model without creating undue administrative burdens.

A few commenters cited the House Appropriations Committee report on Public Law 102–141 (Report No. 102–95). The report describes various aspects of the COLA model that the Committee felt should be modified. OPM accepts this report as an expression of congressional intent as to the issues that should be addressed in the OPM study and report to Congress. While not ruling out the possibility of making some changes prior to 1995, OPM believes that, given the degree of additional study needed and the requirement in Public Law 102–141 that OPM submit a report to Congress "proposing" changes, broader changes in the COLA model should be delayed until after the report to Congress.

Some commenters stated that the COLA rate-setting methodology should include a component to compensate employees for the allowance area's remoteness and isolation. For example, one commenter suggested that 5 percentage points be added to all COLA rates to reflect the "costs" of remoteness and isolation. There is no statutory requirement that OPM consider remoteness and isolation, in and of themselves, as a "cost of living" that must be assigned a value in setting COLA rates. OPM understands the term "living costs" in section 5941(a)(1) of title 5, United States Code (the provision authorizing COLA payments), to refer to actual dollar expenditures, not to intangible conditions of life that cannot be directly measured in monetary terms. OPM is examining the possibility of adjusting the COLA model to take into consideration tangible expenditures related to the remoteness and isolation of the allowance areas. Examples of such expenditures include air transportation, education, extraordinary medical expenses, and special housing maintenance costs. OPM will address these factors in its report to Congress due in 1995.

One commenter stated that OPM had misinterpreted the *Arana* settlement to mean that OPM was barred from pricing items needed in the allowance area but not needed in the Washington, DC, area. The commenter maintained that an item not needed in Washington, DC, should be priced only in the allowance area.

OPM has made changes in the COLA model to reflect so-called "need differences" in several areas (e.g., car maintenance) and will explore additional changes. In the case of the consumer goods component of the COLA survey, OPM believes that sound methodology requires construction of a representative market basket that is common to the allowance area under consideration and the Washington, DC, area. It is unavoidable that there will be differences in need for various items in the allowance area as opposed to the Washington, DC, area. If goods deemed "unique" to the allowance area are added to the allowance area survey, then one would also be compelled to consider goods "unique" to the Washington, DC, area. The inclusion of "unique" items would be inconsistent with OPM regulations at 5 CFR 591.205(b)(1)(i)), which require exact brands and models to be priced in each area whenever possible. Nevertheless, OPM intends to give this issue further study and will address it more fully in its report to Congress on the COLA program due in March 1995.

Some commenters objected to the use of national consumer expenditure patterns in the living cost model, believing they differed from the consumption patterns in their particular area. They questioned whether the right items were surveyed and whether the right weights were assigned to items. One commenter also stated that the spending pattern data were outdated.

In order to compare living costs in different areas, it is necessary to assign a common set of weights to various expenditure categories to derive comparative indices measuring overall living costs. Since living costs in the Washington, DC, area are the reference point for calculating COLA's, the COLA model would ideally use weights derived from DC area consumer expenditure patterns. While the Bureau of Labor Statistics produces Consumer Expenditure Survey (CES) data for the Washington, DC, area, those data are not arrayed by income level. (OPM's regulations require use of multiple income levels in calculating COLA rates, and the current COLA model uses three income levels.) As a surrogate for weights based on the Washington, DC, area spending patterns, OPM uses national CES data, which are arrayed by income level. The model currently employs 1988 national CES data; however, OPM is developing a methodology for gradually introducing more recent CES data into the model.

Some commenters seem to believe the COLA model should use allowance area spending patterns to establish the common weights. However, even if this approach were found acceptable, there are no CES data for most of the allowance areas. There are CES data for the metropolitan areas of Honolulu, HI, and Anchorage, AK; however, these data are not arrayed by income level.

One commenter suggested that the COLA model be simplified to use only one income level. The commenter believes that this would reduce survey costs and the number of subjective assumptions required. The COLA model uses multiple income levels because this approach recognizes that the gap in living costs can vary by income level. Generally, a more accurate measure of relative living costs for Federal employees can be derived by having multiple income-based indices that are weighted based on the actual salary-level distribution of Federal employees in the allowance area. Nevertheless, to the extent the multiple income levels require additional subjective assumptions, it is possible that the overall integrity of the model would not be impaired by using a single income level. OPM will examine this issue in conjunction with the study of the COLA program required by Public Law 102–141.

A commenter from Hawaii stated that the living cost survey ignores whether Hawaii's significantly higher prices force Federal employees to substitute lower-quality goods, services, and housing facilities than are available to Washington, DC, area employees. Consistent with the *Arana* settlement, OPM has directed Runzheimer to price exact brands and models of goods whenever possible. Similarly, OPM and Runzheimer have striven to ensure that services surveyed are comparable. With respect to housing, Runzheimer used selected criteria, such as square footage, to ensure that similar housing was being compared.

Some commenter stated that income taxes should be included in the living cost model. Several persons from Puerto Rico stated that Puerto Rico has the highest income tax rates of any area in the United States and that this cost of living should be considered. Several commenters also believed that the taxation of COLA payments by local governments in the allowance areas should also be taken into account in setting the COLA rates.

On the other hand, one commenter objected to including income taxes in the model on the grounds that it would unduly complicate the model. (This same commenter did state that, if

income taxes were included in the model, OPM should increase the COLA rate in areas where it is taxed.) Another commenter objected to including income taxes on the grounds that it would be necessary to compare the level of government services "purchased" with the taxes.

OPM has begun a study of whether and how income taxes might be taken into account in the COLA model. Incorporating income taxes in the COLA model would require revisions in OPM's regulations. Therefore, interested parties will have an opportunity for comment when and if any rule change is proposed. This issue will be discussed in OPM's report to Congress.

Comments on the Goods and Services Component

Some commenters questioned whether representative types of stores were surveyed in the allowance areas. They believe place-of-purchase patterns in the allowance areas could vary significantly from patterns in the Washington, DC, area due to the accessibility of various types of stores. OPM's employee survey includes questions regarding the types of stores where employees purchase various consumer goods. After review of the employee survey results, OPM will consider changes to the outlets from which goods and services data are collected.

One commenter expressed concern about the use of catalog pricing in the COLA survey. The commenter questioned whether OPM assumed that allowance area employees are more likely to make catalog purchases than Washington, DC, area employees. The COLA model makes no assumption regarding whether employees in the allowance areas make fewer or more purchases through catalogs. Catalog purchases were included in the COLA survey because catalogs are a common source of retail goods used by many persons. The catalog prices used in the survey reflect differences in shipping costs. As mentioned above, the employee survey will collect information on source of purchases (including catalogs), and this information may lead to future changes in survey procedures.

Comments on the Housing Component

Some commenters stated that the weight assigned to the housing component was too low—that housing expenditures were a significantly higher portion of their overall budget than indicated by the weight. For example, commenters from Hawaii asserted that Federal employees living in Hawaii spend a much larger percentage of their total expenditures on housing than the nationwide average.

The housing weight is an average. There will always be individuals whose housing costs are below or above such an average. People who have recently purchased their homes generally will have a high percentage of their income consumed by mortgage payments. On the other hand, people who purchased a home some time ago using a fixed-rate mortgage will generally have a lower percentage of their income spent on housing. The fact that an individual's own expenditure pattern is different than the average does not mean that the average is not appropriate. A review of CES data for the Honolulu and Washington, DC, areas revealed that housing costs, as a percentage of total household expenditures, are very close in the two areas.

A few commenters stated that the residential areas surveyed did not properly reflect where Federal employees live. A commenter from Hawaii stated that Runzheimer had classified middle-income communities as high-income communities and had excluded areas based on a faulty assumption that housing in the areas was too expensive for Federal employees. The commenter stated that many Federal employees live in the Hawaii Kai area (Honolulu), in which, according to the commenter, the median price of a home is $465,000. The same commenter also suggested that the areas selected in Hawaii did not conform with typical commuting patterns—that they were farther from the major work sites than is typical.

In the judgment of OPM and Runzheimer staff, the residential areas selected provide reasonably representative data regarding the comparative cost of housing at low, middle, and high income levels. The employee survey was designed to collect information regarding place of residence, total household income, and commuting time and distance. OPM will review community selections after the results of the employee survey have been analyzed. Of course, any new procedures or criteria used to make changes in residential areas surveyed can affect housing costs in the Washington, DC, area, as well as in the allowance areas. Whether the housing index for an allowance area increases due to changes in residential areas surveyed will depend not just on the changes in housing costs in the allowance area, but also on changes in housing costs in the Washington, DC, area.

A number of commenters asserted that climate conditions (such as high humidity, high rainfall, sunlight intensity, airborne salt, snow, cold weather) resulted in higher home maintenance costs than in the Washington, DC, area. For example, commenters stated that roofs deteriorate more rapidly and/or that exterior surfaces require more frequent painting. They also suggested that more frequent insect proofing is required. These commenters objected to the fact that in developing home maintenance costs, Runzheimer considered only costs incurred on an annual basis. They believe the living cost model should take into account the fact that some home maintenance costs are incurred more frequently in the allowance areas than in the Washington, DC, area (although not annually)—e.g., roof replacement.

OPM does not have definitive data on the frequency of major home maintenance expenses. However, OPM is collecting data on the frequency of major home maintenance expenses through the employee survey. After analysis of the employee survey data is complete, OPM will consider changes in the COLA model assumptions.

One commenter objected to the assumption that most Alaskans perform their own snow removal. The same commenter was under the impression that the cost of snowblowers was excluded from the survey, which would be inconsistent with the assumption that Alaskans perform snow removal themselves. The employee survey included questions on whether employees pay for various snow removal services on a periodic basis. Model changes may be made if the employee survey shows they are warranted. With respect to the snowblower issue, snowblowers were, in fact, included in the 1992 Alaska COLA survey.

Comments on the Transportation Component

A number of commenters stated that poor roads, rough terrain, salt air, and/or harsh weather increased automobile maintenance costs in the allowance areas and caused cars to depreciate faster. Similar comments were made in response to the previous Runzheimer report.

The OPM COLA model takes into consideration both higher car maintenance costs and greater depreciation. For example, the model includes a presumption that tires tend to have a shorter tread life in all the allowance areas. Also, Runzheimer found that replacement of CV joint

boots, which is one of the items used to determine car maintenance costs in Alaska, was performed at a higher frequency in the Alaska allowance areas than in the Washington, DC, area. This additional cost was captured in automobile maintenance costs. As stated in the Runzheimer report, based on research of used car values, Runzheimer determined that cars in Nome, AK, and Fairbanks, AK, depreciated in value at a more rapid rate than in the Washington, DC, area; therefore, it made adjustments in the calculation of car depreciation expenses in these two areas.

The employee survey now under way was designed to collect data related to car maintenance requirements, including the physical condition and terrain of roads on which employees drive, tire tread life, and the frequency of various repairs. The survey also collects data regarding the number of miles driven per year by Federal employees. OPM will consider changes in the COLA model based on the results of the employee survey.

A number of commenters also stated that car fuel economy was less than in the mainland United States due to poor roads, climate, and/or topography. As explained in the December 10, 1992, **Federal Register** notice (pages 58572–58573), Runzheimer took into account the factors of climate, road surface quality, and topography (gradient) in calculating fuel costs. OPM notes that on page 58573 of the **Federal Register** notice, Runzheimer erroneously stated that, in all allowance areas, the road surface quality subfactors were .94 for locally controlled roads and .97 for federally controlled roads. These factors actually applied only in Alaska. The respective subfactors in the other allowance areas were .96 and 1.00. (The lower subfactors for Alaska reflect the effects of snowy conditions.) The error was confined to the narrative text, and the correct factors were used in the calculations.

Several commenters specifically objected to the assumption that federally controlled roads typically have four lanes. OPM believes it is reasonable to assume that, on average, federally controlled roads support roughly twice as much traffic as locally controlled roads, regardless of whether the federally controlled roads have two or four lanes. OPM notes, however, that using an alternative assumption that federally and locally controlled roads bear the same amount of traffic would not have made a difference in the COLA rates derived from the survey because the increase in fuel costs resulting from the alternative assumption ranged from only $7 to $30 per year.

A commenter from Alaska maintained that the living cost model should be revised to include the cost of four-wheel drive capability in deriving the cost of new cars purchased in Alaska. One of the three types of vehicles used in the COLA survey to estimate car costs was a four-wheel drive Chevrolet Blazer truck, which is available in both Alaska and in the Washington, DC, area.

Some commenters seem to have been confused about the composition of the Public Transportation category. For example, some commenters from Puerto Rico and the Virgin Islands stated that the lack of an effective public mass transportation system compelled them to purchase cars or to use taxi services. Many of the commenters from St. Croix stated that there is no public transportation system on the island, just taxi vans and taxis.

As explained in the report, municipal mass transportation is no longer included in the survey. Air transportation is surveyed instead—i.e., the cost of a around-trip ticket from the allowance area or the Washington, DC, area to Los Angeles, CA. The confusion appears to be caused by the use of the term "Public Transportation" as the category title. This is consistent with the CES name for the category, but the category is not limited to municipal mass transportation. It includes air, boat, taxi, bus, subway, and other forms of commercial and municipal transportation. In future reports, OPM will use less confusing terminology and/or more clearly describe the composition of the Public Transportation category.

Several commenters objected to the selection of Los Angeles as the common destination point in comparing air travel costs. They stated that Los Angeles was the most competitive airline market in the United States, resulting in lower fares relative to other destinations. Many commenters suggested using other destinations, such as St. Louis, MO, or Chicago, IL.

As stated in the report, Los Angeles was selected because it is a common point within the continental United States that is roughly equidistant from each of the allowance areas and the Washington, DC area. St. Louis and Chicago, though popular destinations for air travelers, do not meet the equidistant criterion. The fact that the route may be highly competitive does not invalidate cost comparisons because OPM is measuring the relative cost of air travel. If competition reduces fares because of the volume of travel to Los Angeles, the reductions will be reflected in the Washington, DC, to Los Angeles fares as well as the allowance area to Los Angeles fares. Therefore, OPM believes the comparisons are appropriate.

Some commenters stated that including air transportation costs of a single recreational trip was not a true measure of the air transportation costs that allowance area employees incur. The OPM employee survey includes a number of questions regarding travel outside the area in which the employee lives for extended vacations or family visits, trips to and from a college or university, shopping, and medial treatment. OPM will consider revisions in the COLA model based on the survey data.

Comments on the Miscellaneous Component

One commenter objected to the COLA model assumption that certain expense items in the miscellaneous component (i.e., contributions, pensions, and other retirement vehicles) are equal in the allowance areas and in the Washington, DC, area. The commenter proposed that these items instead be adjusted using the index for the consumer goods and services component. OPM believes it is reasonable to assign equal cost value to the contributions category (including gifts to non-family members), since the size of such contributions is a matter of personal choice and since the best measure of the "cost" of a contribution is dollar value. Furthermore, OPM believes that it is reasonable to assign equal cost value to the category of pensions and other retirement income vehicles, since Federal employees in the allowance areas have the same basic retirement plans as those in the Washington, DC, area.

A number of commenters stated that certain medical services were not available in their area and that they had to fly to other areas to obtain those services. According to commenters in St. Croix, the local hospital is housed in a modular unit (since the former hospital building was destroyed by Hurricane Hugo in 1989) and is not accredited, forcing many Federal employees to fly to San Juan, Puerto Rico, or to the U.S. mainland (e.g., Miami, FL) for hospital services. Federal employees in St. Croix noted the cost of air travel for medical treatment. They also noted the cost of air ambulance service (or insurance to cover such service).

At OPM's request, Runzheimer conducted a preliminary study regarding the availability and cost of medical procedures in the allowance areas. In addition, OPM's employee

survey included questions regrading where Federal employees obtain medical services. OPM will analyze the Runzheimer study and the employee survey results as part of the study of the COLA program required by Public 102–141. OPM also will explore whether the COLA model should be modified for future surveys to include the costs of air ambulance insurance in areas such as St. Croix.

A number of commenters from the allowance areas stated that OPM should have considered the cost of private education in grades K through 12. They maintained that public schools in their areas were of poor quality, thus causing a high percentage of Federal employees to send their children to private schools. For example, a number of commenters from St. Croix stated that the public schools are not accredited. OPM and Runzheimer are studying whether and how private K through 12 education costs should be included in the COLA model. The employee survey now underway is collecting information about the number of children enrolled in private schools.

Some commenters wanted OPM to take into account the cost of sending children to out-of-area colleges and universities. They noted the cost of travel to and from the college, the cost of housing, and the need to pay tuition at the non-State resident rate. At OPM's request, Runzheimer conducted a preliminary study regarding the availability and cost of college and university educational opportunities for members of Federal employees' families in the allowance area. In addition, OPM's employee survey includes questions regarding where members of Federal employees' families obtain higher education. OPM will analyze the Runzheimer study and the employee survey results as part of the study of the COLA program required by Public 102–141.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10,000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR 1985 Comp., p. 338.

2. Appendix A of subpart B of part 591 is revised to read as follows:

Appendix A of Subpart B—Places and Rates at Which Allowances Shall Be Paid

This appendix lists the places where a cost-of-living allowance has been approved and shows the allowance rate to be paid to employees along with any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage/allowance category	Authorized allowance rate (percent)
State of Alaska:	
City of Anchorage and 50 mile radius by road:	
Local Retail	25.0
Commissary/Exchange	17.5
City of Fairbanks and 50 mile radius by road:	
Local Retail	25.0
Commissary/Exchange	20.0
City of Juneau and 50 mile radius by road:	
Local Retail	25.0
Commissary/Exchange	25.0
Rest of the State:	
All Employees	25.0
State of Hawaii:	
City and County of Honolulu:	
Local Retail	22.5
Commissary/Exchange	15.0
County of Hawaii:	
All Employees	15.0
County of Kauai:	
Local Retail	17.5
Commissary/Exchange	17.5
County of Maui and County of Kalawao:	
All Employees	22.5
Territory of Guam and Commonwealth of the Northern Mariana Islands:	
All Locations:	
Local Retail	15.0
Commissary/Exchange	7.5
Commonwealth of Puerto Rico:	
All Locations:	
Local Retail	10.0
Commissary/Exchange	0.0
The Virgin Islands:	
St. Croix:	
All Employees	12.5
St. Thomas and St. John:	
All Employees	15.0

Definitions of Allowance Categories

The following definitions of the allowance categories identified in the tables in this appendix shall be used to determine employee eligibility for the appropriate allowance rate:

Allowance category	Definition
Local Retail	This category includes those employees who purchase goods and services from private retail establishments.
Commissary/Exchange.	This category includes those employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities.

Note: Eligibility for access to military commissary and exchange facilities is determined by the appropriate military department. If an employee is furnished with these privileges for reasons associated with his or her Federal civilian employment, he or she will have an identification card that authorizes access to such facilities. Possession of such an identification card—i.e., one issued by reason of his or her Federal civilian employment—is sufficient evidence that the employee uses the facilities.

[FR Doc. 93–14363 Filed 6–17–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

General Crop Insurance Regulations; Rice Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This rule provides for an option for those policyholders who aerially seed rice if such seed rice is not presoaked. The aerial seeding of rice

which is not presoaked will be insurable only by written agreement between the insured and the Federal Crop Insurance Corporation (FCIC).

DATES: Effective Date: March 31, 1993.

Comments: Comments must be received by August 17, 1993.

ADDRESSES: Comments should be sent to Mari L. Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, 14th & Independence Avenue SW., Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. Such a review is in process and a determination under those provisions will be shortly forthcoming. The present sunset review date established for these regulations is August 29, 1998.

Kathleen Connelly, Acting Manager, FCIC has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Kathleen Connelly also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or on the farmers served by this totally voluntary crop insurance program because this action does not require significant actions on their part. This action imposes no additional burden on the insured farmer, does not require participation in the program, or increase what is currently paid to gain insurance protection. Further, this action requires of the reinsured company or sales and service contractor what is considered normal and customary in the ordinary conduct of business. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Acting Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in section 2(a), and 2(b)(2) of Executive Order 12778.

This regulation revises a provision of the rice crop insurance policy issued under the Federal crop insurance program. The provisions of these policies clearly pre-empt all conflicting provisions of state law or regulation. The rule is effective retroactively to March 31, 1993, the sales closing date for the rice policy in most counties for the 1993 crop year. No party with standing is required to undertake an administrative proceeding before suit on the publication of the provision. However, administrative procedures are required before a policyholder may collect an indemnity under this provision.

Background

The Environmental Protection Agency (EPA) has determined that under certain circumstances, presoaking of rice seed which has been treated with a surface sterilant may be contrary to environmental protection rules. Further, the Extension Service has determined that the presoaking of rice seed is not the exclusively acceptable good farming practice for aerial seeding. Failure to allow for exception to the restriction requiring that all aerial seeded rice be presoaked would prohibit a large number of producers using acceptable methods of crop production from obtaining crop insurance on their rice crop. Therefore, good cause is found for publication of the rule without notice and comment pursuant to 5 U.S.C. 553. Comments on the interim rule will be for 60 days after publication in the **Federal Register** and will be taken into consideration when determining whether to make the rule final.

List of Subjects in 7 CFR Part 401

Crop insurance, Rice.

Accordingly, for the reasons set forth in the supplementary information, FCIC amends 7 CFR part 410 as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. § 401.120 is amended by revising paragraphs (a) and (b) of section 10 of the Rice Crop Insurance Endorsement, to read as follows:

§ 401.120 Rice endorsement.

* * * * *

10. Meaning of Terms:

(a) *Aerial seeding*—distribution of presoaked (unless agreed to by us in writing) rice seed onto a prepared seedbed covered by water under controlled flooding conditions by use of an airplane specifically modified for this purpose. The modification must ensure a sufficient distribution of the rice seed in the seed bed to assure a normal crop.

* * * * *

(f) *Planted*—the proper placement of the seed in a prepared seedbed by use of a drill, broadcasting, or by aerial seeding. Drill seeding and broadcast seeding other than aerial seeding, require mechanical incorporation of seed into the soil at the proper depth. Aerial seeding of presoaked seed onto the seedbed will be considered planted if a controlled flood of the seedbed exists at the time of planting and a uniform distribution of seed exists after removal of flood water. Planting in any other manner will be considered as a failure to follow recognized good farming practices for rice and any loss of production resulting will not be insured under the policy unless we agree, in writing, to allow another method of aerial seeding.

* * * * *

Issued in Washington, DC on April 2, 1993.

Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 93–14402 Filed 6–17–93; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Parts 401, 406, 415, and 422

General Crop Insurance Regulations; Various Crop Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the General Crop Insurance Regulations for the 1994 crop year only by extending the dates by which contract changes must be on file in the service office for forage production, barley, nursery, oats, potatoes, rye, sugarcane, and wheat crops. Since FCIC's appropriation has not been finalized, FCIC believes that delay of the contract change date will substantially lessen confusion.

DATES: Effective Date: May 31, 1993.

Comments: Comments must be received by August 17, 1993.

ADDRESSES: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1997.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Kathleen Connelly also certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or on the individual served by the crop insurance program because this action does not require significant actions on their part. Since final appropriation language may require substantial program modification, this amendment will not cause an additional burden on participants and may substantially reduce any burden caused by changes in the program. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this interim rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This action is necessary to allow FCIC sufficient time to review and revise the crop insurance program regulations and to provide actuarially sound data in order to administer the program within the budget and appropriations prices for the 1994 Fiscal Year.

FCIC policies required that all crop insurance contract changes be available for inspection at service offices by a date specified in each applicable crop endorsement. FCIC's 1994 budget proposal may require further review and revision in the crop insurance program. The current contract change dates do not allow sufficient time to make necessary program revisions. Extending the date by which contract changes will be available in the policyholders' service offices to August 15, 1993, will allow FCIC adequate time to make any necessary program revisions. Extending the contract change date will still give current policyholders sufficient time to review changes in the crop insurance program and to determine the viability of insuring their fall crops for the 1994 crop year.

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action does have a retroactive effect for the 1994 Fall planted crops.

Therefore, each holder of an FCIC barley, wheat, forage production, oats, rye, nursery, sugarcane, or potatoes crop insurance policy will receive actual notice of the change. This interim rule will not preempt any state or local law, regulations, or policies, unless they are in conflict with this rule. Litigation involving claim for indemnities affected by this rule require that the administrative appeal process at 7 CFR part 400, subpart J be exhausted.

This rule does not adversely affect insureds although it will shorten the time for the insureds to make risk management decisions. A vast majority of decisions for the coming crop insurance year are made in the 30 days immediately preceding the sales closing date. The earliest sales closing date for these crops is September 30 which will still allow a minimum of 45 days in which to make a decision. The interim rule will also shorten the time for insurance companies to train personnel. However, we believe the disruption in the normal sales training will be minimal compared to what would be required if FCIC was required to cancel all policies and begin each program from the initial application after policy terms have been set. Notice and public comment procedures on the rule are impractical, unnecessary, and contrary to the public interest and good cause is shown for making this interim rule effective upon publication. FCIC is soliciting comments on this rule for 60 days after publication in the **Federal Register**. Comments received will be considered before this interim rule is made final.

List of Subjects in 7 CFR Parts 401, 406, 415, and 422

Barley, Crop insurance, Forage production, Nursery, Oats, Potatoes, Rye, Sugarcane, and Wheat.

Interim Rule

Accordingly, for the reasons set forth in the supplementary information, FCIC amends the Wheat, Barley, Oats, Rye, Sugarcane, Nursery, Forage Production, and Potatoes Crop Insurance Regulations (7 CFR parts 401, 406, 415, and 422), effective for the 1994 crop year only, in the following instances:

1. The authority citation for 7 CFR parts 401, 406, 415, and 422 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

§§ 401.101, 401.103, 401.105, 401.106, 401.133, 406.7, and 422.7 [Amended]

2. Sections 401.101, 401.103, 401.105, 401.106, 401.133, 406.7, and 422.7 are amended by removing the date "June 30" and adding, in its place, the date "August 15" in the following sections:

(a) Section 401.101 9. Contract Changes;

(b) Section 401.103 9. Contract Changes;

(c) Section 401.105 9. Contract Changes;

(d) Section 401.106 9. Contract Changes;

(e) Section 401.133 9. Contract Changes;

(f) Section 406.7 16. Contract Changes; and

(g) Section 422.7 16. Contract Changes.

§ 415.7 [Amended]

2. Section 415.7 is amended by removing the date "May 31" and adding, in its place, the date "August 15" in paragraph 16. Contract Changes.

Done in Washington, DC., on June 14, 1993.

Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 93-14435 Filed 6-17-93; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 776, 785, 786, and 799

[Docket No. 930477-3077]

Conversion to the Metric System

June 14, 1993.

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to convert units of weight and measure to the metric system. This complies with the 1988 Omnibus Trade and Competitiveness Act (OTCA), which amended the Metric Conversion Act of 1975. The OTCA designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce and requires each Federal agency, to the extent economically feasible, to use the metric system by the end of fiscal year 1992. This rule also reflects current international trade, which is conducted almost exclusively in the metric system. Although the new metric figures have been rounded for ease in application, the rounding has not altered the scope of control for the affected items.

This final rule converts data found in two entries on the Commerce Control List (ECCNs 9A92 and 9A93) as well as data found in other portions of the EAR to conform with the CCL. Almost all other measurements used in the EAR have already been converted to the metric system, except where other units are in general usage or specified by law.

EFFECTIVE DATE: This rule is effective June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, P.O. Box 273, Washington, DC 20044, Telephone: (202) 482-4819.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule does not affect the burden hours associated with any collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

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

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

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 776, 786, and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 785

Exports.

Accordingly, parts 776, 785, 786, and 799 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for 15 CFR part 776 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. The authority citation for 15 CFR part 785 continues to read as follows:

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

3. The authority citation for 15 CFR parts 786 and 799 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2,

1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 776—[AMENDED]

4. Section 776.9 is amended by revising the phrase "40 feet in length" to read "12 m (40 ft) in length" in the introductory text of paragraph (b)(1)(iii) (two references), and in the introductory text of paragraph (b)(3)(iii) (two references).

PART 785—[AMENDED]

5. Section 785.4 is amended:

a. By revising the phrase "10,000 lbs. empty weight" in paragraph (d)(1)(vi) to read "4.5 t (10,000 lbs) empty weight" (two references);

b. By revising the phrase "10 tons" in paragraph (d)(1)(viii) to read "9 t (10 tons)"; and

c. By revising the parenthetical phrase "(greater than 400 horsepower)" in paragraph (d)(1)(ix) to read "(greater than 298 kW (400 horsepower))".

6. Section 785.7 is amended by revising the phrase "10 tons" in paragraph (c) to read "9 t (10 tons)".

PART 786—[AMENDED]

7. Section 786.7 is amended:

a. By revising the phrase "'lbs.', 'sq. ft.'" in the introductory text of paragraph (c)(1) to read "'kilograms', 'square meters'";

b. By revising the phrase "100,000 pounds" in the introductory text of paragraph (e)(1) to read "100,000 kg";

c. By revising the phrase "110,000 pounds" in paragraph (e)(1)(i) to read "110,000 kg"; and

d. By revising paragraphs (e)(1)(ii) and (e)(1)(iii) to read as follows:

§ 786.7 Shipping tolerance.

* * * * *

(e) * * *

(1) * * *

(ii) If the first shipment is for 40,000 kg, the second shipment may not exceed 66,000 kg (10% of the unshipped balance of 60,000 kg (6,000 kg) plus the unshipped balance), and the total cost of the second shipment shall not exceed $850,000—

$600,000	(the value of the unshipped balance of 60,000 kg)
+250,000	(25% of the original total value shown on the license)
=$850,000	

(iii) If the first shipment is for 40,000 kg and the second shipment is for 20,000 kg, the third shipment may not exceed 44,000 kg (10% of the unshipped balance of 40,000 kg (4,000 kg) plus the unshipped balance), and the total cost of the third shipment shall not exceed $650,000—

$400,000	(the value of the unshipped balance of 40,000 kg)
+250,000	(25% of the original total value on the license)
=$650,000	

* * * * *

PART 799—[AMENDED]

8. Section 799.1 is amended by adding a new paragraph (h) to read as follows:

§ 799.1 The commerce control list and how to use it.

* * * * *

(h) *Units of measure.* Most measurements used on the Commerce Control List are expressed in metric units, frequently followed by an approximate inch-pound measurement in parentheses, except where other units are in general usage or specified by law. Whenever there is difference between the metric and inch-pound figures, the metric standard will be used for classification or export licensing purposes.

9. Supplement No. 1 to § 799.1, Category 9, is amended by revising the headings to ECCNs 9A92F and 9A93F to read as follows:

9A92F Off highway wheel tractors of carriage capacity 9 t (10 tons) or more; and parts and accessories, n.e.s.

* * * * *

9A93F On-Highway tractors; with single or tandem rear axles rated for 9 t (20,000 lbs.) or greater and specially designed parts.

* * * * *

Dated: June 14, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–14463 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 6a, 602

[T.D. 8476]

RIN 1545–AR05; 1545–AP09

Arbitrage Restrictions on Tax-Exempt Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments. Changes to the applicable law were made by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989, and the Revenue Reconciliation Act of 1990. These regulations affect issuers of tax-exempt bonds and provide guidance for complying with the arbitrage and related restrictions.

DATES: These regulations are effective on July 1, 1993.

For dates of applicability of these regulations to various bond issues, including certain elective retroactivity provisions and transition rules, see § 1.148–11 of these regulations.

FOR FURTHER INFORMATION CONTACT: Scott R. Lilienthal or William P. Cejudo at 202–622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1347.

The estimated annual burden per recordkeeper varies from 12 hours to 15 hours, depending on individual circumstances, with an estimated average of 13.5 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed

to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

Explanation of Provisions

I. Background of Regulations

Section 148 provides rules restricting the use of proceeds of tax-exempt State and local bonds to acquire higher yielding investments. Section 148(a) provides generally that interest on a State or local bond is tax-exempt only if the issuer invests bond proceeds at a yield that is not materially higher than the yield on the bond issue. Section 148(f) provides that interest on a State or local bond is tax-exempt only if the issuer rebates to the Federal government certain arbitrage earnings derived from investing gross proceeds at a yield exceeding the yield on the bond issue.

Longstanding regulations relating to the arbitrage yield restriction rules are in §§ 1.103–13 through 1.103–15. On May 18, 1992, final regulations under section 148 were published at §§ 1.148–0 through 1.148–11 (the May 1992 regulations). At that time, the Internal Revenue Service and the Treasury Department announced that they would further simplify and clarify the regulations under section 148 by revising the arbitrage regulations and finalizing these rewritten regulations by June 1993. To evidence this commitment, the May 1992 regulations expire on June 30, 1993.

Proposed regulations were published at §§ 1.148–0 through 1.148–11, 1.149(d)–1, 1.149(g)–1, 1.150–1, and 1.150–2 in the **Federal Register** for November 6, 1992. The proposed regulations would replace the existing yield restriction and rebate regulations currently provided in §§ 1.103–13 through 1.103–15, § 1.103–13T, §§ 1.148–0 through 1.148–11, § 1.148–12T, and § 1.148–13T with coordinated, simplified regulations. The proposed regulations also propose to amend certain related regulations on advance refunding limitations in § 1.149–1(d), definitions in § 1.150–1, and reimbursement bonds in § 1.103–18. Written comments were received on the proposed regulations, and additional public comments were received at a public hearing held on February 2, 1993.

In addition, on October 10, 1990, proposed and temporary regulations under § 1.149(b)(3)–1T were published in the **Federal Register**. These regulations provide that certain investments in obligations issued by the Resolution Funding Corporation under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 are excepted from the prohibition on federal guarantees of tax-exempt bonds under section 149(b).

After consideration of the comments, the proposed regulations have been modified and are adopted in final form. Certain comments on the proposed regulations, and responses to those comments, are discussed below.

II. Comments on Proposed Regulations and Certain Changes in Final Regulations

A. *In general.* The proposed regulations substantially revise the arbitrage regulations on tax-exempt bonds to simplify those rules and to reduce administrative burdens. The proposed regulations provide greater coordination of the rules on yield restriction and rebate, more unified definitions, general anti-abuse rules in lieu of numerous special rules, clarification of ambiguous areas, and new guidance on many previously reserved topics. Although numerous modifications have been made to clarify the regulations in various technical respects in response to comments received, the general principles behind the proposed regulations have been retained in the final regulations.

B. *Section 1.148–1 Definitions and Elections.* 1. Computation Date and Computation Period. Rebate is computed over permitted computation periods occurring between computation dates. The proposed regulations generally provide issuers of variable yield issues with flexibility to choose computation dates and computation periods for computing yield on an issue for rebate purposes. Commentators requested clarification of the scope of this flexibility. The final regulations retain significant flexibility to choose these dates and periods until the date that the first required rebate payment must be made (i.e., 5 years after the issue date), but provide a more limited choice of permitted computation periods thereafter.

2. De Minimis Original Issue Discount or Premium. The proposed regulations generally permit issuers to value certain bonds and investments having standard features and not more than de minimis amounts of original issue discount or premium ("plain par bonds" and "plain par investments"), based on a simplified measure of outstanding principal amount. The definition of de minimis amount applies for a variety of purposes. De minimis original issue discount or premium is generally defined in the proposed regulations as an amount that does not exceed 0.25 percent multiplied by the product of the stated redemption price at maturity and the number of complete years to final maturity from the issue date.

To decrease complexity and to minimize certain identified distortions, the final regulations limit the measure of this de minimis amount for valuation purposes to a flat percentage of the stated redemption price at maturity. In a related change, the final regulations clarify that plain par bonds eligible for the simplified valuation rules include certain tender option bonds (i.e., "qualified tender bonds" under Notice 88–130, 1988–2 C.B. 543).

3. Program Investments. The proposed regulations change certain aspects of the existing definition of "program investments" under § 1.103–13(h). Commentators recommended that the existing definition generally be retained, particularly its treatment of multifamily housing loans as eligible program investments. The final regulations revise this definition to be more consistent with the existing definition.

4. Investment-Type Property. Whether an item financed with bond proceeds is investment property, including investment-type property, generally determines whether that item is subject to arbitrage restrictions under section 148. The proposed regulations provide a definition of investment-type property that includes certain prepayments based on the investment motivation for the prepayment. Commentators expressed concern that this provision was too broad and potentially covered common prepayments made for bona fide business reasons. The final regulations provide two exceptions to the general rule on prepayments. One exception focuses on whether the issuer has any commercially reasonable alternative to the prepayment. The other exception focuses on whether similar prepayments are customary among persons not eligible for tax-exempt financing.

5. Replacement Proceeds. The arbitrage restrictions apply to both proceeds received from the sale of bonds and amounts "replaced" by the proceeds. The proposed regulations generally provide that replacement proceeds include, but are not limited to, sinking funds, amounts that are pledged as security for an issue, working capital replacement funds, and amounts that are replaced because of their nexus to a governmental purpose of the issue. Commentators requested that the regulations provide a general definition of replacement proceeds. The final

regulations provide a general definition of replacement proceeds based on whether the amounts have a sufficient nexus to the governmental purpose of the issue. The final regulations also clarify that replacement proceeds may arise at any time, regardless of whether the creation of the replacement proceeds is reasonably expected by the issuer on the issue date.

Commentators also requested that the provision dealing with working capital replacement funds be revised or deleted. The final regulations do not include the working capital replacement fund rule. To reduce the arbitrage incentive to issue bonds with longer terms than necessary and to recognize the additional borrowing implicit in these issues, however, the final regulations generally provide that replacement proceeds arise if the term of an issue is reasonably expected to be longer than necessary to accomplish the governmental purpose of the issue and funds are expected to become available during the term of the issue. The final regulations provide two safe harbors against the application of this rule that apply if: (1) An otherwise-restricted working capital financing issue is not outstanding more than 2 years; or (2) a capital project financing issue has a weighted average maturity that does not exceed 120 percent of the economic life of the financed projects. These provisions are only safe harbors relating to the existence of replacement proceeds and are not intended to place a maturity limitation on tax-exempt bonds.

C. *Section 1.148–2 General Arbitrage Yield Restriction Rules.* 1. Reasonable Expectations. Under section 148(a), bonds are generally taxable arbitrage bonds if, as of the issue date, the issuer reasonably expects to invest the proceeds in higher yielding investments. The proposed regulations permit an issuer to certify its expectations. The proposed regulations also provide certain requirements as a prerequisite to the use of the certification that were intended to encourage more complete disclosure of facts and material tax issues. Commentators expressed concern that some of these requirements were unduly burdensome and created practical difficulties for issuers.

The final regulations significantly modify the certification requirements to address issuer concerns. The required complete disclosure of facts and material tax issues has been eliminated. The regulations clarify that the certification does not establish any presumptions about the reasonableness of an issuer's expectations. In general, this and other certifications referred to in the final regulations have no special evidentiary status.

2. Temporary Periods. Under section 148(c), proceeds may be invested at a materially higher yield during a reasonable temporary period until needed for the governmental purpose of the issue without causing the bonds of the issue to be arbitrage bonds.

Under the proposed regulations, an issuer must satisfy an expenditure test, a time test, and a due diligence test in order to qualify for the general 3-year temporary period for capital projects, and these tests apply separately to each capital project financed by an issue. Commentators expressed concern about the administrative burden associated with tracking individual capital projects and requested that these tests be applied on an aggregate basis to all capital projects financed by an issue. The final regulations generally adopt this comment, except in the case of certain pooled issues.

Commentators expressed concern that the 13-month temporary period for proceeds used for working capital expenditures was inadequate for certain issuers who, under local law, have a longer period between their annual budget cycle and the tax collections for that period. The final regulations provide a temporary period of up to 2 years after the issue date for this type of issue.

3. Minor Portion. In response to comments, the final regulations permit issuers to waive at any time the ability to invest amounts constituting a minor portion of an issue at an unrestricted yield.

D. *Section 1.148–3 General Arbitrage Rebate Rules.* 1. Computation Date Credit. The proposed regulations provide that, for purposes of computing rebate, an issuer is entitled to a computation date credit of $5,000 on the last day of each fifth bond year and on the final maturity date. In order to target the credit more closely to the periods associated with the computations, the final regulations change the credit to $1,000 for each bond year during which there are gross proceeds of the issue and for the final maturity date.

2. Bona Fide Debt Service Funds. In response to comments, the final regulations add a safe harbor relating to the statutory exception to the rebate requirement for certain bona fide debt service funds, based on a specified maximum average annual debt service on an issue.

E. *Section 1.148–4 Yield on an Issue of Bonds.* 1. Yield Recomputation for a Fixed Yield Issue. The proposed regulations generally provide that yield on a fixed yield issue is determined as of the issue date and, except in narrow circumstances involving hedging transactions, is not recomputed to take into account subsequent unexpected events. The final regulations generally retain this approach for rebate purposes.

Many commentators requested guidance on the Federal income tax consequences of an issuer's sale of a right associated with a bond, such as a call right, in a separate transaction from the original sale of the bond (e.g., so-called "detachable calls"). These comments included requests for guidance on whether the sale affects the yield on the bond for arbitrage purposes under section 148 and whether the sale results in a deemed retirement of the related bond and the deemed issuance of a new bond (a reissuance) under the tax-exempt bond rules or section 1001. The final regulations clarify that amounts received by the issuer from the sale of a detachable call are taken into account as additional issue price on the issue for rebate purposes. No implication is intended on whether the sale of a detachable call results in a reissuance of the issue under section 1001. It is anticipated that this issue will be addressed in regulations under section 1001.

2. Bonds Subject to Mandatory or Contingent Early Redemption. Under the proposed regulations, the yield on certain fixed yield bonds subject to mandatory early redemption is computed by treating those bonds as redeemed on the reasonably expected early redemption date for an amount equal to their value. The proposed regulations further provide that the outstanding stated principal amount (plus accrued interest) of the bond may be treated as its value if the original issue discount on the bond does not exceed a de minimis amount. The final regulations generally retain this rule, but further limit the permitted de minimis amount to an amount based on the number of years to the weighted average maturity date, rather than the final maturity date, of substantially identical bonds.

3. Bonds Subject to Optional Early Redemption. The proposed regulations contain a special rule for computing the yield on an issue containing bonds that are subject to optional early redemption and that have certain early redemption rights, significant premium, or so-called "stepped-coupons." The yield on an issue subject to this special rule is computed by treating the bonds as redeemed on the optional redemption date that would produce the lowest yield. The final regulations generally retain this rule, but exclude certain bonds if their assumed redemption has

only a minimal effect on the yield on the issue of which the bond is a part.

4. Qualified Guarantees. The proposed regulations provide simplified rules under which issuers may take into account certain fees for credit enhancement, such as bond insurance and letters of credit ("qualified guarantees") in computing yield on an issue. The final regulations clarify that certain liquidity arrangements may be qualified guarantees and provide a safe harbor for the allocation of qualified guarantee fees in variable yield issues.

5. Qualified Hedging Transactions. The proposed regulations permit issuers to take certain qualified hedging transactions into account for purposes of computing yield on an issue. Under the proposed regulations, a hedge is generally a qualified hedging transaction if the terms of the hedge closely correspond with the terms of the issue and if the hedge is adequately identified. Commentators requested that the types of qualified hedging transactions be expanded.

The final regulations generally expand the definition of a qualified hedging transaction in various respects. The final regulations permit hedges for less than the entire term of the issue and hedges relating to less than all of the bonds of an issue. The final regulations also treat certain additional hedging products (e.g., interest rate caps) as qualified hedging transactions. The final regulations generally treat issues that involve qualified hedging transactions as variable yield issues. Certain variable rate issues that use interest rate swaps involving no nonperiodic hedge payments, however, are treated as fixed yield issues. The final regulations amend the identification, accounting, and other technical rules on qualified hedging transactions.

F. *Section 1.148–5 Yield and Valuation of Investments.* 1. Yield on a Separate Class of Investments. The proposed regulations provide that the yields on individual investments within the same class of investments are blended together for purposes of applying the arbitrage yield restriction rules. Under the proposed regulations, the determination of whether investments are part of the same class is based on whether the investments are subject to the same definition of "materially higher" under the arbitrage yield restriction rules.

Commentators requested that issuers be given greater flexibility to blend the yields on individual investments for arbitrage yield restriction purposes. The final regulations provide expanded flexibility to blend yields on various categories of investments. The general anti-abuse rules in § 1.148–10 clarify, however, that certain financing structures that improperly exploit these rules cause the bonds to be arbitrage bonds.

2. Yield Reduction Payments to the United States. The proposed regulations provide significant integration of the arbitrage yield restriction and rebate provisions by permitting certain payments to be made to the United States to reduce the yield on investments for yield restriction purposes. The proposed regulations permit these payments in specified circumstances in which arbitrage yield restriction creates administrative difficulties.

Commentators requested that the scope of the rule on yield reduction payments be expanded in various respects. The final regulations expand the ability of issuers to make yield reduction payments in additional circumstances involving certain variable yield issues and certain reserve funds. For purpose investments, the final regulations also delay the due date for these payments.

3. Administrative Costs of Investments. The proposed regulations permit reasonable direct administrative costs on all investments to be taken into account in computing yield on the investments and rebate on the issue. The proposed regulations further provide, however, that indirect costs such as general overhead may not be taken into account. Commentators requested clarification of the scope of permitted administrative costs. The final regulations provide additional examples of the types of qualifying and nonqualifying administrative costs. The final regulations also provide special rules for administrative costs on regulated investment companies, certain external commingled funds, and program investments.

G. Section 1.148–6 General Allocation and Accounting Rules. 1. Universal Cap on Value of Investments Allocated to an Issue. The proposed regulations generally retain the universal cap provided under the existing regulations that limits the amount of gross proceeds allocable to a bond issue. Commentators expressed concern that in some cases the application of the universal cap creates unnecessary administrative burdens. The final regulations reduce the frequency with which the universal cap must be applied and also permit issuers to disregard the universal cap altogether in specified circumstances.

2. Expenditures of Proceeds for Working Capital Purposes. For working capital expenditures, the proposed regulations generally retain the "proceeds-spent-last" accounting method from the existing regulations. Bond proceeds generally are not treated as spent under this rule until other available amounts have been spent. The proposed regulations permit an amount equal to 10 percent of the previous fiscal year's working capital expenditures to be treated as an unavailable, reasonable reserve. Commentators requested certain clarifications, including whether an issuer may, in effect, finance the permitted working capital reserve (e.g., by issuing bonds in an amount equal to the working capital reserve and spending those proceeds while accumulating a like amount to serve as the reserve).

Based on a review of these comments and re-consideration of this area in light of continuing policy concerns regarding the arbitrage incentives to issue larger working capital financings than necessary, the final regulations impose certain further limitations on working capital financings. The final regulations retain the approach of the existing and proposed regulations that measures the permitted working capital reserve by reference to the previous year's actual working capital expenditures. To further limit overissuance, the permitted working capital reserve has been reduced to 5 percent of the issuer's working capital expenditures for the prior year. In addition, the final regulations clarify that, except in the case of issues by certain small issuers and issues that are exempt from rebate under the section 148(f)(4)(B)(iii) rebate safe harbor, an issue indirectly used to finance a working capital reserve results in the creation of replacement proceeds that remain subject to the arbitrage rules. In a related change, the definition of "controlled group," which is relevant in determining the available amounts, has been narrowed. In addition, in response to comments, the final regulations also exclude from the amounts considered available for working capital purposes certain "quasi-endowment funds" held by hospitals, universities, or similar institutions.

H. Section 1.148–7 Spending Exceptions to the Rebate Requirement. The proposed regulations provide a new 18-month spending exception to the rebate requirement that is broadly applicable and requires prompt expenditure of bond proceeds under a prescribed, approximately level spending schedule. This new spending exception was introduced because of the difficulties many issuers had using the existing spending exceptions. Commentators were largely supportive of the new 18-month exception, but

requested that the spending percentage for the first 6-month period be reduced. The final regulations reduce the spending percentage for this period to 15 percent.

I. *Section 1.148–8 Small Issuer Exception to the Rebate Requirement.* For purposes of the small issuer exception to rebate, bonds issued by a subordinate entity are treated as also issued by each entity to which it is subordinate. The proposed regulations provide a definition of "subordinate entity" based on issuing authority and control. Commentators requested that the general section 150 definition of "controlled entity" be extended to define a "subordinate entity." The final regulations adopt this comment.

J. *Section 1.148–9 Arbitrage Rules for Refunding Issues.* 1. Transferred Proceeds Allocation Rule. The proposed regulations provide a "principal-to-principal" transferred proceeds allocation rule similar to that of the existing regulations, under which unspent proceeds of a prior issue become transferred proceeds of a refunding issue at the time that proceeds of the refunding issue discharge any of the outstanding principal amount of the prior issue. The proposed regulations generally do not include an "operating rule" (as under former § 1.103–14(e)(1)) to divide a prior issue into refunded and unrefunded portions for transferred proceeds purposes.

Commentators requested that an operating rule be included to provide simplification and greater certainty in the planning of refunding issues. The final regulations provide such a rule.

2. Multipurpose Issue Allocations. The proposed regulations contain a flexible multipurpose issue allocation rule that permits issues used for separate governmental purposes to be treated as separate issues for prescribed purposes. In the case of a multipurpose issue a portion of which is a refunding issue, the proposed regulations permit issuers to use only certain specified allocation methods to allocate bonds of the multipurpose issue to the refunding of the prior issue. Commentators expressed concern that, in certain circumstances, an issuer may have no practical way to use any of the required allocation methods under this rule. The final regulations add another allocation rule permitting allocations in proportion to the average economic lives of the facilities financed by the overall multipurpose issue. In addition, the final regulations permit an issuer to use another reasonable allocation method in limited circumstances based on state law, existing legal restrictions, or similar circumstances.

The final regulations expand the applicability of the multipurpose issue rule for an issue that refunds two or more prior issues and provide additional rules for allocating the proceeds of these issues. The final regulations also permit the application of the multipurpose issue rule to divide certain pooled issues for yield calculation purposes.

K. *Section 1.148–10* Anti-Abuse Rules and Authority of Commissioner. The proposed regulations provide a broad, general anti-abuse rule that treats bonds as taxable arbitrage bonds if the issuer uses an abusive device to obtain a material financial advantage based on arbitrage. This general anti-abuse rule proposes to replace the general artifice or device rules contained in § 1.103–13(j) and § 1.148–9(g) and numerous specific anti-abuse rules. Commentators expressed concern that the general anti-abuse rule in the proposed regulations is not sufficiently specific for issuers to determine whether a particular transaction violates the rule.

The final regulations retain a broad, general anti-abuse rule, but provide additional specific guidance intended to clarify further the scope of covered abusive transactions. In large part, the revised abusive arbitrage device provision is based on the existing artifice or device prohibition in § 1.103–13(j). The revised rule continues to focus on transactions that exploit the difference between tax-exempt and taxable interest rates and that overburden the tax-exempt bond market. Although many clarifications have been made to these rules, no implication is intended regarding the scope of the existing artifice or device rule or that the examples of abusive arbitrage devices do not involve artifices or devices.

L. *Section 149(d)–1 Limitations on Advance Refundings.* 1. General Rule. Section 149(d) provides limits on advance refundings, including limitations on the number of permitted tax-exempt advance refundings. The final regulations provide additional guidance relating to the requirement that the refunded bonds be retired on their first call date and the related savings test.

2. Sales of Tax-exempt Conduit Loans. The proposed regulations include a provision under the anti-abuse rules that treats tax-exempt purpose investments financed by a conduit financing issue as taxable investments if they are subsequently transferred to another party. Without some limitations on these transactions, issuers could effectively double the amount of tax-exempt bonds on the market for a single project. Commentators expressed concern that this provision is overly broad and recommended that these transactions instead be treated under a refunding analysis. The final regulations adopt this more direct approach by treating the actual issuer of the conduit financing and the conduit borrower as related parties for purposes of section 149(d). Thus, a later sale of the conduit loan is treated as a new issue the yield on which is determined based on the amounts derived from that sale. If the proceeds of that deemed new issue are used to pay debt service on the conduit financing issue, the conduit loan is treated as a refunding issue. Further, the abusive arbitrage device rules illustrate that this type of transaction may involve an exploitation of the difference between taxable and tax-exempt rates.

M. *Section 1.150–1 Definitions.* 1. Issue. The proposed regulations provide a new definition of issue for arbitrage and related purposes. In response to comments, and to promote simplification, the final regulations extend this definition to apply for all tax-exempt bond purposes. The final regulations provide additional guidance on whether obligations are issued at substantially the same time, sold pursuant to the same plan of financing, and are reasonably expected to be paid from the same source of funds. The final regulations generally provide that taxable and tax-exempt bonds are not part of a single issue and clarify the special rules for commercial paper and draw-down loans. The final regulations also provide that issuers may treat tax-exempt governmental bonds and private activity bonds as separate issues under specified circumstances.

2. Controlled Group. The proposed regulations provide a definition of controlled group that focuses on control of the governing board, budgetary control, and control over the ability to issue debt obligations. The final regulations narrow the definition of controlled group to focus on board control and financial control. The final regulations also provide that certain general purpose governmental units are not controlled by any other entity.

N. *Section 1.150–2 Proceeds of Bonds used for Reimbursement.* The proposed regulations provide simplified and expanded rules to determine when an allocation of bond proceeds to reimburse expenditures previously made by an issuer is treated as an expenditure of those bond proceeds. The proposed regulations require an issuer to reimburse past expenditures with bond proceeds within a prescribed

period that is not later than 3 years after the expenditure is paid. Commentators expressed concern that the 3-year overall limit on the reimbursement period may be too short for certain types of projects. The final regulations expand the maximum reimbursement period to 5 years for certain long-term construction projects. Commentators also requested that a rule under prior regulations excluding certain preliminary expenditures from the reimbursement rules be reinserted. The final regulations include such a preliminary expenditures exception.

Commentators also noted that the proposed regulations and § 1.103–8(a)(5) were duplicative and requested clarification of the continued application of § 1.103–8(a)(5). The final regulations eliminate the official action requirement of § 1.103–8(a)(5).

O. *Federal Guarantees.* The final regulations also finalize the regulations under § 1.149(b)(3)–1T relating to the exception from the section 149(d) prohibition against federal guarantees for certain investments in obligations issued by the Resolution Funding Corporation under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. In addition, the final regulations provide an expanded exception under which bonds are not federally guaranteed as a result of an investment in a refunding escrow.

P. *Effective Dates.* The final regulations generally apply to bonds issued after June 30, 1993. To simplify the area and promote compliance, the final regulations generally permit elective, retroactive application of the final regulations in whole, but not in part, to outstanding issues issued prior to July 1, 1993, that are subject to the rebate requirement. The 18-month spending exception, however, may not be applied retroactively. The final regulations also provide certain other transition and related rules. The final regulations also extend the due date for rebate payments due after June 30, 1993, to a date not earlier than September 1, 1993.

Finally, in order to not interfere with ongoing transactions, at the issuer's option, certain existing provisions may be applied to bonds issued before August 15, 1993.

Special Analyses

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

Drafting Information

The principal authors of these regulations are Scott R. Lilienthal, William P. Cejudo, Michael G. Bailey, Lon B. Smith, and John J. Cross III of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, and Mitchell H. Rapaport, Office of Tax Legislative Counsel, Department of the Treasury. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 1 and 6a

Income taxes, Reporting and recordkeeping requirements.

26 CFR 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 6a and 602 are amended as follows:

Paragraph 1. The authority citation for part 1 is amended by removing the entries for "Sections 1.148–0 through 1.148–9," "Section 1.148–10," "Section 1.148–11", "Section 1.148–12T" "Section 1.148–13T" and "Section 1.149(b)(3)–1T" and adding the following citations to read as follows:

Authority: 26 U.S.C. 7805 * * * Sections 1.148–0 through 1.148–11 also issued under 26 U.S.C. 148 (f), (g), and (i).

Section 1.149(b)–1 also issued under 26 U.S.C. 149(b)(3)(B) (v). * * *

Section 1.149(g)–1 also issued under 26 U.S.C. 149(g)(5). * * *

Par. 2. Section 1.103–8(a)(5) is revised to read as follows:

§ 1.103–8 Interest on bonds to finance certain exempt facilities.

(a) * * *

(5) *Limitation.* (i) A facility qualifies under this section only to the extent that there is a valid reimbursement allocation under § 1.150–2 with respect to expenditures that are incurred before the issue date of the bonds to provide the facility and that are to be paid with the proceeds of the issue. In addition, if the original use of the facility begins before the issue date of the bonds, the facility does not qualify under this section if any person or related person who is a substantial user of the facility during the 5-year period beginning on the issue date was a substantial user of the facility during the 5-year period ending on the issue date.

(ii) Except to the extent provided in § 1.150–2(j), this paragraph (a)(5) applies to bonds issued after June 30, 1993.

* * * * *

§§ 1.103–13, 1.103–13T, 1.103–14, 1.103–15 and 1.103–18 [Removed]

Par. 3. Sections 1.103–13, 1.103–13T, 1.103–14, 1.103–15, and 1.103–18 are removed.

Par. 4. Section 1.147(b)–1 is added to read as follows:

§ 1.147(b)–1 Bond maturity limitation-treatment of working capital.

Section 147(b) does not apply to proceeds of a private activity bond issue used to finance working capital expenditures.

Par. 5. Sections 1.148–0 through 1.148–11 are revised to read as set forth below:

§ 1.148–0 Scope and table of contents.

(a) *Overview.* Under section 103(a), interest on certain obligations issued by States and local governments is excludable from the gross income of the owners. Section 148 was enacted to minimize the arbitrage benefits from investing gross proceeds of tax-exempt bonds in higher yielding investments and to remove the arbitrage incentives to issue more bonds, to issue bonds earlier, or to leave bonds outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes for which the bonds were issued. To accomplish these purposes, section 148 restricts the direct and indirect investment of bond proceeds in higher yielding investments and requires that certain earnings on higher yielding investments be rebated to the United States. Violation of these provisions causes the bonds in the issue to become *arbitrage bonds*, the interest on which is not excludable from the gross income of the owners under section 103(a). The regulations in §§ 1.148–1 through 1.148–11 apply in a manner consistent with these purposes.

(b) *Scope.* Sections 1.148–1 through 1.148–11 apply generally for purposes of the arbitrage restrictions on State and local bonds under section 148.

(c) *Table of contents.* This paragraph (c) lists the table of contents for §§ 1.148–1 through 1.148–11.

§ 1.148–1 Definitions and elections.

(a) In general.

(b) Certain definitions.

(c) Definition of replacement proceeds.
(1) In general.
(2) Sinking fund.
(3) Pledged fund.
(4) Other replacement proceeds.
(d) Elections.
§ 1.148–2 General arbitrage yield restriction rules.
(a) In general.
(b) Reasonable expectations.
(1) In general.
(2) Certification of expectations.
(c) Intentional acts.
(d) Materially higher yielding investments.
(1) In general.
(2) Definitions of materially higher yield.
(3) Mortgage loans.
(e) Temporary periods.
(1) In general.
(2) General 3-year temporary period for capital projects and qualified mortgage loans.
(3) Temporary period for restricted working capital expenditures.
(4) Temporary period for pooled financings.
(5) Temporary period for replacement proceeds.
(6) Temporary period for investment proceeds.
(7) Other amounts.
(f) Reserve or replacement funds.
(1) General 10 percent limitation on funding with sale proceeds.
(2) Exception from yield restriction for reasonably required reserve or replacement funds.
(3) Certain parity reserve funds.
(g) Minor portion.
(h) Certain waivers permitted.
§ 1.148–3 General arbitrage rebate rules.
(a) In general.
(b) Definition of rebate amount.
(c) Computation of future value of a payment or receipt.
(d) Payments and receipts.
(1) Definition of payments.
(2) Definition of receipts.
(3) Special rules for commingled funds.
(e) Computation dates.
(1) In general.
(2) Final computation date.
(f) Amount of required rebate installment payment.
(1) Amount of interim rebate payments.
(2) Amount of final rebate payment.
(3) Future value of rebate payments.
(g) Time and manner of payment.
(h) Penalty in lieu of loss of tax exemption.
(1) In general.
(2) Interest on underpayments.
(3) Waivers of the penalty.
(4) Application to alternative penalty under § 1.148–7.
(i) Recovery of overpayment of rebate.
(1) In general.
(2) Limitations on recovery.
(j) Examples.
(k) Bona fide debt service fund exception.
§ 1.148–4 Yield on an issue of bonds.
(a) In general.
(b) Computing yield on a fixed yield issue.
(1) In general.
(2) Yield on certain fixed yield bonds subject to mandatory or contingent early redemption.
(3) Yield on certain fixed yield bonds subject to optional early redemption.
(4) Yield recomputed upon transfer of certain rights associated with the bond.
(5) Examples.
(c) Computing yield on a variable yield issue.
(1) In general.
(2) Payments on bonds included in yield for a computation period.
(3) Example.
(d) Conversion from variable yield issue to fixed yield issue.
(e) Value of bonds.
(1) Plain par bonds.
(2) Other bonds.
(f) Qualified guarantees.
(1) In general.
(2) Interest savings.
(3) Guarantee in substance.
(4) Reasonable charge.
(5) Guarantee of purpose investments.
(6) Allocation of qualified guarantee payments.
(7) Refund or reduction of guarantee payments.
(g) Yield on certain mortgage revenue and student loan bonds.
(h) Qualified hedging transactions.
(1) In general.
(2) Qualified hedge defined.
(3) Accounting for qualified hedges.
(4) Certain variable yield issues treated as fixed yield issues.
(5) Authority of the Commissioner.
§ 1.148–5 Yield and valuation of investments.
(a) In general.
(b) Yield on an investment.
(1) In general.
(2) Yield on a separate class of investments.
(3) Investments to be held beyond issue's maturity or beyond temporary period.
(4) Consistent redemption assumptions on purpose investments.
(5) Student loan special allowance payments included in yield.
(c) Yield reduction payments to the United States.
(1) In general.
(2) Manner of payment.
(3) Applicability of special yield reduction rule.
(d) Value of investments.
(1) In general.
(2) Mandatory valuation of yield restricted investments at present value.
(3) Mandatory valuation of certain investments at fair market value.
(4) Special transition rule for transferred proceeds.
(5) Definition of present value of an investment.
(6) Definition of fair market value.
(e) Administrative costs of investments.
(1) In general.
(2) Qualified administrative costs on nonpurpose investments.
(3) Qualified administrative costs on purpose investments.
§ 1.148–6 General allocation and accounting rules.
(a) In general.
(1) Reasonable accounting methods required.
(2) Bona fide deviations from accounting method.
(b) Allocation of gross proceeds to an issue.
(1) One-issue rule and general ordering rules.
(2) Universal cap on value of nonpurpose investments allocated to an issue.
(c) Fair market value limit on allocations to nonpurpose investments.
(d) Allocation of gross proceeds to expenditures.
(1) Expenditures in general.
(2) Treatment of gross proceeds invested in purpose investments.
(3) Expenditures for working capital purposes.
(4) Expenditures for grants.
(5) Expenditures for reimbursement purposes.
(6) Expenditures of certain commingled investment proceeds of governmental issues.
(7) Payments to related parties.
(e) Special rules for commingled funds.
(1) In general.
(2) Investments held by a commingled fund.
(3) Certain expenditures involving a commingled fund.
(4) Fiscal periods.
(5) Unrealized gains and losses on investments of a commingled fund.
(6) Allocations of commingled funds serving as common reserve funds or sinking funds.
§ 1.148–7 Spending exceptions to the rebate requirement.
(a) Scope of section.
(1) In general.
(2) Relationship of spending exceptions.
(3) Spending exceptions not mandatory.
(b) Rules applicable for all spending exceptions.
(1) Special transferred proceeds rules.
(2) Application of multipurpose issue rules.
(3) Expenditures for governmental purposes of the issue.
(4) De minimis rule.
(5) Special definition of reasonably required reserve or replacement fund.
(6) Pooled financing issue.
(c) 6-month exception.
(1) General rule.
(2) Additional period for certain bonds.
(3) Amounts not included in gross proceeds.
(4) Series of refundings.
(d) 18-month exception.
(1) General rule.
(2) Extension for reasonable retainage.
(3) Gross proceeds.
(4) Application to multipurpose issues.
(e) 2-year exception.
(1) General rule.
(2) Extension for reasonable retainage.
(3) Definitions.
(f) Construction issue.
(1) Definition.
(2) Use of actual facts.
(3) Ownership requirement.
(g) Construction expenditures.
(1) Definition.
(2) Certain acquisitions under turnkey contracts treated as construction expenditures.

(3) Constructed personal property.
(4) Specially developed computer software.
(5) Examples.
(h) Reasonable retainage definition.
(i) Available construction proceeds.
(1) Definition in general.
(2) Earnings on a reasonably required reserve or replacement fund.
(3) Reasonable expectations test for future earnings.
(4) Issuance costs.
(5) One and one-half percent penalty in lieu of arbitrage rebate.
(6) Payments on purpose investments and repayments of grants.
(7) Examples.
(j) Election to treat portion of issue used for construction as separate issue.
(1) In general.
(2) Example.
(k) One and one-half percent penalty in lieu of arbitrage rebate.
(1) In general.
(2) Application to reasonable retainage.
(3) Coordination with rebate requirement.
(l) Termination of 1½ percent penalty.
(1) Termination after initial temporary period.
(2) Termination before end of initial temporary period.
(3) Application to reasonable retainage.
(4) Example.
(m) Payment of penalties.
§ 1.148–8 Small issuer exception to rebate requirement.
(a) Scope.
(b) General taxing powers.
(c) Size limitation.
(1) In general.
(2) Aggregation rules.
(3) Certain refunding bonds not taken into account.
(d) Pooled financings.
(1) Treatment of pool issuer.
(2) Treatment of conduit borrowers.
(e) Refunding issues.
(1) In general.
(2) Multipurpose issues.
§ 1.148–9 Arbitrage rules for refunding issues.
(a) Scope of application.
(b) Transferred proceeds allocation rule.
(1) In general.
(2) Special definition of principal amount.
(3) Relation of transferred proceeds rule to universal cap rule.
(4) Limitation on multi-generational transfers.
(c) Special allocation rules for refunding issues.
(1) Allocations of investments.
(2) Allocations of mixed escrows to expenditures for principal, interest, and redemption prices on a prior issue.
(d) Temporary periods in refundings.
(1) In general.
(2) Types of temporary periods in refundings.
(e) Reasonably required reserve or replacement funds in refundings.
(f) Minor portions in refundings.
(g) Certain waivers permitted.
(h) Multipurpose issue allocations.
(1) Application of multipurpose issue allocation rules.
(2) Rules on allocations of multipurpose issues.
(3) Separate purposes of a multipurpose issue.
(4) Allocations of bonds of a multipurpose issue.
(5) Limitation on multi-generation allocations.
(i) Operating rules for separation of prior issues into refunded and unrefunded portions.
(1) In general.
(2) Allocations of proceeds and investments in a partial refunding.
(3) References to prior issue.
§ 1.148–10 Anti-abuse rules and authority of Commissioner.
(a) Abusive arbitrage device.
(1) In general.
(2) Abusive arbitrage device defined.
(3) Exploitation of tax-exempt interest rates.
(4) Overburdening the tax-exempt market.
(b) Consequences of overburdening the tax-exempt bond market.
(1) In general.
(2) Application.
(c) Anti-abuse rules on excess gross proceeds of advance refunding issues.
(1) In general.
(2) Definition of excess gross proceeds.
(3) Special treatment of transferred proceeds.
(4) Special rule for crossover refundings.
(5) Special rule for gross refundings.
(d) Examples.
(e) Authority of the Commissioner to clearly reflect the economic substance of a transaction.
(f) Authority of the Commissioner to require an earlier date for payment of rebate.
(g) Authority of the Commissioner to waive regulatory limitations.
§ 1.148–11 Effective dates.
(a) In general.
(b) Elective retroactive application in whole.
(1) In general.
(2) No elective retroactive application for 18-month spending exception.
(c) Elective retroactive application of certain provisions.
(1) In general.
(2) Certain allocations of multipurpose issues.
(3) Special limitation.
(d) Transition rule excepting certain state guarantee funds from the definition of replacement proceeds.
(1) Certain perpetual trust funds.
(2) Permanent University Fund.
(e) Transition rule regarding special allowance payments.
(f) Transition rule regarding applicability of yield reduction rule.
(g) Extension of due date for rebate payments.
(h) Elective application of existing regulations.

§ 1.148–1 Definitions and elections.

(a) *In general.* The definitions in this section and the definitions under section 150 apply for purposes of section 148 and §§ 1.148–1 through 1.148–11.

(b) *Certain definitions.* The following definitions apply:

Accounting method means both the overall method used to account for gross proceeds of an issue (e.g., the cash method or a modified accrual method) and the method used to account for or allocate any particular item within that overall accounting method (e.g., accounting for investments, expenditures, allocations to and from different sources, and particular items of the foregoing).

Annuity contract means annuity contract as defined in section 72.

Available amount means available amount as defined in § 1.148–6(d)(3)(iii).

Bona fide debt service fund means a fund, which may include proceeds of an issue, that—

(1) Is used primarily to achieve a proper matching of revenues with principal and interest payments within each bond year; and

(2) Is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of:

(i) the earnings on the fund for the immediately preceding bond year; or

(ii) one-twelfth of the principal and interest payments on the issue for the immediately preceding bond year.

Bond year means, in reference to an issue, each 1-year period that ends on the day selected by the issuer. The first and last bond years may be short periods. If no day is selected by the issuer before the earlier of the final maturity date of the issue or the date that is 5 years after the issue date, bond years end on each anniversary of the issue date and on the final maturity date.

Capital project or capital projects means all capital expenditures, plus related working capital expenditures to which the de minimis rule under § 1.148–6(d)(3)(ii)(A) applies, that carry out the governmental purposes of an issue. For example, a capital project may include capital expenditures for one or more buildings, plus related start-up operating costs.

Commingled fund means any fund or account containing both gross proceeds of an issue and amounts in excess of $25,000 that are not gross proceeds of that issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account. An open-end regulated investment company under section 851, however, is not a commingled fund.

Computation date means each date on which the rebate amount for an issue is computed under § 1.148–3(e).

Computation period means the period between computation dates. The first computation period begins on the issue date and ends on the first computation date. Each succeeding computation period begins on the date immediately following the computation date and ends on the next computation date.

Consistently applied means applied uniformly within a fiscal period and between fiscal periods to account for gross proceeds of an issue and any amounts that are in a commingled fund.

De minimis amount means—

(1) In reference to original issue discount (as defined in section 1273(a)(1)) or premium on an obligation—

(i) An amount that does not exceed 2 percent multiplied by the stated redemption price at maturity; plus

(ii) Any original issue premium that is attributable exclusively to reasonable underwriters' compensation; and

(2) In reference to market discount (as defined in section 1278(a)(2)(A)) or premium on an obligation, an amount that does not exceed 2 percent multiplied by the stated redemption price at maturity.

Economic accrual method (also known as the *constant interest method* or *actuarial method*) means the method of computing yield that is based on the compounding of interest at the end of each compounding period.

Fair market value means fair market value as defined in § 1.148–5(d)(6).

Fixed rate investment means any investment whose yield is fixed and determinable on the issue date.

Fixed yield bond means any bond whose yield is fixed and determinable on the issue date using the assumptions and rules provided in § 1.148–4(b).

Fixed yield issue means any issue if each bond that is part of the issue is a fixed yield bond.

Gross proceeds means any proceeds and replacement proceeds of an issue.

Guaranteed investment contract includes any nonpurpose investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply investments on two or more future dates (e.g., a forward supply contract).

Higher yielding investments means higher yielding investments as defined in section 148(b)(1).

Investment means any investment property as defined in sections 148(b)(2) and 148(b)(3), and any other tax-exempt bond.

Investment proceeds means any amounts actually or constructively received from investing proceeds of an issue.

Investment-type property includes any property, other than property described in section 148(b)(2) (A), (B), (C), or (E), that is held principally as a passive vehicle for the production of income. Except as otherwise provided, a prepayment for property or services is investment-type property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. A prepayment is not investment-type property if—

(1) The prepayment is made for a substantial business purpose other than investment return and the issuer has no commercially reasonable alternative to the prepayment, or

(2) Prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing.

Issue price means, except as otherwise provided, issue price as defined in sections 1273 and 1274. Generally, the issue price of bonds that are publicly offered is the first price at which a substantial amount of the bonds is sold to the public. Ten percent is a substantial amount. The public does not include bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. The issue price does not change if part of the issue is later sold at a different price. The issue price of bonds that are not substantially identical is determined separately. The issue price of bonds for which a bona fide public offering is made is determined as of the sale date based on reasonable expectations regarding the initial public offering price. If a bond is issued for property, the applicable Federal tax-exempt rate is used in lieu of the Federal rate in determining the issue price under section 1274. The issue price of bonds may not exceed their fair market value as of the sale date.

Issuer generally means the entity that actually issues the issue, and, unless the context or a provision clearly requires otherwise, each conduit borrower of the issue. For example, rules imposed on issuers to account for gross proceeds of an issue apply to a conduit borrower to account for any gross proceeds received under a purpose investment. Provisions regarding elections, filings, liability for the rebate amount, and certifications of reasonable expectations apply only to the actual issuer.

Multipurpose issue means an issue the proceeds of which are used for two or more separate purposes determined in accordance with § 1.148–9(h).

Net sale proceeds means sale proceeds, less the portion of those sale proceeds invested in a reasonably required reserve or replacement fund under section 148(d) and as part of a minor portion under section 148(e).

Nonpurpose investment means any investment property, as defined in section 148(b), that is not a purpose investment.

Payment means a payment as defined in § 1.148–3(d) for purposes of computing the rebate amount, and a payment as defined in § 1.148–5(b) for purposes of computing the yield on an investment.

Plain par bond means a qualified tender bond or a bond—

(1) Issued with not more than a de minimis amount of original issue discount or premium;

(2) Issued for a price that does not include accrued interest other than pre-issuance accrued interest;

(3) That bears interest from the issue date at a single, stated, fixed rate or that is a variable rate debt instrument under section 1275, in each case with interest unconditionally payable at least annually; and

(4) That has a lowest stated redemption price that is not less than its outstanding stated principal amount.

Plain par investment means an investment that is an obligation—

(1) Issued with not more than a de minimis amount of original issue discount or premium, or, if acquired on a date other than the issue date, acquired with not more than a de minimis amount of market discount or premium;

(2) Issued for a price that does not include accrued interest other than pre-issuance accrued interest;

(3) That bears interest from the issue date at a single, stated, fixed rate or that is a variable rate debt instrument under section 1275, in each case with interest unconditionally payable at least annually; and

(4) That has a lowest stated redemption price that is not less than its outstanding stated principal amount.

Pre-issuance accrued interest means amounts representing interest that accrued on an obligation for a period not greater than one year before its issue date but only if those amounts are paid within one year after the issue date.

Proceeds means any sale proceeds, investment proceeds, and transferred proceeds of an issue. Proceeds do not include, however, amounts actually or constructively received with respect to a purpose investment that are properly allocable to the immaterially higher yield under § 1.148–2(d) or section

143(g) or to qualified administrative costs recoverable under § 1.148–5(e).

Program investment means a purpose investment that is part of a governmental program in which—

(1) The program involves the origination or acquisition of purpose investments;

(2) At least 95 percent (90 percent for qualified student loans under section 144(b)(1)(A)) of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, States or political subdivisions, 501(c)(3) organizations, persons who provide housing and related facilities, or any combination of the foregoing;

(3) At least 95 percent of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption;

(4) The program documents prohibit any obligor on a purpose investment financed by the program or any related party to that obligor from purchasing bonds of an issue that finance the program in an amount related to the amount of the purpose investment acquired from that obligor; and

(5) The issuer has not waived the right to treat the investment as a program investment.

Purpose investment means an investment that is acquired to carry out the governmental purpose of an issue.

Qualified administrative costs means qualified administrative costs as defined in § 1.148–5(e).

Qualified guarantee means a qualified guarantee as defined in § 1.148–4(f).

Qualified hedge means a qualified hedge as defined in § 1.148–4(h)(2).

Reasonable expectations or reasonableness. An issuer's expectations or actions are reasonable only if a prudent person in the same circumstances as the issuer would have those same expectations or take those same actions, based on all the objective facts and circumstances. Factors relevant to a determination of reasonableness include the issuer's history of conduct concerning stated expectations made in connection with the issuance of obligations, the level of inquiry by the issuer into factual matters, and the existence of covenants, enforceable by bondholders, that require implementation of specific expectations. For a conduit financing issue, factors relevant to a determination of reasonableness include the reasonable expectations of the conduit borrower, but only if, under the circumstances, it is reasonable and prudent for the issuer to rely on those expectations.

Rebate amount means 100 percent of the amount owed to the United States under section 148(f)(2), as further described in § 1.148–3.

Receipt means a receipt as defined in § 1.148–3(d) for purposes of computing the rebate amount, and a receipt as defined in § 1.148–5(b) for purposes of computing yield on an investment.

Refunding escrow means one or more funds established as part of a single transaction or a series of related transactions, containing proceeds of a refunding issue and any other amounts to provide for payment of principal or interest on one or more prior issues. For this purpose, funds are generally not so established solely because of—

(1) The deposit of proceeds of an issue and replacement proceeds of the prior issue in an escrow more than 6 months apart, or

(2) The deposit of proceeds of completely separate issues in an escrow.

Restricted working capital expenditures means working capital expenditures that are subject to the proceeds-spent-last rule in § 1.148–6(d)(3)(i) and are ineligible for any exception to that rule.

Sale proceeds means any amounts actually or constructively received from the sale of the issue, including amounts used to pay underwriters' discount or compensation and accrued interest other than pre-issuance accrued interest.

Stated redemption price means the redemption price of an obligation under the terms of that obligation, including any call premium.

Transferred proceeds means transferred proceeds as defined in § 1.148–9 (or the applicable corresponding provision of prior law).

Unconditionally payable means payable under terms in which—

(1) Late payment or nonpayment results in a significant penalty to the borrower or reasonable remedies to the lender, and

(2) It is reasonably certain on the issue date that the payment will actually be made.

Value means value determined under § 1.148–4(e) for a bond, and value determined under § 1.148–5(d) for an investment.

Variable yield bond means any bond that is not a fixed yield bond.

Variable yield issue means any issue that is not a fixed yield issue.

Yield means yield computed under § 1.148–4 for an issue, and yield computed under § 1.148–5 for an investment.

Yield restricted means required to be invested at a yield that is not materially higher than the yield on the issue under section 148(a) and § 1.148–2.

(c) *Definition of replacement proceeds*—(1) *In general.* Amounts are replacement proceeds of an issue if the amounts have a sufficiently direct nexus to the issue or to the governmental purpose of the issue to conclude that the amounts would have been used for that governmental purpose if the proceeds of the issue were not used or to be used for that governmental purpose. For this purpose, governmental purposes include the expected use of amounts for the payment of debt service on a particular date. The mere availability or preliminary earmarking of amounts for a governmental purpose, however, does not in itself establish a sufficient nexus to cause those amounts to be replacement proceeds. Replacement proceeds include, but are not limited to, sinking funds, pledged funds, and other replacement proceeds described in paragraph (c)(4) of this section, to the extent that those funds or amounts are held by or derived from a substantial beneficiary of the issue. A substantial beneficiary of an issue includes the issuer and any related party to the issuer, and, if the issuer is not a state, the state in which the issuer is located. A person is not a substantial beneficiary of an issue solely because it is a guarantor under a qualified guarantee.

(2) *Sinking fund. Sinking fund* includes a debt service fund, redemption fund, reserve fund, replacement fund, or any similar fund, to the extent reasonably expected to be used directly or indirectly to pay principal or interest on the issue.

(3) *Pledged fund*—(i) *In general.* A *pledged fund* is any amount that is directly or indirectly pledged to pay principal or interest on the issue. A pledge need not be cast in any particular form but, in substance, must provide reasonable assurance that the amount will be available to pay principal or interest on the issue, even if the issuer encounters financial difficulties. A pledge to a guarantor of an issue is an indirect pledge to secure payment of principal or interest on the issue. A pledge of more than 50 percent of the outstanding stock of a corporation that is a conduit borrower of the issue is not treated as a pledge for this purpose, unless the corporation is formed or

availed of to avoid the creation of replacement proceeds.

(ii) *Negative pledges.* An amount is treated as pledged to pay principal or interest on an issue if it is held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the bondholders or a guarantor of the bonds. An amount is not treated as pledged under this paragraph (c)(3)(ii), however, if—

(A) The issuer or a substantial beneficiary may grant rights in the amount that are superior to the rights of the bondholders or the guarantor; or

(B) The amount does not exceed reasonable needs for which it is maintained, the required level is tested no more frequently than every 6 months, and the amount may be spent without any substantial restriction other than a requirement to replenish the amount by the next testing date.

(4) *Other replacement proceeds*—(i) *Bonds outstanding longer than necessary*—(A) *In general.* Replacement proceeds arise to the extent that the issuer reasonably expects as of the issue date that—

(*1*) The term of an issue will be longer than is reasonably necessary for the governmental purposes of the issue, and

(*2*) There will be available amounts during the period that the issue remains outstanding longer than necessary. Whether an issue is outstanding longer than necessary is determined under § 1.148–10. Replacement proceeds are created under this paragraph (c)(4)(i)(A) at the beginning of each fiscal year during which an issue remains outstanding longer than necessary in an amount equal to available amounts of the issuer as of that date.

(B) *Safe harbor against creation of replacement proceeds.* As a safe harbor, replacement proceeds do not arise under paragraph (c)(4)(i)(A) of this section—

(*1*) For the portion of an issue that is to be used to finance restricted working capital expenditures, if that portion is not outstanding longer than 2 years;

(*2*) For the portion of an issue that is to be used to finance capital projects, if that portion has a weighted average maturity that does not exceed 120 percent of the average reasonably expected economic life of the financed capital projects, determined in the same manner as under section 147(b); or

(*3*) For the portion of an issue that is a refunding issue, if that portion has a weighted average maturity that does not exceed the remaining weighted average maturity of the prior issue, and the issue of which the prior issue is a part satisfies paragraph (c)(4)(i)(B) (*1*) or (*2*) of this section.

(ii) *Bonds financing a working capital reserve*—(A) *In general.* Except as otherwise provided in paragraph (c)(4)(ii)(B) of this section, replacement proceeds arise to the extent a working capital reserve is, directly or indirectly, financed with the proceeds of the issue (regardless of the expenditure of proceeds of the issue). Thus, for example, if an issuer that does not maintain a working capital reserve borrows to fund such a reserve, the issuer will have replacement proceeds.

(B) *Exception to creation of replacement proceeds.* Replacement proceeds do not arise under paragraph (c)(4)(ii)(A) of this section with respect to an issue—

(*1*) All of the net proceeds of which are spent within 6 months of the issue date under section 148(f)(4)(B)(iii)(I); or

(*2*) That is not subject to the rebate requirement under the exception provided by section 148(f)(4)(D).

(d) *Elections.* Except as otherwise provided, any required elections must be made in writing, and, once made, may not be revoked without the permission of the Commissioner.

§ 1.148–2 General arbitrage yield restriction rules.

(a) *In general.* Under section 148(a), the direct or indirect investment of the gross proceeds of an issue in higher yielding investments causes the bonds of the issue to be arbitrage bonds. The investment of proceeds in higher yielding investments, however, during a temporary period described in paragraph (e) of this section, as part of a reasonably required reserve or replacement fund described in paragraph (f) of this section, or as part of a minor portion described in paragraph (g) of this section does not cause the bonds of the issue to be arbitrage bonds. Bonds are not arbitrage bonds under this section as a result of an inadvertent, insubstantial error.

(b) *Reasonable expectations*—(1) *In general.* Except as provided in paragraph (c) of this section, the determination of whether an issue consists of arbitrage bonds under section 148(a) is based on the issuer's reasonable expectations as of the issue date regarding the amount and use of the gross proceeds of the issue.

(2) *Certification of expectations*—(i) *In general.* An officer of the issuer responsible for issuing the bonds must, in good faith, certify the issuer's expectations as of the issue date. The certification must state the facts and estimates that form the basis for the issuer's expectations. The certification is evidence of the issuer's expectations, but does not establish any conclusions of law or any presumptions regarding either the issuer's actual expectations or their reasonableness.

(ii) *Exceptions to certification requirement.* An issuer is not required to make a certification for an issue under paragraph (b)(2)(i) of this section if—

(A) The issuer reasonably expects as of the issue date that there will be no unspent gross proceeds after the issue date, other than gross proceeds in a bona fide debt service fund (e.g., *equipment lease* financings in which the issuer purchases equipment in exchange for an installment payment note); or

(B) The issue price of the issue does not exceed $250,000.

(c) *Intentional acts.* The taking of any deliberate, intentional action by the issuer or person acting on its behalf after the issue date in order to earn arbitrage causes the bonds of the issue to be arbitrage bonds if that action, had it been expected on the issue date, would have caused the bonds to be arbitrage bonds. An intent to violate the requirements of section 148 is not necessary for an action to be intentional.

(d) *Materially higher yielding investments*—(1) *In general.* The yield on investments is materially higher than the yield on the issue to which the investments are allocated if the yield on the investments over the term of the issue exceeds the yield on the issue by an amount in excess of the applicable definition of *materially higher* set forth in paragraph (d)(2) of this section. If yield restricted investments in the same class are subject to different definitions of *materially higher*, the applicable definition of *materially higher* that produces the lowest permitted yield applies to all the investments in the class. The yield on the issue is determined under § 1.148–4. The yield on investments is determined under § 1.148–5.

(2) *Definitions of materially higher yield*—(i) *General rule for purpose and nonpurpose investments.* For investments that are not otherwise described in this paragraph (d)(2), materially higher means one-eighth of 1 percentage point.

(ii) *Refunding escrows and replacement proceeds.* For investments in a refunding escrow or for investments allocable to replacement proceeds, materially higher means one-thousandth of 1 percentage point.

(iii) *Program investments.* For program investments that are not described in paragraph (d)(2)(iv) of this section, materially higher means 1 and one-half percentage points.

(iv) *Student loans.* For qualified student loans that are program

investments, materially higher means 2 percentage points.

(v) *Tax-exempt investments.* For investments that are tax-exempt bonds and are not investment property under section 148(b)(3), no yield limitation applies.

(3) *Mortgage loans.* Qualified mortgage loans that satisfy the requirements of section 143(g) are treated as meeting the requirements of this paragraph (d).

(e) *Temporary periods*—(1) *In general.* During the temporary periods set forth in this paragraph (e), the proceeds and replacement proceeds of an issue may be invested in higher yielding investments without causing bonds in the issue to be arbitrage bonds. This paragraph (e) does not apply to refunding issues (see § 1.148–9).

(2) *General 3-year temporary period for capital projects and qualified mortgage loans*—(i) *In general.* The net sale proceeds and investment proceeds of an issue reasonably expected to be allocated to expenditures for capital projects qualify for a temporary period of 3 years beginning on the issue date (the *3-year temporary period).* The 3-year temporary period also applies to the proceeds of qualified mortgage bonds and qualified veterans' mortgage bonds by substituting *qualified mortgage loans* in each place that *capital projects* appears in this paragraph (e)(2). The 3-year temporary period applies only if the issuer reasonably expects to satisfy the expenditure test, the time test, and the due diligence test. These rules apply separately to each conduit loan financed by an issue (other than qualified mortgage loans), with the expenditure and time tests measured from the issue date of the issue.

(A) *Expenditure test.* The expenditure test is met if at least 85 percent of the net sale proceeds of the issue are allocated to expenditures on the capital projects by the end of the 3-year temporary period.

(B) *Time test.* The time test is met if the issuer incurs within 6 months of the issue date a substantial binding obligation to a third party to expend at least 5 percent of the net sale proceeds of the issue on the capital projects. An obligation is not binding if it is subject to contingencies within the issuer's or a related party's control.

(C) *Due diligence test.* The due diligence test is met if completion of the capital projects and the allocation of the net sale proceeds of the issue to expenditures proceed with due diligence.

(ii) *5-year temporary period.* In the case of proceeds expected to be allocated to a capital project involving a substantial amount of construction expenditures (as defined in § 1.148–7), a 5-year temporary period applies in lieu of the 3-year temporary period if the issuer satisfies the requirements of paragraph (e)(2)(i) of this section applied by substituting "5 years" in each place that "3 years" appears, and both the issuer and a licensed architect or engineer certify that the longer period is necessary to complete the capital project.

(3) *Temporary period for restricted working capital expenditures*—(i) *General rule.* The proceeds of an issue that are reasonably expected to be allocated to restricted working capital expenditures within 13 months after the issue date qualify for a temporary period of 13 months beginning on the issue date. Paragraph (e)(2) of this section contains additional temporary period rules for certain working capital expenditures that are treated as part of a capital project.

(ii) *Longer temporary period for certain tax anticipation issues.* If an issuer reasonably expects to use tax revenues arising from tax levies for a single fiscal year to redeem or retire an issue, and the issue matures by the earlier of 2 years after the issue date or 60 days after the last date for payment of those taxes without interest or penalty, the temporary period under paragraph (e)(3)(i) of this section is extended until the maturity date of the issue.

(4) *Temporary period for pooled financings*—(i) *In general.* Proceeds of a pooled financing issue reasonably expected to be used to finance purpose investments qualify for a temporary period of 6 months while held by the issuer before being loaned to a conduit borrower. Any otherwise available temporary period for proceeds held by a conduit borrower, however, is reduced by the period of time during which those proceeds were held by the issuer before being loaned. For example, if the proceeds of a pooled financing issue loaned to a conduit borrower would qualify for a 3-year temporary period, and the proceeds are held by the issuer for 5 months before being loaned to the conduit borrower, the proceeds qualify for only an additional 31-month temporary period after being loaned to the conduit borrower. This paragraph (e)(4) does not apply to any qualified mortgage bond or qualified veterans' mortgage bond under section 143.

(ii) *Loan repayments*—(A) *Amount held by the issuer.* The temporary period under this paragraph (e)(4) for proceeds from the sale or repayment of any loan that are reasonably expected to be used to make or finance new loans is 3 months.

(B) *Amounts re-loaned to conduit borrowers.* Any temporary period for proceeds held by a conduit borrower under a new loan from amounts described in paragraph (e)(4)(ii)(A) of this section is determined by treating the date the new loan is made as the issue date and by reducing the temporary period by the period the amounts were held by the issuer following the last repayment.

(iii) *Construction issues.* If all or a portion of a pooled financing issue qualifies as a construction issue under § 1.148–7(b)(6), paragraph (e)(4)(i) of this section is applied by substituting "2 years" for "6 months."

(5) *Temporary period for replacement proceeds*—(i) *In general.* Except as otherwise provided, replacement proceeds qualify for a temporary period of 30 days beginning on the date that the amounts are first treated as replacement proceeds.

(ii) *Temporary period for bona fide debt service funds.* Amounts in a bona fide debt service fund for an issue qualify for a temporary period of 13 months. If only a portion of a fund qualifies as a bona fide debt service fund, only that portion qualifies for this temporary period.

(6) *Temporary period for investment proceeds.* Except as otherwise provided in this paragraph (e), investment proceeds qualify for a temporary period of 1 year beginning on the date of receipt.

(7) *Other amounts.* Gross proceeds not otherwise eligible for a temporary period described in this paragraph (e) qualify for a temporary period of 30 days beginning on the date of receipt.

(f) *Reserve or replacement funds*—(1) *General 10 percent limitation on funding with sale proceeds.* An issue consists of arbitrage bonds if sale proceeds of the issue in excess of 10 percent of the stated principal amount of the issue are used to finance any reserve or replacement fund, without regard to whether those sale proceeds are invested in higher yielding investments. If an issue has more than a de minimis amount of original issue discount or premium, the issue price (net of pre-issuance accrued interest) is used to measure the 10-percent limitation in lieu of stated principal amount. This rule does not limit the use of amounts other than sale proceeds of an issue to fund a reserve or replacement fund.

(2) *Exception from yield restriction for reasonably required reserve or replacement funds*—(i) *In general.* The investment of amounts that are part of

a reasonably required reserve or replacement fund in higher yielding investments will not cause an issue to consist of arbitrage bonds. A reasonably required reserve or replacement fund may consist of all or a portion of one or more funds, however labelled, derived from one or more sources. Amounts in a reserve or replacement fund in excess of the amount that is reasonably required are not part of a reasonably required reserve or replacement fund.

(ii) *Size limitation.* The amount of gross proceeds of an issue that qualifies as a reasonably required reserve or replacement fund may not exceed an amount equal to the least of 10 percent of the stated principal amount of the issue, the maximum annual principal and interest requirements on the issue, or 125 percent of the average annual principal and interest requirements on the issue. If an issue has more than a de minimis amount of original issue discount or premium, the issue price of the issue (net of pre-issuance accrued interest) is used to measure the 10 percent limitation in lieu of its stated principal amount. For a reserve or replacement fund that secures more than one issue (e.g. a parity reserve fund), the size limitation may be measured on an aggregate basis.

(iii) *Valuation of investments.* Investments in a reasonably required reserve or replacement fund may be valued in any reasonable, consistently applied manner that is permitted under § 1.148–5.

(iv) *150 percent debt service limitation on investment in nonpurpose investments for certain private activity bonds.* Section 148(d)(3) contains additional limits on the amount of gross proceeds of an issue of private activity bonds, other than qualified 501(c)(3) bonds, that may be invested in higher yielding nonpurpose investments without causing the bonds to be arbitrage bonds. For purposes of these rules, *initial temporary period* means the temporary periods under paragraphs (e)(2), (e)(3), and (e)(4) of this section and under § 1.148–9(d)(2)(i), (ii), and (iii).

(3) *Certain parity reserve funds.* The limitation contained in paragraph (f)(1) of this section does not apply to an issue if the master legal document authorizing the issuance of the bonds (e.g., a master indenture) was adopted before August 16, 1986, and that document—

(i) Requires a reserve or replacement fund in excess of 10 percent of the sale proceeds, but not more than maximum annual principal and interest requirements;

(ii) Is not amended after August 31, 1986 (other than to permit the issuance of additional bonds as contemplated in the master legal document); and

(iii) Provides that bonds having a parity of security may not be issued by or on behalf of the issuer for the purposes provided under the document without satisfying the reserve fund requirements of the indenture.

(g) *Minor portion.* Under section 148(e), a bond of an issue is not an arbitrage bond solely because of the investment in higher yielding investments of gross proceeds of the issue in an amount not exceeding the lesser of—

(1) 5 percent of the sale proceeds of the issue; or

(2) $100,000.

(h) *Certain waivers permitted.* On or before the issue date, an issuer may elect to waive the right to invest in higher yielding investments during any temporary period under paragraph (e) of this section or as part of a reasonably required reserve or replacement fund under paragraph (f) of this section. At any time, an issuer may waive the right to invest in higher yielding investments as part of a minor portion under paragraph (g) of this section.

§ 1.148–3 General arbitrage rebate rules.

(a) *In general.* Section 148(f) requires that certain earnings on nonpurpose investments allocable to the gross proceeds of an issue be paid to the United States to prevent the bonds in the issue from being arbitrage bonds. The arbitrage that must be rebated is based on the difference between the amount actually earned on nonpurpose investments and the amount that would have been earned if those investments had a yield equal to the yield on the issue.

(b) *Definition of rebate amount.* As of any date, the rebate amount for an issue is the excess of the future value, as of that date, of all receipts on nonpurpose investments over the future value, as of that date, of all payments on nonpurpose investments.

(c) *Computation of future value of a payment or receipt.* The future value of a payment or receipt at the end of any period is determined using the economic accrual method and equals the value of that payment or receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the yield on the issue, using the same compounding interval and financial conventions used to compute that yield.

(d) *Payments and receipts*— (1) *Definition of payments.* For purposes of this section, payments are—

(i) Amounts actually or constructively paid to acquire a nonpurpose investment (or treated as paid to a commingled fund);

(ii) For a nonpurpose investment that is first allocated to an issue on a date after it is actually acquired (e.g., an investment that becomes allocable to transferred proceeds or to replacement proceeds) or that becomes subject to the rebate requirement on a date after it is actually acquired (e.g., an investment allocated to a reasonably required reserve or replacement fund for a construction issue at the end of the 2-year spending period), the value of that investment on that date;

(iii) For a nonpurpose investment that was allocated to an issue at the end of the preceding computation period, the value of that investment at the beginning of the computation period;

(iv) On the last day of each bond year during which there are amounts allocated to gross proceeds of an issue that are subject to the rebate requirement, and on the final maturity date, a computation credit of $1,000; and

(v) Yield reduction payments on nonpurpose investments made pursuant to § 1.148–5(c).

(2) *Definition of receipts.* For purposes of this section, receipts are—

(i) Amounts actually or constructively received from a nonpurpose investment (including amounts treated as received from a commingled fund), such as earnings and return of principal;

(ii) For a nonpurpose investment that ceases to be allocated to an issue before its disposition or redemption date (e.g., an investment that becomes allocable to transferred proceeds of another issue or that ceases to be allocable to the issue pursuant to the universal cap under § 1.148–6) or that ceases to be subject to the rebate requirement on a date earlier than its disposition or redemption date (e.g., an investment allocated to a fund initially subject to the rebate requirement but that subsequently qualifies as a bona fide debt service fund), the value of that nonpurpose investment on that date; and

(iii) For a nonpurpose investment that is held at the end of a computation period, the value of that investment at the end of that period.

(3) *Special rules for commingled funds.* Section 1.148–6(e) provides special rules to limit certain of the required determinations of payments and receipts for investments of a commingled fund.

(e) *Computation dates*—(1) *In general.* For a fixed yield issue, an issuer may treat any date as a computation date. For a variable yield issue, an issuer:

(i) May treat the last day of any bond year ending on or before the latest date on which the first rebate amount is required to be paid under paragraph (f) of this section (the *first required payment date*) as a computation date but may not change that treatment after the first payment date; and

(ii) After the first required payment date, must consistently treat either the end of each bond year or the end of each fifth bond year as computation dates and may not change these computation dates after the first required payment date.

(2) *Final computation date.* The date that an issue is discharged is the final computation date. For an issue retired within 3 years of the issue date, however, the final computation date need not occur before the end of 8 months after the issue date or during the period in which the issuer reasonably expects that any of the spending exceptions under § 1.148–7 will apply to the issue.

(f) *Amount of required rebate installment payment*—(1) *Amount of interim rebate payments.* The first rebate installment payment must be made for a computation date that is not later than 5 years after the issue date. Subsequent rebate installment payments must be made for a computation date that is not later than 5 years after the previous computation date for which an installment payment was made. A rebate installment payment must be in an amount that, when added to the future value, as of the computation date, of previous rebate payments made for the issue, equals at least 90 percent of the rebate amount as of that date.

(2) *Amount of final rebate payment.* For the final computation date, a final rebate payment must be paid in an amount that, when added to the future value of previous rebate payments made for the issue, equals 100 percent of the rebate amount as of that date.

(3) *Future value of rebate payments.* The future value of a rebate payment is determined under paragraph (c) of this section. This value is computed by taking into account recoveries of overpayments.

(g) *Time and manner of payment.* Each rebate payment must be paid no later than 60 days after the computation date to which the payment relates. Any rebate payment paid within this 60-day period may be treated as paid on the computation date to which it relates. A rebate payment is paid when it is filed with the Internal Revenue Service at the place or places designated by the Commissioner. A payment must be accompanied by the form provided by the Commissioner for this purpose.

(h) *Penalty in lieu of loss of tax exemption*—(1) *In general.* The failure to pay the correct rebate amount when required will cause the bonds of the issue to be arbitrage bonds, unless the Commissioner determines that the failure was not caused by willful neglect and the issuer promptly pays a penalty to the United States. If no bond of the issue is a private activity bond (other than a qualified 501(c)(3) bond), the penalty equals 50 percent of the rebate amount not paid when required to be paid, plus interest on that amount. Otherwise, the penalty equals 100 percent of the rebate amount not paid when required to be paid, plus interest on that amount.

(2) *Interest on underpayments.* Interest accrues at the underpayment rate under section 6621, beginning on the date the correct rebate amount is due and ending on the date 10 days before it is paid.

(3) *Waivers of the penalty.* The penalty is automatically waived if the rebate amount that the issuer failed to pay plus interest is paid within 180 days after discovery of the failure, unless, the Commissioner determines that the failure was due to willful neglect, or the issue is under examination by the Commissioner at any time during the period beginning on the date the failure first occurred and ending on the date 90 days after the receipt of the rebate amount. Generally, extensions of this 180-day period and waivers of the penalty in other cases will be granted by the Commissioner only in unusual circumstances.

(4) *Application to alternative penalty under § 1.148–7.* Paragraphs (h) (1), (2), and (3) of this section apply to failures to pay penalty payments under § 1.148–7 (*alternative penalty amounts*) by substituting *alternative penalty amounts* for *rebate amount* and *the last day of each spending period for computation date.*

(i) *Recovery of overpayment of rebate*—(1) *In general.* An issuer may recover an overpayment for an issue of tax-exempt bonds by establishing to the satisfaction of the Commissioner that the overpayment occurred. An overpayment is the excess of the amount paid to the United States for an issue under section 148 over the sum of the rebate amount for the issue as of the most recent computation date and all amounts that are otherwise required to be paid under section 148 as of the date the recovery is requested.

(2) *Limitations on recovery.* (i) An overpayment may be recovered only to the extent that a recovery on the date that it is first requested would not result in an additional rebate amount if that date were treated as a computation date.

(ii) Except for overpayments of penalty in lieu of rebate under section 148(f)(4)(C)(vii) and § 1.148–7(k), an overpayment of less than $5,000 may not be recovered before the final computation date.

(j) *Examples.* The provisions of this section may be illustrated by the following examples.

Example 1. Calculation and payment of rebate for a fixed yield issue. (i) *Facts.* On January 1, 1994, City *A* issues a fixed yield issue and invests all the sale proceeds of the issue ($49 million). There are no other gross proceeds. The issue has a yield of 7.0000 percent per year compounded semiannually (computed on a 30 day month/360 day year basis). City *A* receives amounts from the investment and immediately expends them for the governmental purpose of the issue as follows:

Date	Amount
2/1/1994	$3,000,000
4/1/1994	5,000,000
6/1/1994	14,000,000
9/1/1994	20,000,000
7/1/1995	10,000,000

(ii) *First computation date.* (A) City *A* selects a bond year ending on January 1, and thus the first required computation date is January 1, 1999. The rebate amount as of this date is computed by determining the future value of the receipts and the payments for the investment. The compounding interval is each 6-month (or shorter) period and the 30 day month/360 day year basis is used because these conventions were used to compute yield on the issue. The future value of these amounts, plus the computation credit, as of January 1, 1999, is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/1994	($49,000,000)	($69,119,339)
2/1/1994	3,000,000	4,207,602
4/1/1994	5,000,000	6,932,715
6/1/1994	14,000,000	19,190,277
9/1/1994	20,000,000	26,947,162
1/1/1995	(1,000)	(1,317)
7/1/1995	10,000,000	12,722,793
1/1/1996	(1,000)	(1,229)
Rebate amount (1/01/1999)		878,664

(B) City *A* pays 90 percent of the rebate amount ($790,798) to the United States within 60 days of January 1, 1999.

(iii) *Second computation date.* (A) On the next required computation date, January 1, 2004, the future value of the payments and receipts is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/1999	$878,664	$1,239,442
Rebate amount (1/01/2004) .		1,239,442

(B) As of this computation date, the future value of the payment treated as made on January 1, 1999, is $1,115,499, which equals at least 90 percent of the rebate amount as of this computation date ($1,239,442 × 0.9), and thus no additional rebate payment is due as of this date.

(iv) *Final computation date.* (A) On January 1, 2009, City *A* redeems all the bonds, and thus this date is the final computation date. The future value of the receipts and payments as of this date is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/2004	$1,239,442	$1,748,355
1/1/2009	(1,000)	(1,000)
Rebate amount (1/01/2009) .		1,747,355

(B) As of this computation date, the future value of the payment made on January 1, 1999, is $1,573,521 and thus an additional rebate payment of $173,834 is due. This payment reflects the future value of the 10 percent unpaid portion, and thus would not be owed had the issuer paid the full rebate amount as of any prior computation date.

Example 2. Calculation and payment of rebate for a variable yield issue. (i) *Facts.* On July 1, 1994, City *B* issues a variable yield issue and invests all of the sale proceeds of the issue ($30 million). There are no other gross proceeds. As of July 1, 1999, there are nonpurpose investments allocated to the issue. Prior to July 1, 1999, City *B* receives amounts from nonpurpose investments and immediately expends them for the governmental purpose of the issue as follows:

Date	Amount
8/1/1994	$5,000,000
7/1/1995	8,000,000
12/1/1995	17,000,000
7/1/1999	650,000

(ii) *First computation date.* (A) City *B* treats the last day of the fifth bond year (July 1, 1999) as a computation date. The yield on the variable yield issue during the first computation period (the period beginning on the issue date and ending on the first computation date) is 6.0000 percent per year compounded semiannually. The value of the nonpurpose investments allocated to the issue as of July 1, 1999, is $3 million. The rebate amount as of July 1, 1999, is computed by determining the future value of the receipts and the payments for the nonpurpose investments. The compounding interval is each 6-month (or shorter) period and the 30 day month/360 day year basis is used because these conventions were used to compute yield on the issue. The future value of these amounts and of the computation date credits as of July 1, 1999, is:

Date	Receipts (payments)	FV (6.0000 percent)
7/1/1994	($30,000,000)	($40,317,491)
8/1/1994	5,000,000	6,686,560
7/1/1995	(1,000)	(1,267)
7/1/1995	8,000,000	10,134,161
12/1/1995 ...	17,000,000	21,011,112
7/1/1996	(1,000)	(1,194)
7/1/1997	(1,000)	(1,126)
7/1/1998	(1,000)	(1,061)
7/1/1999	3,000,000	3,000,000
7/1/1999	650,000	650,000
7/1/1999	(1,000)	(1,000)
Rebate amount (7/01/1999) ..		1,158,694

(B) City *B* pays 90 percent of the rebate amount ($1,042,824.60) to the United States within 60 days of July 1, 1999.

(iii) *Next computation date.* (A) On July 1, 2004, City *B* redeems all of the bonds. Thus, the next computation date is July 1, 2004. On July 30, 1999, City *B* chose to compute rebate for periods following the first computation period by treating the end of each fifth bond year as a computation date. The yield during the second computation period is 5.0000 percent per year compounded semiannually. The computation of the rebate amount as of this date reflects the value of the nonpurpose investments allocated to the issue at the end of the prior computation period. On July 1, 2004, City *B* sells those nonpurpose investments for $3,925,000 and expends that amount for the governmental purpose of the issue.

(B) As of July 1, 2004, the future value of the rebate amount computed as of July 1, 1999, and of all other payments and receipts is:

Date	Receipts (payments)	FV (5.0000 percent)
7/1/1999	$1,158,694	$1,483,226
7/1/1999	(3,000,000)	(3,840,254)
7/1/2000	(1,000)	(1,218)
7/1/2001	(1,000)	(1,160)
7/1/2002	(1,000)	(1,104)
7/1/2003	(1,000)	(1,051)
7/1/2004	(2,000)	(2,000)
7/1/2004	3,925,000	3,925,000
		1,561,439

(C) As of this computation date, the future value of the payment made on July 1, 1999, is $1,334,904 and thus an additional rebate payment of $226,535 is due.

(k) *Bona fide debt service fund exception.* Under section 148(f)(4)(A), the rebate requirement does not apply to amounts in certain bona fide debt service funds. An issue with an average annual debt service that is not in excess of $2,500,000 may be treated as satisfying the $100,000 limitation in section 148(f)(4)(A)(ii).

§ 1.148–4 Yield on an issue of bonds.

(a) *In general.* The yield on an issue of bonds is used to apply investment yield restrictions under section 148(a) and to compute rebate liability under section 148(f). Yield is computed under the economic accrual method using any consistently applied compounding interval of not more than one year. A short first compounding interval and a short last compounding interval may be used. Yield is expressed as an annual percentage rate that is calculated to at least four decimal places (e.g., 5.2525 percent). Other reasonable, standard financial conventions, such as the 30 days per month/360 days per year convention, may be used in computing yield but must be consistently applied. The yield on an issue that would be a purpose investment (absent section 148(b)(3)(A)) is equal to the yield on the conduit financing issue that financed that purpose investment. The Commissioner may permit issuers of qualified mortgage bonds or qualified student loan bonds to use a single yield for two or more issues.

(b) *Computing yield on a fixed yield issue*—(1) *In general*—(i) *Yield on an issue.* The yield on a fixed yield issue is the discount rate that, when used in computing the present value as of the issue date of all unconditionally payable payments of principal, interest, and fees for qualified guarantees on the issue and amounts reasonably expected to be paid as fees for qualified guarantees on the issue, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price of bonds of the issue as of the issue date. Further, payments include certain amounts properly allocable to a qualified hedge. Yield on a fixed yield issue is computed as of the issue date

and is not affected by subsequent unexpected events, except to the extent provided in paragraphs (b)(4) and (h)(3) of this section.

(ii) *Yield on a bond.* Yield on a fixed yield bond is computed in the same manner as yield on a fixed yield issue.

(2) *Yield on certain fixed yield bonds subject to mandatory or contingent early redemption*—(i) *In general.* The yield on a fixed yield issue that includes a bond subject to mandatory early redemption or expected contingent redemption is computed by treating that bond as redeemed on its reasonably expected early redemption date for an amount equal to its value on that date. Reasonable expectations are determined on the issue date. A bond is subject to mandatory early redemption if it is unconditionally payable in full before its final maturity date. A bond is subject to a contingent redemption if it must be, or is reasonably expected to be, redeemed prior to final maturity upon the occurrence of a contingency. A contingent redemption is taken into account only if the contingency is reasonably expected to occur, in which case the date of occurrence of the contingency must be reasonably estimated. For example, if bonds are reasonably expected to be redeemed early using excess revenues from general or special property taxes or benefit assessments or similar amounts, the reasonably expected redemption schedule is used to determine yield. For purposes of this paragraph (b)(2)(i), excess proceeds calls for issues for which the requirements of § 1.148–2(e)(2) or (3) are satisfied, calamity calls, and refundings do not cause a bond to be subject to early redemption. The value of a bond is determined under paragraph (e) of this section.

(ii) *Substantially identical bonds subject to mandatory early redemption.* If substantially identical bonds of an issue are subject to specified mandatory redemptions prior to final maturity (e.g., a mandatory sinking fund redemption requirement), yield on that issue is computed by treating those bonds as redeemed in accordance with the redemption schedule for an amount equal to their value. Generally, bonds are substantially identical if the stated interest rate, maturity, and payment dates are the same. In computing the yield on an issue containing bonds described in this paragraph (b)(2)(ii), each of those bonds must be treated as redeemed at its present value, unless the stated redemption price at maturity of the bond does not exceed the issue price of the bond by more than one-fourth of one percent multiplied by the product of the stated redemption price at maturity and the number of years to the weighted average maturity date of the substantially identical bonds, in which case each of those bonds must be treated as redeemed at its outstanding stated principal amount, plus accrued, unpaid interest. Weighted average maturity is determined by taking into account the mandatory redemption schedule.

(3) *Yield on certain fixed yield bonds subject to optional early redemption*—(i) *In general.* If a fixed yield bond is subject to optional early redemption and is described in paragraph (b)(3)(ii) of this section, the yield on the issue containing the bond is computed by treating the bond as redeemed at its stated redemption price on the optional redemption date that would produce the lowest yield on the issue.

(ii) *Fixed yield bonds subject to special yield calculation rule.* A fixed yield bond is described in this paragraph (b)(3)(ii) only if it—

(A) Is subject to optional redemption within five years of the issue date, but only if the yield on the issue computed by assuming all bonds in the issue subject to redemption within 5 years of the issue date are redeemed at maturity is more than one-eighth of one percentage point higher than the yield on that issue computed by assuming all bonds subject to optional redemption within 5 years of the issue date are redeemed at the earliest date for their redemption;

(B) Is issued at an issue price that exceeds the stated redemption price at maturity by more than one-fourth of one percent multiplied by the product of the stated redemption price at maturity and the number of complete years to the first optional redemption date for the bond; or

(C) Bears interest at increasing interest rates (i.e., a *stepped coupon bond*).

(4) *Yield recomputed upon transfer of certain rights associated with the bond.* For purposes of § 1.148–3, as of the date of any transfer, waiver, modification, or similar transaction (collectively, a *transfer*) of any right that is part of the terms of a bond or is otherwise associated with a bond (e.g., a redemption right), in a transaction that is separate and apart from the original sale of the bond, the issue is treated as if it were retired and a new issue issued on the date of the transfer (*reissued*). The redemption price of the retired issue and the issue price of the new issue equal the aggregate values of all the bonds of the issue on the date of the transfer. In computing yield on the new issue, any amounts received by the issuer as consideration for the transfer are taken into account.

(5) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples.

Example 1. No early call—(i) *Facts.* On January 1, 1994, City *A* issues an issue consisting of four identical fixed yield bonds. The stated final maturity date of each bond is January 1, 2004, and no bond is subject to redemption before this date. Interest is payable on January 1 of each year at a rate of 6.0000 percent per year on the outstanding principal amount. The total stated principal amount of the bonds is $20 million. The issue price of the bonds $20,060,000.

(ii) *Computation.* The yield on the issue is computed by treating the bonds as retired at the stated maturity under the general rule of § 1.148–4(b)(1). The bonds are treated as redeemed for their stated redemption prices. The yield on the issue is 5.8731 percent per year compounded semiannually, computed as follows:

Date	Payments	PV (5.8731 percent)
1/1/1995	$1,200,000	$1,132,510
1/1/1996	1,200,000	1,068,816
1/1/1997	1,200,000	1,008,704
1/1/1998	1,200,000	951,973
1/1/1999	1,200,000	898,433
1/1/2000	1,200,000	847,903
1/1/2001	1,200,000	800,216
1/1/2002	1,200,000	755,210
1/1/2003	1,200,000	712,736
1/1/2004	21,200,000	11,883,498
		20,060,000

Example 2. Mandatory calls. (i) *Facts.* The facts are the same as in *Example 1.* In this case, however, the bonds are subject to mandatory sinking fund redemption on January 1 of each year, beginning January 1, 2001. On each sinking fund redemption date, one of the bonds is chosen by lottery and is required to be redeemed at par plus accrued interest.

(ii) *Computation.* Because the bonds are subject to specified redemptions, yield on the issue is computed by treating the bonds as redeemed in accordance with the redemption schedule under § 1.148–4(b)(2)(ii). Because the bonds are not sold at a discount, the bonds are treated as retired at their stated redemption prices. The yield on the issue is 5.8678 percent per year compounded semiannually, computed as follows:

Date	Payments	PV (5.8678 percent)
1/1/1995	$1,200,000	$1,132,569
1/1/1996	1,200,000	1,068,926
1/1/1997	1,200,000	1,008,860
1/1/1998	1,200,000	952,169
1/1/1999	1,200,000	898,664
1/1/2000	1,200,000	848,166
1/1/2001	6,200,000	4,135,942
1/1/2002	5,900,000	3,714,650
1/1/2003	5,600,000	3,327,647
1/1/2004	5,300,000	2,972,407
		$20,060,000

Example 3. Optional early call. (i) *Facts.* On January 1, 1994, City *C* issues an issue consisting of three bonds. Each bond has a stated principal amount of $10 million dollars and is issued for par. Bond *X* bears interest at 5 percent per year and matures on January 1, 1999. Bond *Y* bears interest at 6 percent per year and matures on January 1, 2002. Bond *Z* bears interest at 7 percent per year and matures on January 1, 2004. Bonds *Y* and *Z* are callable by the issuer at par plus accrued interest after December 31, 1998.

(ii) *Computation.* (A) The yield on the issue computed as if each bond is outstanding to its maturity is 6.0834 percent per year compounded semiannually, computed as follows:

Date	Payments	PV (6.0834 percent)
1/1/1995	$1,800,000	$1,695,299
1/1/1996	1,800,000	1,596,689
1/1/1997	1,800,000	1,503,814
1/1/1998	1,800,000	1,416,342
1/1/1999	11,800,000	8,744,830
1/1/2000	1,300,000	907,374
1/1/2001	1,300,000	854,595
1/1/2002	11,300,000	6,996,316
1/1/2003	700,000	408,190
1/1/2004	10,700,000	5,876,551
		30,000,000

(B) The yield on the issue computed as if all bonds are called at the earliest date for redemption is 5.9126 percent per year compounded semiannually, computed as follows:

Date	Payments	PV (5.9126 percent)
1/1/1995	$1,800,000	$1,698,113
1/1/1996	1,800,000	1,601,994
1/1/1997	1,800,000	1,511,315
1/1/1998	1,800,000	1,425,769
1/1/1999	31,800,000	23,762,809
		30,000,000

(C) Because the yield on the issue computed by assuming all bonds in the issue subject to redemption within 5 years of the issue date are redeemed at maturity is more than one-eighth of one percentage point higher than the yield on the issue computed by assuming all bonds subject to optional redemption within 5 years of the issue date are redeemed at the earliest date for their redemption, each bond is treated as redeemed on the date that would produce the lowest yield for the issue. The lowest yield on the issue would result from a redemption of all the bonds on January 1, 1999. Thus, the yield on the issue is 5.9126 percent per year compounded semiannually.

(c) *Computing yield on a variable yield issue*—(1) *In general.* The yield on a variable yield issue is computed separately for each computation period. The yield for each computation period is the discount rate that, when used in computing the present value as of the first day of the computation period of all the payments of principal and interest and fees for qualified guarantees that are attributable to the computation period, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price (or deemed issue price, as determined in paragraph (c)(2)(iv) of this section) of the bonds of the issue as of the first day of the computation period. The yield on a variable yield bond is computed in the same manner as the yield on a variable yield issue. Except as provided in paragraph (c)(2) of this section, yield on any fixed yield bond in a variable yield issue is computed in the same manner as the yield on a fixed yield issue as provided in paragraph (b) of this section.

(2) *Payments on bonds included in yield for a computation period*—(i) *Payments in general.* The payments on a bond that are attributable to a computation period include any amounts actually paid during the period for principal on the bond. Payments also include any amounts paid during the current period both for interest accruing on the bond during the current period and for interest accruing during the prior period that was included in the deemed issue price of the bond as accrued unpaid interest at the start of the current period under this paragraph (c)(2). Further, payments include any amounts properly allocable to fees for a qualified guarantee of the bond for the period and to any amounts properly allocable to a qualified hedge for the period.

(ii) *Payments at actual redemption.* If a bond is actually redeemed during a computation period, an amount equal to the greater of its value on the redemption date or the actual redemption price is a payment on the actual redemption date.

(iii) *Payments for bonds outstanding at end of computation period.* If a bond is outstanding at the end of a computation period, a payment equal to the bond's value is taken into account on the last day of that period.

(iv) *Issue price for bonds outstanding at beginning of next computation period.* A bond outstanding at the end of a computation period is treated as if it were immediately reissued on the next day for a deemed issue price equal to the value from the day before as determined under paragraph (c)(2)(iii) of this section.

(3) *Example.* The provisions of this paragraph (c) may be illustrated by the following example.

Example. On January 1, 1994, City *A* issues an issue of identical plain par bonds in an aggregate principal amount of $1,000,000. The bonds pay interest at a variable rate on each June 1 throughout the term of the issue. The entire principal amount of the bonds plus accrued, unpaid interest is payable on the final maturity date of January 1, 2000. No bond year is selected. On June 1, 1994, 1995, 1996, 1997, and 1998, interest in the amounts of $30,000, $55,000, $57,000, $56,000, and $45,000 is paid on the bonds. From June 1, 1998, to January 1, 1999, $30,000 of interest accrues on the bonds. From January 1, 1999, to June 1, 1999, another $35,000 of interest accrues. On June 1, 1999, the issuer actually pays $65,000 of interest. On January 1, 2000, $1,000,000 of principal and $38,000 of accrued interest are paid. The payments for the computation period starting on the issue date and ending on January 1, 1999, include all annual interest payments paid from the issue date to June 1, 1998. Because the issue is outstanding on January 1, 1999, it is treated as redeemed on that date for amount equal to its value ($1,000,000 plus accrued, unpaid interest of $30,000 under paragraph (e)(1) of this section). Thus, $1,030,000 is treated as paid on January 1, 1999. The issue is then treated as reissued on January 1, 1999, for $1,030,000. The payments for the next computation period starting on January 1, 1999, and ending on January 1, 2000, include the interest actually paid on the bonds during that period ($65,000 on June 1, 1999, plus $38,000 paid on January 1, 2000). Because the issue was actually redeemed on January 1, 2000, an amount equal to its stated redemption price is also treated as paid on January 1, 2000.

(d) *Conversion from variable yield issue to fixed yield issue.* As of the first day on which a variable yield issue would qualify as a fixed yield issue if it were newly issued on that date (a *conversion date*), that issue is treated as if it were reissued as a fixed yield issue on the conversion date. The redemption price of the variable yield issue and the issue price of the fixed yield issue equal the aggregate values of all the bonds on the conversion date. Thus, for example, for plain par bonds (e.g., tender bonds), the deemed issue price would be the outstanding principal amount, plus accrued unpaid interest. If the conversion date occurs on a date other than a computation date, the issuer may continue to treat the issue as a variable yield issue until the next computation date, at which time it must be treated as converted to a fixed yield issue.

(e) *Value of bonds*—(1) *Plain par bonds.* Except as otherwise provided, the value of a plain par bond is its outstanding stated principal amount, plus accrued unpaid interest. The value of a plain par bond that is actually redeemed or treated as redeemed is its stated redemption price on the redemption date, plus accrued, unpaid interest.

(2) *Other bonds.* The value of a bond other than a plain par bond on a date is its present value on that date. The present value of a bond is computed

under the economic accrual method taking into account all the unconditionally payable payments of principal, interest, and fees for a qualified guarantee to be paid on or after that date and using the yield on the bond as the discount rate, except that for purposes of § 1.148–6(b)(2) (relating to the universal cap), these values may be determined by consistently using the yield on the issue of which the bonds are a part. To determine yield on fixed yield bonds, see paragraph (b)(1) of this section. The rules contained in paragraphs (b)(2) and (b)(3) of this section apply for this purpose. In the case of bonds described in paragraph (b)(2)(ii) of this section, the present value of those bonds on any date is computed using the yield to the final maturity date of those bonds as the discount rate. In determining the present value of a variable yield bond under this paragraph (e)(2), the initial interest rate on the bond established by the interest index or other interest rate setting mechanism is used to determine the interest payments on that bond.

(f) *Qualified guarantees*—(1) *In general.* Fees properly allocable to payments for a qualified guarantee for an issue (as determined under paragraph (f)(6) of this section) are treated as additional interest on that issue under section 148. A guarantee is a qualified guarantee if it satisfies each of the requirements of paragraphs (f)(2) through (f)(4) of this section.

(2) *Interest savings.* As of the date the guarantee is obtained, the issuer must reasonably expect that the present value of the fees for the guarantee will be less than the present value of the expected interest savings on the issue as a result of the guarantee. For this purpose, present value is computed using the yield on the issue, determined with regard to guarantee payments, as the discount rate.

(3) *Guarantee in substance.* The arrangement must create a guarantee in substance. The arrangement must impose a secondary liability that unconditionally shifts substantially all of the credit risk for all or part of the payments, such as payments for principal and interest, redemption prices, or tender prices, on the guaranteed bonds. Reasonable procedural or administrative requirements of the guarantee do not cause the guarantee to be conditional. In the case of a guarantee against failure to remarket a qualified tender bond, commercially reasonable limitations based on credit risk, such as limitations on payment in the event of default by the primary obligor or the bankruptcy of a long-term credit guarantor, do not cause the guarantee to be conditional. The guarantee may be in any form. The guarantor may not be a co-obligor. Thus, the guarantor must not expect to make any payments other than under a direct-pay letter of credit or similar arrangement for which the guarantor will be reimbursed immediately. The guarantor and any related parties together must not use more than 10 percent of the proceeds of the portion of the issue allocable to the guaranteed bonds.

(4) *Reasonable charge*—(i) *In general.* Fees for a guarantee must not exceed a reasonable, arm's-length charge for the transfer of credit risk. In complying with this requirement, the issuer may not rely on the representations of the guarantor.

(ii) *Fees for services other than transfer of credit risk must be separately stated.* A fee for a guarantee must not include any payment for any direct or indirect services other than the transfer of credit risk, unless the compensation for those other services is separately stated, reasonable, and excluded from the guarantee fee. Fees for the transfer of credit risk include fees for the guarantor's overhead and other costs relating to the transfer of credit risk. For example, a fee includes payment for services other than transfer of credit risk if—

(A) It includes payment for the cost of underwriting or remarketing bonds or for the cost of insurance for casualty to bond-financed property;

(B) It is refundable upon redemption of the guaranteed bond before the final maturity date and the amount of the refund would exceed the portion of the fee that had not been earned; or

(C) The requirements of § 1.148–2(e)(2) (relating to temporary periods for capital projects) are not satisfied, and the guarantor is not reasonably assured that the bonds will be repaid if the project to be financed is not completed.

(5) *Guarantee of purpose investments.* Except for guarantees of qualified mortgage loans and qualified student loans, a guarantee of payments on a purpose investment is a qualified guarantee of the issue if all payments on the purpose investment reasonably coincide with payments on the related bonds and the payments on the purpose investment are unconditionally payable no more than 6 months before the corresponding interest payment and 12 months before the corresponding principal payments on the bonds. This paragraph (f)(5) only applies if, in addition to satisfying the other requirements of this paragraph (f), the guarantee is, in substance, a guarantee of the bonds allocable to that purpose investment and to no other bonds except for bonds that are equally and ratably secured by purpose investments of the same conduit borrower.

(6) *Allocation of qualified guarantee payments*—(i) *In general.* Payments for a qualified guarantee must be allocated to bonds and to computation periods in a manner that properly reflects the proportionate credit risk for which the guarantor is compensated. Proportionate credit risk for bonds that are not substantially identical may be determined using any reasonable, consistently applied method. For example, this risk may be based on the ratio of the total principal and interest paid and to be paid on a guaranteed bond to the total principal and interest paid and to be paid on all bonds of the guaranteed issue. An allocation method generally is not reasonable, for example, if a substantial portion of the fee is allocated to the construction portion of the issue and a correspondingly insubstantial portion is allocated to the later years covered by the guarantee. Reasonable letter of credit *set up* fees may be allocated ratably during the initial term of the letter of credit. Upon an early redemption of a variable yield bond, fees otherwise allocable to the period after the redemption are allocated to remaining outstanding bonds of the issue or, if none remain outstanding, to the period before the redemption.

(ii) *Safe harbor for allocation of qualified guarantee fees for variable yield issues.* An allocation of non-level payments for a qualified guarantee for variable yield bonds is treated as meeting the requirements of paragraph (f)(6)(i) of this section if, for each bond year for which the guarantee is in effect, an equal amount (or for any short bond year, a proportionate amount of the equal amount) is treated as paid as of the beginning of that bond year. The present value of the annual amounts must equal the fee for the guarantee allocated to that bond, with present value computed as of the first day the guarantee is in effect by using as the discount rate the yield on the variable yield bonds covered by the guarantee, determined without regard to any fee allocated under this paragraph (f)(6)(ii).

(7) *Refund or reduction of guarantee payments.* If as a result of an investment of proceeds of a refunding issue in a refunding escrow, there will be a reduction in, or refund of, payments for a guarantee (*savings*), the savings must be treated as a reduction in the payments on the refunding issue.

(g) *Yield on certain mortgage revenue and student loan bonds.* For purposes of section 148 and this section, section 143(g)(2)(C)(ii) applies to the

computation of yield on an issue of qualified mortgage bonds or qualified veterans' mortgage bonds. For purposes of applying sections 148 and 143(g) to a variable yield issue of qualified mortgage bonds or qualified student loan bonds, the yield on that issue is computed over the term of the issue.

(h) *Qualified hedging transactions*—(1) *In general.* Payments made or received by an issuer under a qualified hedge (as defined in paragraph (h)(2) of this section) relating to bonds of an issue are taken into account (as provided in paragraph (h)(3) of this section) to determine the yield on the issue. Except as provided in paragraph (h)(4) of this section, the issue is treated as a variable yield issue. These hedging rules apply solely for purposes of section 148.

(2) *Qualified hedge defined.* A *qualified hedge* is a contract that satisfies each of the following requirements:

(i) *Hedge*—(A) *In general.* The contract is a *hedge* entered into primarily to reduce the issuer's risk of interest rate changes with respect to a borrowing. For example, the contract may be an interest rate swap, an interest rate cap, a futures contract, a forward contract, or an option.

(B) *No significant investment element.* A contract is not a hedge under paragraph (h)(2)(i)(A) of this section if it contains a significant investment element (i.e., an expected return). For example, variable rate bonds held by the issuer do not meet the requirements of this paragraph (h)(2)(i). A contract may contain a significant investment element if the payments under the contract do not correspond closely in time and amount to the interest payments on the bonds being hedged. For example, an interest rate swap generally contains a significant investment element if it requires any payments other than periodic payments, within the meaning of section 446 and the regulations thereunder (*periodic payments*) (e.g., an up-front payment for an off-market swap) before its termination date. Similarly, an interest rate cap generally contains a significant investment element if the cap rate is less than the on-market swap rate on the date the cap is entered into. For this purpose, the on-market swap rate is the single fixed rate for which the rate or index that is the subject of the cap could be swapped in an on-market interest rate swap that requires only periodic payments and that has a term equal to the term of the cap.

(ii) *Parties.* The contract is entered into between the issuer or the political subdivision on behalf of which the issuer issues the bonds (collectively referred to in this paragraph (h) as the *issuer*) and a provider that is not a related party (the *hedge provider*).

(iii) *Hedged bonds.* The hedge covers all of one or more groups of substantially identical bonds in the issue (i.e., all of the bonds having the same interest rate, maturity, and terms). If the hedge does not cover all interest payments on all of the substantially identical bonds being hedged, it must cover, in whole or in part, the same specific identifiable interest payments on each of the substantially identical bonds. Thus, for example, a qualified hedge may include a hedge of all or a pro rata portion of each interest payment on the variable rate bonds in an issue for the first five years following their issuance. For purposes of this paragraph (h), unless the context clearly requires otherwise, *hedged bonds* means the specific bonds or portions thereof (i.e., the specific interest payments) covered by a hedge.

(iv) *Interest based.* Changes in the value of the contract are based primarily on interest rate changes. For example, an interest rate swap or a futures contract on Treasury securities may qualify. A commodity swap or an option on a commodity futures contract, however, is not a qualified hedge.

(v) *Size.* The contract does not hedge an amount larger than the issuer's risk with respect to interest rate changes on the hedged bonds.

(vi) *Receipts.* The payments to the issuer under the contract correspond closely, in both time and amount, to the specific interest payments being hedged on the hedged bonds.

(vii) *Timing and duration.* Payments do not begin to accrue under the contract on a date earlier than the sale date of the hedged bonds and do not accrue longer than the hedged interest payments on the hedged bonds.

(viii) *Source of payments.* Payments to the hedge provider are reasonably expected to be made from the same source of funds that, absent the hedge, would be reasonably expected to be used to pay principal and interest on the hedged bonds.

(ix) *Identification.* The hedge is identified by the actual issuer on its books and records maintained for the hedged bonds on or before the later of the date on which the parties enter into the contract or the issue date of the hedged bonds. The identification specifies the hedge provider, the terms of the hedge, and the hedged bonds. The identification contains sufficient detail to establish that the requirements of this paragraph (h)(2) and, if applicable, paragraph (h)(4) of this section are satisfied. The existence of the hedge is noted on all forms filed with the Internal Revenue Service for the issue after the date on which the hedge is entered into.

(3) *Accounting for qualified hedges*—(i) *In general.* Except as otherwise provided in paragraph (h)(4) of this section, payments made or received by the issuer under a qualified hedge are treated as payments made or received, as appropriate, on the hedged bonds that are taken into account in determining the yield on those bonds. These payments are reasonably allocated to the hedged bonds in the period to which the payments relate, as determined under paragraph (h)(3)(iii) of this section. Payments made or received by the issuer include payments deemed made or received when a contract is terminated or deemed terminated under this paragraph (h)(3). Payments reasonably allocable to the reduction of risk of interest rate changes and to the hedge provider's overhead under this paragraph (h) are included as payments made or received under a qualified hedge.

(ii) *Exclusions from hedge.* Payments for services or other items under the contract that are not expressly treated as payments under the qualified hedge under paragraph (h)(3)(i) of this section are not payments with respect to a qualified hedge.

(iii) *Timing and allocation of payments.* The period to which a payment made by the issuer relates is determined under general Federal income tax principles, including, without limitation, section 446 and the regulations thereunder on notional principal contracts, and adjusted as necessary to reflect the end of a computation period and the start of a new computation period. Except as provided in paragraph (h)(3)(iv) of this section, a payment received by the issuer is taken into account in the period that the interest payment that the payment hedges is required to be made.

(iv) *Termination payments*—(A) *Termination defined.* A termination of a qualified hedge includes any sale, assignment, or other disposition of the hedge by the issuer, or the acquisition by the issuer of an offsetting hedge. A deemed termination occurs when the hedged bonds are redeemed.

(B) *General rule.* A payment made or received by an issuer to terminate a qualified hedge, including gain or loss realized or deemed realized, is treated as a payment made or received on the hedged bonds, as appropriate. The payment is reasonably allocated to the remaining periods originally covered by the terminated hedge in a manner that

reflects the economic substance of the hedge.

(C) *Special rule for terminations when bonds are redeemed.* Except as otherwise provided in this paragraph (h)(3)(iv)(C) and in paragraph (h)(3)(iv)(D) of this section, when a qualified hedge is deemed terminated because the hedged bonds are redeemed, the fair market value of the contract on the redemption date is treated as a termination payment made or received on that date. When hedged bonds are redeemed, any payment received by the issuer on termination of a hedge, including a termination payment or a deemed termination payment, reduces, but cannot exceed, the interest payments made by the issuer on the hedged bonds in the computation period ending on the termination date. The excess, if any, is reasonably allocated over the bond years in the immediately preceding computation period or periods to the extent necessary to eliminate the excess.

(D) *Special rules for refundings.* To the extent that the hedged bonds are redeemed using the proceeds of a refunding issue, the termination payment is accounted for under paragraph (h)(3)(iv)(B) by treating it as a payment on the refunding issue, rather than the hedged bonds. In addition, to the extent that the refunding issue, rather than the hedged bonds, has been redeemed, paragraph (h)(3)(iv)(C) applies to the termination payment by treating it as a payment on the redeemed refunding issue.

(4) *Certain variable yield issues treated as fixed yield issues*—(i) *In general.* Except as otherwise provided in paragraph (h)(4)(ii)(C) of this section, if the issuer of a variable yield issue enters into an interest rate swap that is a qualified hedge, the hedged bonds are treated as fixed yield bonds if—

(A) *Start date.* The date on which payments begin to accrue on the swap is not later than 15 days after the issue date of the hedged bonds;

(B) *Maturity.* The term of the swap is equal to the term of the hedged bonds or the entire period during which the hedged bonds bear interest at variable interest rates.

(C) *No nonperiodic payments.* Payments to be made or received under the swap are reasonably expected to correspond closely, in time and amount, to payments on the hedged bonds (i.e., no nonperiodic payments). Swap payments made within 15 days of the related payments on the hedged bonds generally so correspond.

(D) *Notional principal amount.* The notional principal amount used to compute both fixed and variable payments on the swap equals the principal amount of all the variable yield bonds in the issue.

(E) *Payments and interest rate.* Under the swap, the issuer makes level payments based on a fixed interest rate and receives payments based on a variable interest rate that is substantially the same as the interest rate on the hedged bonds. These interest rates are treated as substantially the same if they are reasonably expected to be substantially the same throughout the term of the hedge. For example, an objective 30-day tax-exempt variable rate index or other objective index (e.g., LIBOR, J.J. Kenney Index, PSA Municipal swap index) may be adjusted to correspond to an issuer's individual 30-day interest rate.

(ii) *Accounting*—(A) *In general.* If a hedged bond is treated as a fixed yield bond under this paragraph (h)(4), the fixed-rate payments made by the issuer on the swap are substituted for the actual interest payments on the hedged bonds for purposes of computing yield on that bond. For this purpose, the fixed-rate payments are the amounts determined by multiplying the notional principal amount by the fixed rate (i.e., the amount determined before netting the fixed and variable amounts due under the swap).

(B) *Effect of termination generally.* Except as otherwise provided in paragraph (h)(4)(ii)(C) of this section, for purposes of § 1.148–3, as of the termination date of a qualified hedge covered by this paragraph (h)(4), the issue of which the hedged bonds are a part is treated as if it were reissued on the termination date. The redemption price of the retired issue and the issue price of the new issue equal the aggregate values of all the bonds of the issue on the termination date. In computing the yield on the new issue, any termination payment is accounted for under paragraph (h)(3)(iv) of this section, applied by treating the termination payment as made or received on the deemed new issue under this paragraph (h)(4)(ii)(B).

(C) *Effect of early termination.* If the swap is terminated or deemed terminated within 5 years after the issue date of the issue of which the hedged bonds are a part, the general rules under this paragraph (h)(4) do not apply, and, for purposes of § 1.148–3, the hedged bonds are treated as variable yield bonds from the issue date.

(5) *Authority of the Commissioner*—(i) *In general.* A contract is not a qualified hedge if the Commissioner determines, based on all the facts and circumstances, that treating the contract as a qualified hedge would provide a material potential for arbitrage, or a principal purpose for entering into the contract is that arbitrage potential. For example, a contract that requires a substantial nonperiodic payment may constitute, in whole or part, an embedded loan, investment-type property, or other investment.

(ii) *Other qualified hedges.* The Commissioner, by publication of a revenue ruling or revenue procedure, may specify contracts that do not otherwise meet the requirements of paragraph (h)(2) of this section as qualified hedges.

(iii) *Recomputation of yield.* If an issuer enters into a hedge that is not properly identified or otherwise fails to meet the requirements of this section, the Commissioner may recompute the yield on the issue taking the hedge into account if the failure to take the hedge into account distorts that yield or otherwise fails to clearly reflect the economic substance of the transaction.

§ 1.148–5 Yield and valuation of investments.

(a) *In general.* This section provides rules for computing the yield and value of investments allocated to an issue for various purposes under section 148.

(b) *Yield on an investment*—(1) *In general.* Except as otherwise provided, the yield on an investment allocated to an issue is computed under the economic accrual method, using the same compounding interval and financial conventions used to compute the yield on the issue. The yield on an investment allocated to an issue is the discount rate that, when used in computing the present value as of the date the investment is first allocated to the issue of all unconditionally payable receipts from the investment, produces an amount equal to the present value of all unconditionally payable payments for the investment. For this purpose, *payments* means amounts to be actually or constructively paid to acquire the investment, and *receipts* means amounts to be actually or constructively received from the investment, such as earnings and return of principal. The yield on a variable rate investment is determined in a manner comparable to the determination of the yield on a variable rate issue. For an issue of qualified mortgage bonds, qualified veterans' mortgage bonds, or qualified student loan bonds on which interest is paid semiannually, all regular monthly loan payments to be received during a semiannual debt service period may be treated as received at the end of that period. In addition, for any conduit financing issue, payments made by the conduit borrower are not treated as paid

until the conduit borrower ceases to receive the benefit of earnings on those amounts.

(2) *Yield on a separate class of investments*—(i) *In general.* For purposes of the yield restriction rules of section 148(a) and § 1.148–2, yield is computed separately for each class of investments. For this purpose, in determining the yield on a separate class of investments, the yield on each individual investment within the class is blended with the yield on other individual investments within the class, whether or not held concurrently, by treating those investments as a single investment. The yields on investments that are not within the same class are not blended.

(ii) *Separate classes of investments.* Each of the following is a separate class of investments—

(A) Each category of yield restricted purpose investment and program investment that is subject to a different definition of *materially higher* under § 1.148–2(d)(2);

(B) Yield-restricted nonpurpose investments; and

(C) All other nonpurpose investments;

(iii) *Permissive application of single investment rules to certain yield restricted investments for all purposes of section 148.* Excluding those investments to which paragraph (b)(2)(iv) of this section applies, all yield restricted investments that are part of the same class may be treated as a single investment having a single yield, determined under this paragraph (b)(2), for all purposes of section 148.

(iv) *Mandatory application of single investment rules for refunding escrows for all purposes of section 148.* For all purposes of section 148, in computing the yield on yield restricted investments allocable to proceeds (i.e., sale proceeds, investment proceeds, and transferred proceeds) of a refunding issue that are held in one or more refunding escrows, the individual investments are treated as a single investment having a single yield, whether or not held concurrently. For example, this single investment includes both the individual investments allocable to sale and investment proceeds of a refunding issue that are held in one refunding escrow for a prior issue and the investments allocable to transferred proceeds of that refunding issue that are held in another refunding escrow.

(3) *Investments to be held beyond issue's maturity or beyond temporary period.* In computing the yield on investments allocable to an issue that are to be held beyond the reasonably expected redemption date of the issue, those investments are treated as sold for an amount equal to their value on that date. In computing the yield on investments that are held beyond an applicable temporary period under § 1.148–2, for purposes of § 1.148–2 those investments may be treated as purchased for an amount equal to their fair market value as of the end of the temporary period.

(4) *Consistent redemption assumptions on purpose investments.* The yield on purpose investments allocable to an issue is computed using the same redemption assumptions used to compute the yield on the issue. Yield on purpose investments allocable to an issue of qualified mortgage bonds and qualified veterans' mortgage bonds must be determined in a manner that is consistent with, and using the assumptions required by, section 143(g)(2)(B).

(5) *Student loan special allowance payments included in yield.* Except as provided in § 1.148–11(e), the yield on qualified student loans is computed by including as receipts any special allowance payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965.

(c) *Yield reduction payments to the United States*—(1) *In general.* In determining the yield on an investment to which this paragraph (c) applies, any amount paid to the United States in accordance with this paragraph (c), including a rebate amount, is treated as a payment for that investment that reduces the yield on that investment.

(2) *Manner of payment*—(i) *In general.* Except as otherwise provided in paragraph (c)(2)(ii) of this section, an amount is paid under this paragraph (c) if it is paid to the United States at the same time and in the same manner as rebate amounts are required to be paid or at such other time or in such manner as the Commissioner may prescribe. The provisions of § 1.148–3(i) apply to payments made under this paragraph (c).

(ii) *Special rule for purpose investments.* For purpose investments allocable to an issue—

(A) No amounts are required to be paid to satisfy this paragraph (c) until the earlier of the end of the tenth bond year after the issue date of the issue or 60 days after the date on which the issue is no longer outstanding; and

(B) For payments made prior to the date on which the issue is retired, the issuer need not pay more than 75 percent of the amount otherwise required to be paid as of the date to which the payment relates.

(3) *Applicability of special yield reduction rule*—(i) *Covered investments.* This paragraph (c) applies to—

(A) Nonpurpose investments allocable to proceeds of an issue that qualified for one of the temporary periods available for capital projects, restricted working capital expenditures, pooled financings, or investment proceeds under paragraphs § 1.148–2 (e)(2), (e)(3), (e)(4), or (e)(6) of this section, respectively;

(B) Investments allocable to a variable yield issue during any computation period in which at least 5 percent of the value of the issue is represented by variable yield bonds, unless the issue is an issue of hedge bonds (as defined in section 149(g)(3)(A));

(C) Nonpurpose investments allocable to transferred proceeds of—

(*1*) A current refunding issue to the extent necessary to reduce the yield on those investments to satisfy yield restrictions under section 148(a); or

(*2*) An advance refunding issue to the extent that investment of the refunding escrows allocable to the proceeds, other than transferred proceeds, of the refunding issue in zero-yielding nonpurpose investments is insufficient to satisfy yield restrictions under section 148(a);

(D) Purpose investments allocable to qualified student loans under a program described in section 144(b)(1)(A);

(E) Nonpurpose investments allocable to gross proceeds of an issue in a fund that, except for its failure to satisfy the size limitation in § 1.148–2(f)(2)(ii), would qualify as a reasonably required reserve or replacement fund, but only to the extent that—

(*1*) The value of the nonpurpose investments in the fund is not greater than 15 percent of the stated principal amount of the issue, as computed under § 1.148–2(f)(2)(ii), or

(*2*) The amounts in the fund (other than investment earnings) are not reasonably expected to be used to pay debt service on the issue (e.g., a reserve fund for a revolving fund loan program);

(F) Nonpurpose investments allocated to replacement proceeds of a refunded issue as a result of the application of the universal cap to amounts in a refunding escrow (see § 1.148–11(c)(1)(ii)); and

(G) Investments described in § 1.148–11(f).

(ii) *Exception to yield reduction payments rule for advance refunding issues.* Paragraph (c)(1) of this section does not apply to investments allocable to gross proceeds of an advance refunding issue, other than transferred proceeds to which paragraph (c)(3)(i)(C) of this section applies and replacement proceeds to which paragraph (c)(3)(i)(F) of this section applies.

(d) *Value of investments*—(1) *In general.* Except as otherwise provided, the value of an investment (including a payment or receipt on the investment) on a date must be determined using one of the following valuation methods consistently for all purposes of section 148 to that investment on that date:

(i) *Plain par investment—outstanding principal amount.* A plain par investment may be valued at its outstanding stated principal amount, plus any accrued unpaid interest on that date.

(ii) *Fixed rate investment—present value.* A fixed rate investment may be valued at its present value on that date.

(iii) *Any investment—fair market value.* An investment may be valued at its fair market value on that date.

(2) *Mandatory valuation of yield restricted investments at present value.* Any yield restricted investment must be valued at present value. For example, a purpose investment or an investment allocable to gross proceeds in a refunding escrow after the expiration of the initial temporary period must be valued at present value. See, however, paragraph (b)(3) of this section.

(3) *Mandatory valuation of certain investments at fair market value*—(i) *In general.* Except as provided in paragraphs (d)(2), (d)(3)(ii), and (d)(4) of this section, an investment must be valued at fair market value on the date that it is first allocated to an issue or first ceases to be allocated to an issue as a consequence of a deemed acquisition or deemed disposition. For example, if an issuer deposits existing investments into a sinking fund for an issue, those investments must be valued at fair market value as of the date first deposited into the fund.

(ii) *Exception to fair market value requirement for transferred proceeds allocations, universal cap allocations, and commingled funds.* This paragraph (d)(3) does not apply if the investment is allocated to an issue or ceases to be allocated to an issue as a result of the transferred proceeds allocation rule under § 1.148–9(b) or the universal cap rule under § 1.148–6(b)(2). In addition, this paragraph (d)(3) does not apply to investments in a commingled fund (other than a bona fide debt service fund) unless it is a commingled fund described in § 1.148–6(e)(5)(iii).

(4) *Special transition rule for transferred proceeds.* The value of a nonpurpose investment that is allocated to transferred proceeds of a refunding issue on a transfer date may not exceed the value of that investment on the transfer date used for purposes of applying the arbitrage restrictions to the refunded issue.

(5) *Definition of present value of an investment.* Except as otherwise provided, present value of an investment is computed under the economic accrual method, using the same compounding interval and financial conventions used to compute the yield on the issue. The present value of an investment on a date is equal to the present value of all unconditionally payable receipts to be received from and payments to be paid for the investment after that date, using the yield on the investment as the discount rate.

(6) *Definition of fair market value*—(i) *In general.* The fair market value of an investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's-length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the nonpurpose investment becomes binding (i.e., the trade date rather than the settlement date). Except as otherwise provided in this paragraph (d)(6), an investment that is not of a type traded on an established securities market, within the meaning of section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

(ii) *Safe harbor for establishing fair market value for certificates of deposit.* This paragraph (d)(6)(ii) applies to a certificate of deposit that has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal. The purchase price of such a certificate of deposit is treated as its fair market value on the purchase date if the yield on the certificate of deposit is not less than—

(A) The yield on reasonably comparable direct obligations of the United States; and

(B) The highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(iii) *Safe harbor for establishing fair market value for guaranteed investment contracts.* The purchase price of a guaranteed investment contract is treated as its fair market value on the purchase date if—

(A) The issuer makes a bona fide solicitation for a specified guaranteed investment contract and receives at least three bona fide bids from providers that have no material financial interest in the issue (e.g., as underwriters or brokers);

(B) The issuer purchases the highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees);

(C) The yield on the guaranteed investment contract (determined net of broker's fees) is not less than the yield then available from the provider on reasonably comparable guaranteed investment contracts, if any, offered to other persons from a source of funds other than gross proceeds of tax-exempt bonds;

(D) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the issuer's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in debt service funds and reasonably required reserve or replacement funds;

(E) The terms of the guaranteed investment contract, including collateral security requirements, are reasonable; and

(F) The obligor on the guaranteed investment contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the guaranteed investment contract.

(e) *Administrative costs of investments*—(1) *In general.* Except as otherwise provided in this paragraph (e), an allocation of gross proceeds of an issue to a payment or a receipt on an investment is not adjusted to take into account any costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the investment (administrative costs). Thus, these administrative costs generally do not increase the payments for, or reduce the receipts from, investments.

(2) *Qualified administrative costs on nonpurpose investments*—(i) *In general.* In determining payments and receipts on nonpurpose investments, qualified administrative costs are taken into account. Thus, qualified administrative costs increase the payments for, or decrease the receipts from, the investments. Qualified administrative costs are reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody, and similar costs. General overhead costs and similar indirect costs of the issuer such as employee salaries and office expenses and costs associated with computing the rebate amount under section 148(f) are not qualified administrative costs. In general, administrative costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if

acquired with a source of funds other than gross proceeds of tax-exempt bonds.

(ii) *Special rule for administrative costs of nonpurpose investments in certain regulated investment companies and commingled funds.* Qualified administrative costs include all reasonable administrative costs, without regard to the limitation on indirect costs under paragraph (e)(2)(i) of this section, incurred by:

(A) *Regulated investment companies.* A publicly offered regulated investment company (as defined in section 67(c)(2)(B)); and

(B) *External commingled funds.* A commingled fund in which the issuer and any related parties do not own more than 10 percent of the beneficial interest in the fund.

(iii) *Special rule for guaranteed investment contracts.* For a guaranteed investment contract, a broker's commission paid on behalf of either an issuer or the provider is not a qualified administrative cost to the extent that the commission exceeds 0.05 percent of the amount reasonably expected to be invested per year. This paragraph (e)(2)(iii) does not apply to an issue that satisfies section 148(f)(4)(D)(i).

(3) *Qualified administrative costs on purpose investments*—(i) *In general.* In determining payments and receipts on purpose investments, qualified administrative costs described in this paragraph (e)(3) paid by the conduit borrower are taken into account. Thus, these costs increase the payments for, or decrease the receipts from, the purpose investments. This rule applies even if those payments merely reimburse the issuer. Although the actual payments by the conduit borrower may be made at any time, for this purpose, a pro rata portion of each payment made by a conduit borrower is treated as a reimbursement of reasonable administrative costs, if the present value of those payments does not exceed the present value of the reasonable administrative costs paid by the issuer, using the yield on the issue as the discount rate.

(ii) *Definition of qualified administrative costs of purpose investments*—(A) *In general.* Except as otherwise provided in this paragraph (e)(3)(ii), qualified administrative costs of a purpose investment means—

(*1*) Costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the investment; and

(*2*) Costs of issuing, carrying, or repaying the issue, and any underwriters' discount.

(B) *Limitation on program investments.* For a program investment, qualified administrative costs include only those costs described in paragraph (e)(3)(ii)(A)(*2*) of this section.

§ 1.148–6 General allocation and accounting rules.

(a) *In general*—(1) *Reasonable accounting methods required.* An issuer may use any reasonable, consistently applied accounting method to account for gross proceeds, investments, and expenditures of an issue.

(2) *Bona fide deviations from accounting method.* An accounting method does not fail to be reasonable and consistently applied solely because a different accounting method is used for a bona fide governmental purpose to consistently account for a particular item. Bona fide governmental purposes may include special State law restrictions imposed on specific funds or actions to avoid grant forfeitures.

(b) *Allocation of gross proceeds to an issue*—(1) *One-issue rule and general ordering rules.* Except as otherwise provided, amounts are allocable to only one issue at a time as gross proceeds, and if amounts simultaneously are proceeds of one issue and replacement proceeds of another issue, those amounts are allocable to the issue of which they are proceeds. Amounts cease to be allocated to an issue as proceeds only when those amounts are allocated to an expenditure for a governmental purpose, are allocated to transferred proceeds of another issue, or cease to be allocated to that issue at retirement of the issue or under the universal cap of paragraph (b)(2) of this section. Amounts cease to be allocated to an issue as replacement proceeds only when those amounts are allocated to an expenditure for a governmental purpose, are no longer used in a manner that causes those amounts to be replacement proceeds of that issue, or cease to be allocated to that issue because of the retirement of the issue or the application of the universal cap under paragraph (b)(2) of this section. Amounts that cease to be allocated to an issue as gross proceeds are eligible for allocation to another issue. Under § 1.148–10(a), however, the rules in this paragraph (b)(1) do not apply in certain cases involving abusive arbitrage devices.

(2) *Universal cap on value of nonpurpose investments allocated to an issue*—(i) *Application.* The rules in this paragraph (b)(2) provide an overall limitation on the amount of gross proceeds allocable to an issue. Although the universal cap generally may be applied at any time in the manner described in this paragraph (b)(2), it need not be applied on any otherwise required date of application if its application on that date would not result in a reduction or reallocation of gross proceeds of an issue. For this purpose, if an issuer reasonably expects as of the issue date that the universal cap will not reduce the amount of gross proceeds allocable to the issue during the term of the issue, the universal cap need not be applied on any date on which an issue actually has all of the following characteristics—

(A) No replacement proceeds are allocable to the issue, other than replacement proceeds in a bona fide debt service fund or a reasonably required reserve or replacement fund;

(B) The net sale proceeds of the issue—

(*1*) Qualified for one of the temporary periods available for capital projects, restricted working capital expenditures, or pooled financings under paragraphs § 1.148–2 (e)(2), (e)(3), or (e)(4), and those net sales proceeds were in fact allocated to expenditures prior to the expiration of the longest applicable temporary period; or

(*2*) were deposited in a refunding escrow and expended as originally expected;

(C) The issue does not refund a prior issue that, on any transfer date, has unspent proceeds allocable to it;

(D) None of the bonds are retired prior to the date on which those bonds are treated as retired in computing the yield on the issue; and

(E) No proceeds of the issue are invested in qualified student loans or qualified mortgage loans.

(ii) *General rule.* Except as otherwise provided below, amounts that would otherwise be gross proceeds allocable to an issue are allocated (and remain allocated) to the issue only to the extent that the value of the nonpurpose investments allocable to those gross proceeds does not exceed the value of all outstanding bonds of the issue. For this purpose, gross proceeds allocable to cash, tax-exempt bonds that would be nonpurpose investments (absent section 148(b)(3)(A)), qualified student loans, and qualified mortgage loans are treated as nonpurpose investments. The values of bonds and investments are determined under § 1.148–4(e) and § 1.148–5(d), respectively. The value of all outstanding bonds of the issue is referred to as the *universal cap.* Thus, for example, the universal cap for an issue of plain par bonds is equal to the outstanding stated principal amount of those bonds plus accrued interest.

(iii) *Determination and application of the universal cap.* Except as otherwise provided, beginning with the first bond year that commences after the second

anniversary of the issue date, the amount of the universal cap and the value of the nonpurpose investments must be determined as of the first day of each bond year. For refunding and refunded issues, the cap and values must be determined as of each date that, but for this paragraph (b)(2), proceeds of the refunded issue would become transferred proceeds of the refunding issue, and need not otherwise be determined in the bond year in which that date occurs. All values are determined as of the close of business on each determination date, after giving effect to all payments on bonds and payments for and receipts on investments on that date.

(iv) *General ordering rule for allocations of amounts in excess of the universal cap*—(A) *In general.* If the value of all nonpurpose investments allocated to the gross proceeds of an issue exceeds the universal cap for that issue on a date as of which the cap is determined under paragraph (b)(2)(iii) of this section, nonpurpose investments allocable to gross proceeds necessary to eliminate that excess cease to be allocated to the issue, in the following order of priority—

(*1*) First, nonpurpose investments allocable to replacement proceeds;

(*2*) Second, nonpurpose investments allocable to transferred proceeds; and

(*3*) Third, nonpurpose investments allocable to sale proceeds and investment proceeds.

(B) *Re-allocation of certain amounts.* Except as provided in § 1.148–9(b)(3), amounts that cease to be allocated to an issue as a result of the application of the universal cap may only be allocated to another issue as replacement proceeds.

(C) *Allocations of portions of investments.* Portions of investments to which this paragraph (b)(2)(iv) applies are allocated under either the ratable method or the representative method in the same manner as allocations of portions of investments to transferred proceeds under § 1.148–9(c).

(v) *Nonpurpose investments in a bona fide debt service fund not counted.* For purposes of this paragraph (b)(2), nonpurpose investments allocated to gross proceeds in a bona fide debt service fund for an issue are not taken into account in determining the value of the nonpurpose investments, and those nonpurpose investments remain allocated to the issue.

(c) *Fair market value limit on allocations to nonpurpose investments.* Upon a purchase or sale of a nonpurpose investment, gross proceeds of an issue are not allocated to a payment for that nonpurpose investment in an amount greater than, or to a receipt from that nonpurpose investment in an amount less than, the fair market value of the nonpurpose investment as of the purchase or sale date. For purposes of this paragraph (c) only, the fair market value of a nonpurpose investment is adjusted to take into account qualified administrative costs allocable to the investment.

(d) *Allocation of gross proceeds to expenditures*—(1) *Expenditures in general*—(i) *General rule.* Reasonable accounting methods for allocating funds from different sources to expenditures for the same governmental purpose include any of the following methods if consistently applied: a specific tracing method; a gross proceeds spent first method; a first-in, first-out method; or a ratable allocation method.

(ii) *General limitation.* An allocation of gross proceeds of an issue to an expenditure must involve a current outlay of cash for a governmental purpose of the issue. A *current outlay of cash* means an outlay reasonably expected to occur not later than 5 banking days after the date as of which the allocation of gross proceeds to the expenditure is made.

(2) *Treatment of gross proceeds invested in purpose investments*—(i) *In general.* Gross proceeds of an issue invested in a purpose investment are allocated to an expenditure on the date on which the conduit borrower under the purpose investment allocates the gross proceeds to an expenditure in accordance with this paragraph (d).

(ii) *Exception for qualified mortgage loans and qualified student loans.* If gross proceeds of an issue are allocated to a purpose investment that is a qualified mortgage loan or a qualified student loan, those gross proceeds are allocated to an expenditure for the governmental purpose of the issue on the date on which the issuer allocates gross proceeds to that purpose investment.

(iii) *Continuing allocation of gross proceeds to purpose investments.* Regardless of whether gross proceeds of a conduit financing issue invested in a purpose investment have been allocated to an expenditure under paragraph (d)(2) (i) or (ii) of this section, with respect to the actual issuer those gross proceeds continue to be allocated to the purpose investment until the sale, discharge, or other disposition of the purpose investment.

(3) *Expenditures for working capital purposes*—(i) *In general.* Except as otherwise provided in this paragraph (d)(3) or paragraph (d)(4) of this section, proceeds of an issue may only be allocated to working capital expenditures as of any date to the extent that those working capital expenditures exceed available amounts (as defined in paragraph (d)(3)(iii) of this section) as of that date (i.e., a "proceeds-spent-last" method). For this purpose, proceeds include replacement proceeds described in § 1.148–1(c)(4).

(ii) *Exceptions*—(A) *General de minimis exception.* Paragraph (d)(3)(i) of this section does not apply to expenditures to pay—

(*1*) Any qualified administrative costs within the meaning of §§ 1.148–5(e)(2)(i) or (ii), or § 1.148–5(e)(3)(ii)(A);

(*2*) Fees for qualified guarantees of the issue or payments for a qualified hedge for the issue;

(*3*) Interest on the issue for a period commencing on the issue date and ending on the date that is the later of three years from the issue date or one year after the date on which the project is placed in service;

(*4*) Amounts paid to the United States under sections 1.148–3, 1.148–5(c), or 1.148–7 for the issue;

(*5*) Costs, other than those described in paragraphs (d)(3)(ii)(A) (*1*) through (*4*) of this section, that do not exceed 5 percent of the sale proceeds of an issue and that are directly related to capital expenditures financed by the issue (e.g., initial operating expenses for a new capital project);

(*6*) Principal or interest on an issue paid from unexpected excess sale or investment proceeds; and

(*7*) Principal or interest on an issue paid from investment earnings on a reserve or replacement fund that are deposited in a bona fide debt service fund.

(B) *Exception for extraordinary items.* Paragraph (d)(3)(i) of this section does not apply to expenditures for extraordinary, nonrecurring items that are not customarily payable from current revenues, such as casualty losses or extraordinary legal judgments in amounts in excess of reasonable insurance coverage. If, however, an issuer or a related party maintains a reserve for such items (e.g., a self-insurance fund) or has set aside other available amounts for such expenses, gross proceeds within that reserve must be allocated to expenditures only after all other available amounts in that reserve are expended.

(C) *Exception for payment of principal and interest on prior issues.* Paragraph (d)(3)(i) of this section does not apply to expenditures for payment of principal, interest, or redemption prices on a prior issue and, for a crossover refunding issue, interest on that issue.

(D) *No exceptions if replacement proceeds created.* The exceptions provided in this paragraph (d)(3)(ii) do not apply if the allocation merely substitutes gross proceeds for other amounts that would have been used to make those expenditures in a manner that gives rise to replacement proceeds. For example, if a purported reimbursement allocation of proceeds of a reimbursement bond does not result in an expenditure under § 1.150–2, those proceeds may not be allocated to pay interest on an issue that, absent this allocation, would have been paid from the issuer's current revenues.

(iii) *Definition of available amount*—(A) *In general.* For purposes of this paragraph (d)(3), *available amount* means any amount that is available to an issuer for working capital expenditure purposes of the type financed by an issue. Except as otherwise provided, *available amount* excludes proceeds of the issue but includes cash, investments, and other amounts held in accounts or otherwise by the issuer or a related party if those amounts may be used by the issuer for working capital expenditures of the type being financed by an issue without legislative or judicial action and without a legislative, judicial, or contractual requirement that those amounts be reimbursed.

(B) *Reasonable working capital reserve treated as unavailable.* A reasonable working capital reserve is treated as unavailable. Any working capital reserve is reasonable if it does not exceed 5 percent of the actual working capital expenditures of the issuer in the fiscal year before the year in which the determination of available amounts is made. For this purpose only, in determining the working capital expenditures of an issuer for a prior fiscal year, any expenditures (whether capital or working capital expenditures) that are paid out of current revenues may be treated as working capital expenditures.

(C) *Qualified endowment funds treated as unavailable.* For a 501(c)(3) organization that is a hospital, university, or similar institution, a qualified endowment fund is treated as unavailable. A fund is a qualified endowment fund if—

(*1*) The fund is derived from gifts or bequests, or the income thereon, that were neither made nor reasonably expected to be used to pay working capital expenditures;

(*2*) Pursuant to reasonable, established practices of the organization, the governing body of the 501(c)(3) organization designates and consistently operates the fund as a permanent endowment fund or quasi-endowment fund restricted as to use; and

(*3*) There is an independent verification (e.g., from an independent certified public accountant) that the fund is reasonably necessary as part of the organization's permanent capital.

(D) *Application to statutory safe harbor for tax and revenue anticipation bonds.* For purposes of section 148(f)(4)(B)(iii)(II), *available amount* has the same meaning as in paragraph (d)(3)(iii) of this section, except that the otherwise-permitted reasonable working capital reserve is treated as part of the available amount.

(4) *Expenditures for grants*—(i) *In general.* Gross proceeds of an issue that are used to make a grant are allocated to an expenditure on the date on which the grant is made.

(ii) *Characterization of repayments of grants.* If any amount of a grant financed by gross proceeds of an issue is repaid to the grantor, the repaid amount is treated as unspent proceeds of the issue as of the repayment date unless expended within 60 days of repayment.

(iii) *Definition of grant. Grant* means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

(5) *Expenditures for reimbursement purposes.* In allocating gross proceeds of issues of reimbursement bonds (as defined in § 1.150–2)) to certain expenditures, § 1.150–2 applies. In allocating gross proceeds to an expenditure to reimburse a previously paid working capital expenditure, paragraph (d)(3) of this section applies. Thus, if the expenditure is described in paragraph (d)(3)(ii) of this section or there are no available amounts on the date a working capital expenditure is made and there are no other available amounts on the date of the reimbursement of that expenditure, gross proceeds are allocated to the working capital expenditure as of the date of the reimbursement.

(6) *Expenditures of certain commingled investment proceeds of governmental issues.* This paragraph (d)(6) applies to any issue of governmental bonds, any issue of private activity bonds issued to finance a facility that is required by section 142 to be owned by a governmental unit, and any portion of an issue that is not treated as consisting of private activity bonds under section 141(b)(9). Investment proceeds of the issue (other than investment proceeds held in a refunding escrow) are treated as allocated to expenditures for a governmental purpose when the amounts are deposited in a commingled fund with substantial tax or other revenues from governmental operations of the issuer and the amounts are reasonably expected to be spent for governmental purposes within 6 months from the date of the commingling. In establishing these reasonable expectations, an issuer may use any reasonable accounting assumption and is not bound by the *proceeds-spent-last* assumption generally required for working capital expenditures under paragraph (d)(3) of this section.

(7) *Payments to related parties.* Any payment of gross proceeds of the issue to a related party of the payor is not an expenditure of those gross proceeds.

(e) *Special rules for commingled funds*—(1) *In general.* An accounting method for gross proceeds of an issue in a commingled fund, other than a bona fide debt service fund, is reasonable only if it satisfies the requirements of paragraphs (e)(2) through (6) of this section in addition to the other requirements of this section.

(2) *Investments held by a commingled fund*—(i) *Required ratable allocations.* Not less frequently than as of the close of each fiscal period, all payments and receipts (including deemed payments and receipts) on investments held by a commingled fund must be allocated (but not necessarily distributed) among the different investors in the fund. This allocation must be based on a consistently applied, reasonable ratable allocation method.

(ii) *Safe harbors for ratable allocation methods.* Reasonable ratable allocation methods include, without limitation, methods that allocate these items in proportion to either—

(A) The average daily balances of the amounts in the commingled fund from different investors during a fiscal period (as described in paragraph (e)(4) of this section); or

(B) The average of the beginning and ending balances of the amounts in the commingled fund from different investors for a fiscal period that does not exceed one month.

(iii) *Definition of investor.* For purposes of this paragraph (e), the term *investor* means each different source of funds invested in a commingled fund. For example, if a city invests gross proceeds of an issue and tax revenues in a commingled fund, it is treated as two different investors.

(3) *Certain expenditures involving a commingled fund.* If a ratable allocation method is used under paragraph (d) of this section to allocate expenditures from the commingled fund, the same ratable allocation method must be used to allocate payments and receipts on investments in the commingled fund under paragraph (e)(2) of this section.

(4) *Fiscal periods.* The fiscal year of a commingled fund is the calendar year unless the fund adopts another fiscal year. A commingled fund may use any consistent fiscal period that does not exceed three months (e.g., a daily, weekly, monthly, or quarterly fiscal period).

(5) *Unrealized gains and losses on investments of a commingled fund*—(i) *Mark-to-market requirement for internal commingled funds with longer-term investment portfolios.* Except as otherwise provided in this paragraph (e), in the case of a commingled fund in which the issuer and any related party own more than 25 percent of the beneficial interests in the fund (an *internal commingled fund*), the fund must treat all its investments as if sold at fair market value either on the last day of the fiscal year or the last day of each fiscal period. The net gains or losses from these deemed sales of investments must be allocated to all investors of the commingled fund during the period since the last allocation.

(ii) *Exception for internal commingled funds with shorter-term investment portfolios.* If the remaining weighted average maturity of all investments held by a commingled fund during a particular fiscal year does not exceed 18 months, and the investments held by the commingled fund during that fiscal year consist exclusively of obligations, the mark-to-market requirement of paragraph (e)(5)(i) of this section does not apply.

(iii) *Exception for commingled reserve funds and sinking funds.* The mark-to-market requirement of paragraph (e)(5)(i) of this section does not apply to a commingled fund that operates exclusively as a reserve fund, sinking fund, or replacement fund for two or more issues of the same issuer.

(6) *Allocations of commingled funds serving as common reserve funds or sinking funds*—(i) *Permitted ratable allocation methods.* If a commingled fund serves as a common reserve fund, replacement fund, or sinking fund for two or more issues (a *commingled reserve*), after making reasonable adjustments to account for proceeds allocated under paragraph (b)(1) or (b)(2) of this section, investments held by that commingled fund must be allocated ratably among the issues served by the commingled fund in accordance with one of the following methods—

(A) The relative values of the bonds of those issues under § 1.148–4(e);

(B) The relative amounts of the remaining maximum annual debt service requirements on the outstanding principal amounts of those issues; or

(C) The relative original stated principal amounts of the outstanding issues.

(ii) *Frequency of allocations.* An issuer must make any allocations required by this paragraph (e)(6) as of a date at least every 3 years and as of each date that an issue first becomes secured by the commingled reserve. If relative original principal amounts are used to allocate, allocations must also be made on the retirement of any issue secured by the commingled reserve.

§ 1.148–7 Spending exceptions to the rebate requirement.

(a) *Scope of section*—(1) *In general.* This section provides guidance on the spending exceptions to the arbitrage rebate requirement of section 148(f)(2). These exceptions are the 6-month exception in section 148(f)(4)(B) (the *6-month exception*), the 18-month exception under paragraph (d) of this section (the *18-month exception*), and the 2-year construction exception under section 148(f)(4)(C) (the *2-year exception*) (collectively, the *spending exceptions*).

(2) *Relationship of spending exceptions.* Each of the spending exceptions is an independent exception to arbitrage rebate. For example, a construction issue may qualify for the 6-month exception or the 18-month exception even though the issuer makes one or more elections under the 2-year exception with respect to the issue.

(3) *Spending exceptions not mandatory.* Use of the spending exceptions is not mandatory. An issuer may apply the arbitrage rebate requirement to an issue that otherwise satisfies a spending exception. If an issuer elects to pay penalty in lieu of rebate under the 2-year exception, however, the issuer must apply those penalty provisions.

(b) *Rules applicable for all spending exceptions.* The provisions of this paragraph (b) apply for purposes of applying each of the spending exceptions.

(1) *Special transferred proceeds rules*—(i) *Application to prior issues.* For purposes of applying the spending exceptions to a prior issue only, proceeds of the prior issue that become transferred proceeds of the refunding issue continue to be treated as unspent proceeds of the prior issue. If the prior issue satisfies one of the spending exceptions, the proceeds of the prior issue that are excepted from rebate under that spending exception are not subject to rebate either as proceeds of the prior issue or as transferred proceeds of the refunding issue.

(ii) *Application to refunding issues*—(A) *In general.* The only spending exception applicable to refunding issues is the 6-month exception. For purposes of applying the 6-month exception to a refunding issue only, proceeds of the prior issue that become transferred proceeds of the refunding issue generally are not treated as proceeds of the refunding issue and need not be spent for the refunding issue to satisfy that spending exception. Even if the refunding issue qualifies for that spending exception, those transferred proceeds are subject to rebate as proceeds of the refunding issue unless an exception to rebate applied to those proceeds as proceeds of the prior issue.

(B) *Exception.* For purposes of applying the 6-month exception to refunding issues, those transferred proceeds of the refunding issue excluded from the gross proceeds of the prior issue under the special definition of gross proceeds in paragraph (c)(3) of this section, and those that transferred from a prior taxable issue, are generally treated as gross proceeds of the refunding issue. Thus, for the refunding issue to qualify for the 6-month exception, those proceeds must be spent within 6 months of the issue date of the refunding issue, unless those amounts continue to be used in a manner that does not cause those amounts to be gross proceeds under paragraph (c)(3) of this section.

(2) *Application of multipurpose issue rules.* Except as otherwise provided, if any portion of an issue is treated as a separate issue allocable to refunding purposes under § 1.148–9(h) (relating to multipurpose issues), for purposes of this section, that portion is treated as a separate issue.

(3) *Expenditures for governmental purposes of the issue.* For purposes of this section, expenditures for the governmental purpose of an issue include payments for interest, but not principal, on the issue, and for principal or interest on another issue of obligations. The preceding sentence does not apply for purposes of the 18-month and 2-year exceptions if those payments cause the issue to be a refunding issue.

(4) *De minimis rule.* Any failure to satisfy the final spending requirement of

the 18-month exception or the 2-year exception is disregarded if the issuer exercises due diligence to complete the project financed and the amount of the failure does not exceed the lesser of 3 percent of the issue price of the issue or $250,000.

(5) *Special definition of reasonably required reserve or replacement fund.* For purposes of this section only, a reasonably required reserve or replacement fund also includes any fund to the extent described in § 1.148–5(c)(3)(i)(E) or (G).

(6) *Pooled financing issue*—(i) *In general.* Except as otherwise provided in this paragraph (b)(6), the spending exceptions apply to a pooled financing issue as a whole, rather than to each loan separately.

(ii) *Election to apply spending exceptions separately to each loan*—(A) *In general.* At the election (made on or before the issue date) of the issuer of a pooled financing issue, the spending exceptions are applied separately to each conduit loan, and the applicable spending requirements for a loan begin on the earlier of the date the loan is made, or the first day following the 1-year period beginning on the issue date of the pooled financing issue. If this election is made, the rebate requirement applies to, and none of the spending exceptions are available for, gross proceeds of the pooled financing bonds before the date on which the spending requirements for those proceeds begin.

(B) *Application of spending exceptions.* If the issuer makes the election under this paragraph (b)(6)(ii), the rebate requirement is satisfied for proceeds used to finance a particular conduit loan to the extent that the loan satisfies a spending exception or the small issuer exception under § 1.148–8, regardless of whether any other conduit loans allocable to the issue satisfy such an exception. A pooled financing issue is an issue of arbitrage bonds, however, unless the entire issue satisfies the requirements of section 148. An issuer may pay rebate for some conduit loans and 1½ percent penalty for other conduit loans from the same pooled financing issue. The 1½ percent penalty is computed separately for each conduit loan.

(C) *Elections under 2-year exception.* If the issuer makes the election under this paragraph (b)(6)(ii), the issuer may make all elections under the 2-year exception separately for each loan. Elections regarding a loan that otherwise must be made by the issuer on or before the issue date instead may be made on or before the date the loan is made (but not later than 1 year after the issue date).

(D) *Example.* The operation of this paragraph (b)(6) is illustrated by the following example:

Example. Pooled financing issue. On January 1, 1994, Authority *J* issues bonds. As of the issue date, *J* reasonably expects to use the proceeds of the issue to make loans to City *K*, County *L*, and City *M*. *J* does not reasonably expect to use more than 75 percent of the available construction proceeds of the issue for construction expenditures. On or before the issue date, *J* elects to apply the spending exceptions separately for each loan, with spending requirements beginning on the earlier of the date the loan is made or the first day following the 1-year period beginning on the issue date. On February 1, 1994, *J* loans a portion of the proceeds to *K*, and *K* reasonably expects that 45 percent of those amounts will be used for construction expenditures. On the date this loan is made, *J* elects under paragraph (j) of this section to treat 60 percent of the amount loaned to *K* as a separate construction issue, and also elects the 1½ percent penalty under paragraph (k) of this section for the separate construction issue. On March 1, 1994, *J* loans a portion of the proceeds to *L*, and *L* reasonably expects that more than 75 percent of those amounts will be used for construction expenditures. On March 1, 1995, *J* loans the remainder of the proceeds to *M*, and none of those amounts will be used for construction expenditures. *J* must satisfy the rebate requirement for all gross proceeds before those amounts are loaned. For the loan to *K*, the spending periods begin on February 1, 1994, and the 1½ percent penalty must be paid for any failure to meet a spending requirement for the portion of the loan to *K* that is treated as a separate construction issue. Rebate must be paid on the remaining portion of the loan to *K*, unless that portion qualifies for the 6-month exception. For the loan to *L*, the spending periods begin on March 1, 1994, and the rebate requirement must be satisfied unless the 6-month, 18-month, or the 2-year exception is satisfied with respect to those amounts. For the loan to *M*, the spending periods begin on January 2, 1995, and the rebate requirement must be satisfied for those amounts unless the 6-month or 18-month exception is satisfied.

(c) *6-month exception*— (1) *General rule.* An issue is treated as meeting the rebate requirement if—

(i) The gross proceeds (as modified by paragraph (c)(3) of this section) of the issue are allocated to expenditures for the governmental purposes of the issue within the 6-month period beginning on the issue date (the *6-month spending period*); and

(ii) The rebate requirement is met for amounts not required to be spent within the 6-month spending period (excluding earnings on a bona fide debt service fund).

(2) *Additional period for certain bonds.* The 6-month spending period is extended for an additional 6 months in certain circumstances specified under section 148(f)(4)(B)(ii).

(3) *Amounts not included in gross proceeds.* For purposes of paragraph (c)(1)(i) of this section only, gross proceeds has the meaning used in § 1.148–1, except it does not include amounts—

(i) In a bona fide debt service fund;

(ii) In a reasonably required reserve or replacement fund (see § 1.148–7(b)(5));

(iii) That, as of the issue date, are not reasonably expected to be gross proceeds but that become gross proceeds after the end of the 6-month spending period;

(iv) Representing sale or investment proceeds derived from payments under any purpose investment of the issue; and

(v) Representing repayments of grants (as defined in § 1.148–6(d)(4)) financed by the issue.

(4) *Series of refundings.* If a principal purpose of a series of refunding issues is to exploit the difference between taxable and tax-exempt interest rates by investing proceeds during the temporary periods provided in § 1.148–9(d), the 6-month spending period for all issues in the series begins on the issue date of the first issue in the series.

(d) *18-month exception*—(1) *General rule.* An issue is treated as meeting the rebate requirement if all of the following requirements are satisfied—

(i) *18-month expenditure schedule met.* The gross proceeds (as defined in paragraph (d)(3) of this section) are allocated to expenditures for a governmental purpose of the issue in accordance with the following schedule (the *18-month expenditure schedule*) measured from the issue date—

(A) At least 15 percent within 6 months (the *first spending period*);

(B) At least 60 percent within 12 months (the *second spending period*); and

(C) 100 percent within 18 months (the *third spending period*).

(ii) *Rebate requirement met for amounts not required to be spent.* The rebate requirement is met for all amounts not required to be spent in accordance with the 18-month expenditure schedule (other than earnings on a bona fide debt service fund).

(iii) *Issue qualifies for initial temporary period.* All of the gross proceeds (as defined in paragraph (d)(3)(i) of this section) of the issue qualify for the initial temporary period under § 1.148–2(e)(2).

(2) *Extension for reasonable retainage.* An issue does not fail to satisfy the spending requirement for the third spending period as a result of a reasonable retainage if the reasonable retainage is allocated to expenditures

within 30 months of the issue date. Reasonable retainage has the meaning under paragraph (h) of this section, as modified to refer to net sale proceeds on the date 18 months after the issue date.

(3) *Gross proceeds*—(i) *Definition of gross proceeds.* For purposes of paragraph (d)(1) of this section only, *gross proceeds* means gross proceeds as defined in paragraph (c)(3) of this section, as modified to refer to "18 months" in paragraph (c)(3)(iii) of this section in lieu of "6 months."

(ii) *Estimated earnings.* For purposes of determining compliance with the first two spending periods under paragraph (d)(1)(i) of this section, the amount of investment proceeds included in gross proceeds of the issue is determined based on the issuer's reasonable expectations on the issue date.

(4) *Application to multipurpose issues.* This paragraph (d) does not apply to an issue any portion of which is treated as meeting the rebate requirement under paragraph (e) of this section (relating to the 2-year exception).

(e) *2-year exception*—(1) *General rule.* A construction issue is treated as meeting the rebate requirement for available construction proceeds if those proceeds are allocated to expenditures for governmental purposes of the issue in accordance with the following schedule (the *2-year expenditure schedule*), measured from the issue date—

(i) At least 10 percent within 6 months (the *first spending period*);

(ii) At least 45 percent within 1 year (the *second spending period*);

(iii) At least 75 percent within 18 months (the *third spending period*); and

(iv) 100 percent within 2 years (the *fourth spending period*).

(2) *Extension for reasonable retainage.* An issue does not fail to satisfy the spending requirement for the fourth spending period as a result of unspent amounts for reasonable retainage (as defined in paragraph (h) of this section) if those amounts are allocated to expenditures within 3 years of the issue date.

(3) *Definitions.* For purposes of the 2-year exception, the following definitions apply:

(i) *Real property* means land and improvements to land, such as buildings or other inherently permanent structures, including interests in real property. For example, real property includes wiring in a building, plumbing systems, central heating or air-conditioning systems, pipes or ducts, elevators, escalators installed in a building, paved parking areas, roads, wharves and docks, bridges, and sewage lines.

(ii) *Tangible personal property* means any tangible property other than real property, including interests in tangible personal property. For example, tangible personal property includes machinery that is not a structural component of a building, subway cars, fire trucks, automobiles, office equipment, testing equipment, and furnishings.

(iii) *Substantially completed.* Construction may be treated as substantially completed when the issuer abandons construction or when at least 90 percent of the total costs of the construction reasonably expected, as of that date, to be financed with the available construction proceeds have been allocated to expenditures.

(f) *Construction issue*—(1) *Definition. Construction issue* means any issue that is not a refunding issue if—

(i) The issuer reasonably expects, as of the issue date, that at least 75 percent of the available construction proceeds of the issue will be allocated to construction expenditures (as defined in paragraph (g) of this section) for property owned by a governmental unit or a 501(c)(3) organization; and

(ii) Any private activity bonds that are part of the issue are qualified 501(c)(3) bonds or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

(2) *Use of actual facts.* For the provisions of paragraphs (e) through (m) of this section that apply based on the issuer's reasonable expectations, an issuer may elect on or before the issue date to apply all of those provisions based on actual facts.

(3) *Ownership requirement*—(i) *In general.* A governmental unit or 501(c)(3) organization is treated as the owner of property if it would be treated as the owner for Federal income tax purposes. For obligations issued on behalf of a State or local governmental unit, the entity that actually issues the bonds is treated as a governmental unit.

(ii) *Safe harbor for leases and management contracts.* Property leased by a governmental unit or a 501(c)(3) organization is treated as owned by the governmental unit or 501(c)(3) organization if the lessee complies with the requirements of section 142(b)(1)(B). For a bond described in section 142(a)(6), the requirements of section 142(b)(1)(B) apply as modified by section 146(h)(2).

(g) *Construction expenditures*—(1) *Definition.* Except as otherwise provided, *construction expenditures* means capital expenditures (as defined in § 1.150–1) that are allocable to the cost of real property or constructed personal property (as defined in paragraph (g)(3) of this section). Except as provided in paragraph (g)(2) of this section, construction expenditures do not include expenditures for acquisitions of interests in land or other existing real property.

(2) *Certain acquisitions under turnkey contracts treated as construction expenditures.* Expenditures are not for the acquisition of an interest in existing real property other than land if the contract between the seller and the issuer requires the seller to build or install the property (e.g., a *turnkey contract*), but only to the extent that the property has not been built or installed at the time the parties enter into the contract.

(3) *Constructed personal property. Constructed personal property* means tangible personal property (or, if acquired pursuant to a single acquisition contract, properties) or specially developed computer software if—

(i) A substantial portion of the property or properties is completed more than 6 months after the earlier of the date construction or rehabilitation commenced and the date the issuer entered into an acquisition contract;

(ii) Based on the reasonable expectations of the issuer, if any, or representations of the person constructing the property, with the exercise of due diligence, completion of construction or rehabilitation (and delivery to the issuer) could not have occurred within that 6-month period; and

(iii) If the issuer itself builds or rehabilitates the property, not more than 75 percent of the capitalizable cost is attributable to property acquired by the issuer (e.g., components, raw materials, and other supplies).

(4) *Specially developed computer software. Specially developed computer software* means any programs or routines used to cause a computer to perform a desired task or set of tasks, and the documentation required to describe and maintain those programs, provided that the software is specially developed and is functionally related and subordinate to real property or other constructed personal property.

(5) *Examples.* The operation of this paragraph (g) is illustrated by the following examples:

Example 1. Purchase of construction materials. City A issues bonds to finance a new office building. *A* uses proceeds of the bonds to purchase materials to be used in constructing the building, such as bricks, pipes, wires, lighting, carpeting, heating equipment, and similar materials.

Expenditures by *A* for the construction materials are construction expenditures because those expenditures will be capitalizable to the cost of the building upon completion, even though they are not initially capitalizable to the cost of existing real property. This result would be the same if *A* hires a third-party to perform the construction, unless the office building is partially constructed at the time that *A* contracts to purchase the building.

Example 2. Turnkey contract. City *B* issues bonds to finance a new office building. *B* enters into a turnkey contract with developer *D* under which *D* agrees to provide *B* with a completed building on a specified completion date on land currently owned by *D*. Under the agreement, *D* holds title to the land and building and assumes any risk of loss until the completion date, at which time title to the land and the building will be transferred to *B*. No construction has been performed by the date that *B* and *D* enter into the agreement. All payments by *B* to *D* for construction of the building are construction expenditures because all the payments are properly capitalized to the cost of the building, but payments by *B* to *D* allocable to the acquisition of the land are not construction expenditures.

Example 3. Right-of-way. *P*, a public agency, issues bonds to finance the acquisition of a right-of-way and the construction of sewage lines through numerous parcels of land. The right-of-way is acquired primarily through *P*'s exercise of its powers of eminent domain. As of the issue date, *P* reasonably expects that it will take approximately 2 years to acquire the entire right-of-way because of the time normally required for condemnation proceedings. No expenditures for the acquisition of the right-of-way are construction expenditures because they are costs incurred to acquire an interest in existing real property.

Example 4. Subway cars. City *C* issues bonds to finance new subway cars. *C* reasonably expects that it will take more than 6 months for the subway cars to be constructed to *C*'s specifications. The subway cars are constructed personal property. Alternatively, if the builder of the subway cars informs *C* that it will only take 3 months to build the subway cars to *C*'s specifications, no payments for the subway cars are construction expenditures.

Example 5. Fractional interest in property. *U*, a public agency, issues bonds to finance an undivided fractional interest in a newly constructed power-generating facility. *U* contributes its ratable share of the cost of building the new facility to the project manager for the facility. *U*'s contributions are construction expenditures in the same proportion that the total expenditures for the facility qualify as construction expenditures.

Example 6. Park land. City *D* issues bonds to finance the purchase of unimproved land and the cost of subsequent improvements to the land, such as grading and landscaping, necessary to transform it into a park. The costs of the improvements are properly capitalizable to the cost of the land, and therefore, are construction expenditures, but expenditures for the acquisition of the land are not.

(h) *Reasonable retainage definition. Reasonable retainage* means an amount, not to exceed 5 percent of available construction proceeds as of the end of the fourth spending period, that is retained for reasonable business purposes relating to the property financed with the proceeds of the issue. For example, a reasonable retainage may include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained amount is not yet payable, or in which the issuer reasonably determines that a dispute exists regarding completion or payment.

(i) *Available construction proceeds*—(1) *Definition in general. Available construction proceeds* has the meaning used in section 148(f)(4)(C)(vi). For purposes of this definition, earnings include earnings on any tax-exempt bond. Pre-issuance accrued interest and earnings thereon may be disregarded. Amounts that are not gross proceeds as a result of the application of the universal cap under § 1.148–6(b)(2) are not available construction proceeds.

(2) *Earnings on a reasonably required reserve or replacement fund.* Earnings on any reasonably required reserve or replacement fund are available construction proceeds only to the extent that those earnings accrue before the earlier of the date construction is substantially completed or the date that is 2 years after the issue date. An issuer may elect on or before the issue date to exclude from available construction proceeds the earnings on such a fund. If the election is made, the rebate requirement applies to the excluded amounts from the issue date.

(3) *Reasonable expectations test for future earnings.* For purposes of determining compliance with the spending requirements as of the end of each of the first three spending periods, available construction proceeds include the amount of future earnings that the issuer reasonably expected as of the issue date.

(4) *Issuance costs.* Available construction proceeds do not include gross proceeds used to pay issuance costs financed by an issue, but do include earnings on such proceeds. Thus, an expenditure of gross proceeds of an issue for issuance costs does not count toward meeting the spending requirements. The expenditure of earnings on gross proceeds used to pay issuance costs does count toward meeting those requirements. If the spending requirements are met and the proceeds used to pay issuance costs are expended by the end of the fourth spending period, those proceeds and the earnings thereon are treated as having satisfied the rebate requirement.

(5) *One and one-half percent penalty in lieu of arbitrage rebate.* For purposes of the spending requirements of paragraph (e) of this section, available construction proceeds as of the end of any spending period are reduced by the amount of penalty in lieu of arbitrage rebate (under paragraph (k) of this section) that the issuer has paid from available construction proceeds before the last day of the spending period.

(6) *Payments on purpose investments and repayments of grants.* Available construction proceeds do not include—

(i) Sale or investment proceeds derived from payments under any purpose investment of the issue; or

(ii) Repayments of grants (as defined in § 1.148–6(d)(4)) financed by the issue.

(7) *Examples.* The operation of this paragraph (i) is illustrated by the following examples:

Example 1. Treatment of investment earnings. City *F* issues bonds having an issue price of $10,000,000. *F* deposits all of the proceeds of the issue into a construction fund to be used for expenditures other than costs of issuance. *F* estimates on the issue date that, based on reasonably expected expenditures and rates of investment, earnings on the construction fund will be $800,000. As of the issue date and the end of each of the first three spending periods, the amount of available construction proceeds is $10,800,000. To qualify as a construction issue, *F* must reasonably expect on the issue date that at least $8,100,000 (75 percent of $10,800,000) will be used for construction expenditures. In order to meet the 10 percent spending requirement at the end of the first spending period, *F* must spend at least $1,080,000. As of the end of the fourth spending period, *F* has received $1,100,000 in earnings. In order to meet the spending requirement at the end of the fourth spending period, however, *F* must spend all of the $11,100,000 of actual available construction proceeds (except for reasonable retainage not exceeding $555,000).

Example 2. Treatment of investment earnings without a reserve fund. City *G* issues bonds having an issue price of $11,200,000. *G* does not elect to exclude earnings on the reserve fund from available construction proceeds. *G* uses $200,000 of proceeds to pay issuance costs and deposits $1,000,000 of proceeds into a reasonably required reserve fund. *G* deposits the remaining $10,000,000 of proceeds into a construction fund to be used for construction expenditures. On the issue date, *G* reasonably expects that, based on the reasonably expected date of substantial completion and rates of investment, total earnings on the construction fund will be $800,000, and total earnings on the reserve fund to the date of substantial completion will be $150,000. *G* reasonably expects that substantial completion will occur during the fourth spending period. As of the issue date, the

amount of available construction proceeds is $10,950,000 ($10,000,000 originally deposited into the construction fund plus $800,000 expected earnings on the construction fund and $150,000 expected earnings on the reserve fund). To qualify as a construction issue, *G* must reasonably expect on the issue date that at least $8,212,500 will be used for construction expenditures.

Example 3. Election to exclude earnings on a reserve fund. The facts are the same as *Example 2*, except that *G* elects on the issue date to exclude earnings on the reserve fund from available construction proceeds. The amount of available construction proceeds as of the issue date is $10,800,000.

(j) *Election to treat portion of issue used for construction as separate issue*—(1) *In general.* For purposes of paragraph (e) of this section, if any proceeds of an issue are to be used for construction expenditures, the issuer may elect on or before the issue date to treat the portion of the issue that is not a refunding issue as two, and only two, separate issues, if—

(i) One of the separate issues is a construction issue as defined in paragraph (f) of this section;

(ii) The issuer reasonably expects, as of the issue date, that this construction issue will finance all of the construction expenditures to be financed by the issue; and

(iii) The issuer makes an election to apportion the issue under this paragraph (j)(1) in which it identifies the amount of the issue price of the issue allocable to the construction issue.

(2) *Example.* The operation of this paragraph (j) is illustrated by the following example.

Example. City *D* issues bonds having an issue price of $19,000,000. On the issue date, *D* reasonably expects to use $10,800,000 of bond proceeds (including investment earnings) for construction expenditures for the project being financed. *D* deposits $10,000,000 in a construction fund to be used for construction expenditures and $9,000,000 in an acquisition fund to be used for acquisition of equipment not qualifying as construction expenditures. *D* estimates on the issue date, based on reasonably expected expenditures and rates of investment, that total earnings on the construction fund will be $800,000 and total earnings on the acquisition fund will be $200,000. Because the total construction expenditures to be financed by the issue are expected to be $10,800,000, the maximum available construction proceeds for a construction issue is $14,400,000 ($10,800,000 divided by 0.75). To determine the maximum amount of the issue price allocable to a construction issue, the estimated investment earnings allocable to the construction issue are subtracted. The entire $800,000 of earnings on the construction fund are allocable to the construction issue. Only a portion of the $200,000 of earnings on the acquisition fund, however, are allocable to the construction issue. The total amount of the available construction proceeds that is expected to be used for acquisition is $3,600,000 ($14,400,000 − $10,800,000). The portion of earnings on the acquisition fund that is allocable to the construction issue is $78,261 ($200,000×$3,600,000/$9,200,000). Accordingly, *D* may elect on or before the issue date to treat up to $13,521,739 of the issue price as a construction issue ($14,400,000 − $800,000 − $78,261). *D*'s election must specify the amount of the issue price treated as a construction issue. The balance of the issue price is treated as a separate nonconstruction issue that is subject to the rebate requirement unless it meets another exception to arbitrage rebate. Because the financing of a construction issue is a separate governmental purpose under § 1.148–9(h), the election causes the issue to be a multipurpose issue under that section.

(k) *One and one-half percent penalty in lieu of arbitrage rebate*—(1) *In general.* Under section 148(f)(4)(C)(vii), an issuer of a construction issue may elect on or before the issue date to pay a penalty (the *1½ percent penalty*) to the United States in lieu of the obligation to pay the rebate amount on available construction proceeds upon failure to satisfy the spending requirements of paragraph (e) of this section. The 1½ percent penalty is calculated separately for each spending period, including each semiannual period after the end of the fourth spending period, and is equal to 1.5 percent times the underexpended proceeds as of the end of the spending period. For each spending period, underexpended proceeds equal the amount of available construction proceeds required to be spent by the end of the spending period, less the amount actually allocated to expenditures for the governmental purposes of the issue by that date. The 1½ percent penalty must be paid to the United States no later than 90 days after the end of the spending period to which it relates. The 1½ percent penalty continues to apply at the end of each spending period and each semiannual period thereafter until the earliest of the following—

(i) The termination of the penalty under paragraph ( ) of this section;

(ii) The expenditure of all of the available construction proceeds; or

(iii) The last stated final maturity date of bonds that are part of the issue and any bonds that refund those bonds.

(2) *Application to reasonable retainage.* If an issue meets the exception for reasonable retainage except that all retainage is not spent within 3 years of the issue date, the issuer must pay the 1½ percent penalty to the United States for any reasonable retainage that was not so spent as of the close of the 3-year period and each later spending period.

(3) *Coordination with rebate requirement.* The rebate requirement is treated as met with respect to available construction proceeds for a period if the 1½ percent penalty is paid in accordance with this section.

(l) *Termination of 1½ percent penalty*—(1) *Termination after initial temporary period.* The issuer may terminate the 1½ percent penalty after the initial temporary period (a *section 148(f)(4)(C)(viii) penalty termination*) if—

(i) Not later than 90 days after the earlier of the end of the initial temporary period or the date construction is substantially completed, the issuer elects to terminate the 1½ percent penalty; provided that solely for this purpose, the initial temporary period may be extended by the issuer to a date ending 5 years after the issue date;

(ii) Within 90 days after the end of the initial temporary period, the issuer pays a penalty equal to 3 percent of the unexpended available construction proceeds determined as of the end of the initial temporary period, multiplied by the number of years (including fractions of years computed to 2 decimal places) in the initial temporary period;

(iii) For the period beginning as of the close of the initial temporary period, the unexpended available construction proceeds are not invested in higher yielding investments; and

(iv) On the earliest date on which the bonds may be called or otherwise redeemed, with or without a call premium, the unexpended available construction proceeds as of that date (not including any amount earned after the date on which notice of the redemption was required to be given) must be used to redeem the bonds. Amounts used to pay any call premium are treated as used to redeem bonds. This redemption requirement may be met by purchases of bonds by the issuer on the open market at prices not exceeding fair market value. A portion of the annual principal payment due on serial bonds of a construction issue may be paid from the unexpended amount, but only in an amount no greater than the amount that bears the same ratio to the annual principal due that the total unexpended amount bears to the issue price of the construction issue.

(2) *Termination before end of initial temporary period.* If the construction to be financed by the construction issue is substantially completed before the end of the initial temporary period, the issuer may elect to terminate the 1½ percent penalty before the end of the

initial temporary period (a *section 148(f)(4)(C)(ix) penalty termination*) if—

(i) Before the close of the initial temporary period and not later than 90 days after the date the construction is substantially completed, the issuer elects to terminate the 1½ percent penalty;

(ii) The election identifies the amount of available construction proceeds that will not be spent for the governmental purposes of the issue; and

(iii) The issuer has met all of the conditions for a section 148(f)(4)(C)(viii) penalty termination, applied as if the initial temporary period ended as of the date the required election for a section 148(f)(4)(C)(ix) penalty termination is made. That penalty termination election satisfies the required election for a section 148(f)(4)(C)(viii) termination.

(3) *Application to reasonable retainage.* Solely for purposes of determining whether the conditions for terminating the 1½ percent penalty are met, reasonable retainage may be treated as spent for a governmental purpose of the construction issue. Reasonable retainage that is so treated continues to be subject to the 1½ percent penalty.

(4) *Example.* The operation of this paragraph (l) is illustrated by the following example.

Example. City *I* issues a construction issue having a 20-year maturity and qualifying for a 3-year initial temporary period. The bonds are first subject to optional redemption 10 years after the issue date at a premium of 3 percent. *I* elects, on or before the issue date, to pay the 1½ percent penalty in lieu of arbitrage rebate. At the end of the 3-year temporary period, the project is not substantially completed, and $1,500,000 of available construction proceeds of the issue are unspent. At that time, *I* reasonably expects to need $500,000 to complete the project. *I* may terminate the 1½ percent penalty in lieu of arbitrage rebate with respect to the excess $1,500,000 by electing to terminate within 90 days of the end of the initial temporary period; paying a penalty to the United States of $135,000 (3 percent of $1,500,000 multiplied by 3 years); restricting the yield on the investment of unspent available construction proceeds for 7 years until the first call date, although any portion of these proceeds may still be spent on the project prior to that call date; and using the available construction proceeds that, as of the first call date, have not been allocated to expenditures for the governmental purposes of the issue to redeem bonds on that call date. If *I* fails to make the termination election, *I* is required to pay the 1½ percent penalty on unspent available construction proceeds every 6 months until the latest maturity date of bonds of the issue (or any bonds of another issue that refund such bonds).

(m) *Payment of penalties.* Each penalty payment under this section must be paid in the manner provided in § 1.148–3(g). See § 1.148–3(h) for rules on failures to pay penalties under this section.

§ 1.148–8 Small issuer exception to rebate requirement.

(a) *Scope.* Under section 148(f)(4)(D), bonds issued to finance governmental activities of certain small issuers are treated as meeting the arbitrage rebate requirement of section 148(f)(2) (the "small issuer exception"). This section provides guidance on the small issuer exception.

(b) *General taxing powers.* The small issuer exception generally applies only to bonds issued by governmental units with general taxing powers. A governmental unit has general taxing powers if it has the power to impose taxes (or to cause another entity to impose taxes) of general applicability which, when collected, may be used for the general purposes of the issuer. The taxing power may be limited to a specific type of tax, provided that the applicability of the tax is not limited to a small number of persons. The governmental unit's exercise of its taxing power may be subject to procedural limitations, such as voter approval requirements, but may not be contingent on approval by another governmental unit. See, also, section 148(f)(4)(D)(iv).

(c) *Size limitation*—(1) *In general.* An issue (other than a refunding issue) qualifies for the small issuer exception only if the issuer reasonably expects, as of the issue date, that the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by it during that calendar year will not exceed $5,000,000; or the aggregate face amount of all tax-exempt bonds of the issuer (other than private activity bonds) actually issued during that calendar year does not exceed $5,000,000. For this purpose, if an issue has more than a de minimis amount of original issue discount or premium, *aggregate face amount* means the aggregate issue price of that issue (determined without regard to pre-issuance accrued interest).

(2) *Aggregation rules.* The following aggregation rules apply for purposes of applying the $5,000,000 size limitation under paragraph (c)(1) of this section.

(i) *On-behalf-of issuers.* An issuer and all entities (other than political subdivisions) that issue bonds on behalf of that issuer are treated as one issuer.

(ii) *Subordinate entities*—(A) *In general.* Except as otherwise provided in paragraph (d) of this section and section 148(f)(4)(D)(iv), all bonds issued by a subordinate entity are also treated as issued by each entity to which it is subordinate. An issuer is subordinate to another governmental entity if it is directly or indirectly controlled by the other entity within the meaning of § 1.150–1(e).

(B) *Exception for allocations of size limitation.* If an entity properly makes an allocation of a portion of its $5,000,000 size limitation to a subordinate entity (including an on behalf of issuer) under section 148(f)(4)(D)(iv), the portion of bonds issued by the subordinate entity under the allocation is treated as issued only by the allocating entity and not by any other entity to which the issuing entity is subordinate. These allocations are irrevocable and must bear a reasonable relationship to the benefits received by the allocating unit from issues issued by the subordinate entity. The benefits to be considered include the manner in which—

(*1*) Proceeds are to be distributed;

(*2*) The debt service is to be paid;

(*3*) The facility financed is to be owned;

(*4*) The use or output of the facility is to be shared; and

(*5*) Costs of operation and maintenance are to be shared.

(iii) *Avoidance of size limitation.* An entity formed or availed of to avoid the purposes of the $5,000,000 size limitation and all entities that would benefit from the avoidance are treated as one issuer. Situations in which an entity is formed or availed of to avoid the purposes of the $5,000,000 size limitation include those in which the issuer—

(A) Issues bonds which, but for the $5,000,000 size limitation, would have been issued by another entity; and

(B) Does not receive a substantial benefit from the project financed by the bonds.

(3) *Certain refunding bonds not taken into account.* In applying the $5,000,000 size limitation, there is not taken into account the portion of an issue that is a current refunding issue to the extent that the stated principal amount of the refunding bond does not exceed the portion of the outstanding stated principal amount of the refunded bond paid with proceeds of the refunding bond. For this purpose, *principal amount* means, in reference to a plain par bond, its stated principal amount plus accrued unpaid interest, and in reference to any other bond, its present value.

(d) *Pooled financings*—(1) *Treatment of pool issuer.* To the extent that an issuer of a pooled financing is not an ultimate borrower in the financing and the conduit borrowers are governmental units with general taxing powers and

not subordinate to the issuer, the pooled financing is not counted towards the $5,000,000 size limitation of the issuer for purposes of applying the small issuer exception to its other issues. The issuer of the pooled financing issue is, however, subject to the rebate requirement for any unloaned gross proceeds.

(2) *Treatment of conduit borrowers.* A loan to a conduit borrower in a pooled financing qualifies for the small issuer exception, regardless of the size of either the pooled financing or of any loan to other conduit borrowers, only if—

(i) The bonds of the pooled financing are not private activity bonds;

(ii) None of the loans to conduit borrowers are private activity bonds; and

(iii) The loan to the conduit borrower meets all the requirements of the small issuer exception.

(e) *Refunding issues*—(1) *In general.* Sections 148(f)(4)(D) (v) and (vi) provide restrictions on application of the small issuer exception to refunding issues.

(2) *Multipurpose issues.* The multipurpose issue allocation rules of § 1.148–9(h) apply for purposes of determining whether refunding bonds meet the requirements of section 148(f)(4)(D)(v).

§ 1.148–9 Arbitrage rules for refunding issues.

(a) *Scope of application.* This section contains special arbitrage rules for refunding issues. These rules apply for all purposes of section 148 and govern allocations of proceeds, bonds, and investments to determine transferred proceeds, temporary periods, reasonably required reserve or replacement funds, minor portions, and separate issue treatment of certain multipurpose issues.

(b) *Transferred proceeds allocation rule*—(1) *In general.* When proceeds of the refunding issue discharge any of the outstanding principal amount of the prior issue, proceeds of the prior issue become transferred proceeds of the refunding issue and cease to be proceeds of the prior issue. The amount of proceeds of the prior issue that becomes transferred proceeds of the refunding issue is an amount equal to the proceeds of the prior issue on the date of that discharge multiplied by a fraction—

(i) The numerator of which is the principal amount of the prior issue discharged with proceeds of the refunding issue on the date of that discharge; and

(ii) The denominator of which is the total outstanding principal amount of the prior issue on the date immediately before the date of that discharge.

(2) *Special definition of principal amount.* For purposes of this section, *principal amount* means, in reference to a plain par bond, its stated principal amount, and in reference to any other bond, its present value.

(3) *Relation of transferred proceeds rule to universal cap rule*—(i) *In general.* Paragraphs (b)(1) and (c) of this section apply to allocate transferred proceeds and corresponding investments to a refunding issue on any date required by those paragraphs before the application of the universal cap rule of § 1.148–6(b)(2) to reallocate any of those amounts. To the extent nonpurpose investments allocable to proceeds of a refunding issue exceed the universal cap for the issue on the date that amounts become transferred proceeds of the refunding issue, those transferred proceeds and corresponding investments are reallocated back to the issue from which they transferred on that same date to the extent of the unused universal cap on that prior issue.

(ii) *Example.* The following example illustrates the application of this paragraph of (b)(3):

Example. On January 1, 1995, $100,000 of nonpurpose investments allocable to proceeds of issue *A* become transferred proceeds of issue *B* under § 1.148–9, but the unused portion of issue *B*'s universal cap is $75,000 as of that date. On January 1, 1995, issue *A* has unused universal cap in excess of $25,000. Thus, $25,000 of nonpurpose investments representing the transferred proceeds are immediately reallocated back to issue *A* on January 1, 1995, and are proceeds of issue *A*. On the next transfer date under § 1.148–9, the $25,000 receives no priority in determining transferred proceeds as of that date but is treated the same as all other proceeds of issue *A* subject to transfer.

(4) *Limitation on multi-generational transfers.* This paragraph (b)(4) contains limitations on the manner in which proceeds of a first generation issue that is refunded by a refunding issue (a *second generation issue*) become transferred proceeds of a refunding issue (a *third generation issue*) that refunds the second generation issue. Proceeds of the first generation issue that become transferred proceeds of the third generation issue are treated as having a yield equal to the yield on the refunding escrow allocated to the second generation issue (i.e., as determined under § 1.148–5(b)(2)(iv)). The determination of the transferred proceeds of the third generation issue does not affect compliance with the requirements of section 148, including the determination of the amount of arbitrage rebate with respect to or the yield on the refunding escrow, of the second generation issue.

(c) *Special allocation rules for refunding issues*—(1) *Allocations of investments*—(i) *In general.* Except as otherwise provided in this paragraph (c), investments purchased with sale proceeds or investment proceeds of a refunding issue must be allocated to those proceeds, and investments not purchased with those proceeds may not be allocated to those proceeds (i.e., a *specific tracing method*).

(ii) *Allocations to transferred proceeds.* When proceeds of a prior issue become transferred proceeds of a refunding issue, investments (and the related payments and receipts) of proceeds of the prior issue that are held in a refunding escrow for another issue are allocated to the transferred proceeds under the ratable allocation method described in paragraph (c)(1)(iii) of this section. Investments of proceeds of the prior issue that are not held in a refunding escrow for another issue are allocated to the transferred proceeds by application of the allocation methods described in paragraph (c)(1) (iii) or (iv) of this section, consistently applied to all investments on a transfer date.

(iii) *Ratable allocation method.* Under the ratable allocation method, a ratable portion of each nonpurpose and purpose investment of proceeds of the prior issue is allocated to transferred proceeds of the refunding issue.

(iv) *Representative allocation method*—(A) *In general.* Under the representative allocation method, representative portions of the portfolio of nonpurpose investments and the portfolio of purpose investments of proceeds of the prior issue are allocated to transferred proceeds of the refunding issue. Unlike the ratable allocation method, this representative allocation method permits an allocation of particular whole investments. Whether a portion is representative is based on all the facts and circumstances, including, without limitation, whether the current yields, maturities, and current unrealized gains or losses on the particular allocated investments are reasonably comparable to those of the unallocated investments in the aggregate. In addition, if a portion of nonpurpose investments is otherwise representative, it is within the issuer's discretion to allocate the portion from whichever source of funds it deems appropriate, such as a reserve fund or a construction fund for a prior issue.

(B) *Mark-to-market safe harbor for representative allocation method.* In addition to other representative allocations, a specific allocation of a

particular nonpurpose investment to transferred proceeds (e.g., of lower yielding investments) is treated as satisfying the representative allocation method if that investment is valued at fair market value on the transfer date in determining the payments and receipts on that date, but only if the portion of the nonpurpose investments that transfers is based on the relative fair market value of all nonpurpose investments.

(2) *Allocations of mixed escrows to expenditures for principal, interest, and redemption prices on a prior issue*—(i) *In general.* Except for amounts required or permitted to be accounted for under paragraph (c)(2)(ii) of this section, proceeds of a refunding issue and other amounts that are not proceeds of a refunding issue that are deposited in a refunding escrow (a *mixed escrow*) must be accounted for under this paragraph (c)(2)(i). Those proceeds and other amounts must be allocated to expenditures for principal, interest, or stated redemption prices on the prior issue so that the expenditures of those proceeds do not occur faster than ratably with expenditures of the other amounts in the mixed escrow. If, however, the prior issue has unspent proceeds, these allocations must be ratable both between sources for expenditures (i.e., proceeds and other amounts) and between uses (i.e., principal, interest, and stated redemption prices on the prior issue).

(ii) *Exceptions*—(A) *Mandatory allocation of certain non-proceeds to earliest expenditures.* If amounts other than proceeds of the refunding issue are deposited in a mixed escrow, but before the issue date of the refunding issue those amounts had been held in a bona fide debt service fund or a fund to carry out the governmental purpose of the prior issue (e.g., a construction fund), those amounts must be allocated to the earliest expenditures from the mixed escrow.

(B) *Permissive allocation of non-proceeds to earliest expenditures.* Excluding amounts covered by paragraph (c)(2)(ii)(A) of this section and subject to any required earlier expenditure of those amounts, any amounts in a mixed escrow that are not proceeds of a refunding issue may be allocated to the earliest expenditures from the mixed escrow, provided that those expenditures occur before the date of any expenditure from the mixed escrow to pay any principal of the prior issue.

(d) *Temporary periods in refundings*—(1) *In general.* Proceeds of a refunding issue may be invested in higher yielding investments under section 148(c) only during the temporary periods described in paragraph (d)(2) of this section.

(2) *Types of temporary periods in refundings.* The available temporary periods for proceeds of a refunding issue are as follows:

(i) *General temporary period for refunding issues.* Except as otherwise provided in this paragraph (d)(2), the temporary period for proceeds (other than transferred proceeds) of a refunding issue is the period ending 30 days after the issue date of the refunding issue.

(ii) *Temporary periods for current refunding issues*—(A) *In general.* Except as otherwise provided in paragraph (d)(2)(ii)(B) of this section, the temporary period for proceeds (other than transferred proceeds) of a current refunding issue is 90 days.

(B) *Temporary period for short-term current refunding issues.* The temporary period for proceeds (other than transferred proceeds) of a current refunding issue that has an original term to maturity of 270 days or less may not exceed 30 days. The aggregate temporary periods for proceeds (other than transferred proceeds) of all current refunding issues described in the preceding sentence that are part of the same series of refundings is 90 days. An issue is part of a series of refundings if it finances or refinances the same expenditures for a particular governmental purpose as another issue.

(iii) *Temporary periods for transferred proceeds*—(A) *In general.* Except as otherwise provided in paragraph (d)(2)(iii)(B) of this section, each available temporary period for transferred proceeds of a refunding issue begins on the date those amounts become transferred proceeds of the refunding issue and ends on the date that, without regard to the discharge of the prior issue, the available temporary period for those proceeds would have ended had those proceeds remained proceeds of the prior issue.

(B) *Termination of initial temporary period for prior issue in an advance refunding.* The initial temporary period under § 1.148–2(e) (2) and (3) for the proceeds of a prior issue that is refunded by an advance refunding issue (including transferred proceeds) terminates on the issue date of the advance refunding issue.

(iv) *Certain short-term gross proceeds.* Except for proceeds of a refunding issue held in a refunding escrow, proceeds otherwise reasonably expected to be used to pay principal or interest on the prior issue, replacement proceeds not held in a bona fide debt service fund, and transferred proceeds, the temporary period for gross proceeds of a refunding issue is the 13-month period beginning on the date of receipt.

(e) *Reasonably required reserve or replacement funds in refundings.* In addition to the requirements of § 1.148–2(f), beginning on the issue date of a refunding issue, a reserve or replacement fund for a refunding issue or a prior issue is a reasonably required reserve or replacement fund under section 148(d) that may be invested in higher yielding investments only if the aggregate amount invested in higher yielding investments under this paragraph (e) for both the refunding issue and the prior issue does not exceed the size limitations under § 1.148–2 (f)(2) and (f)(3), measured by reference to the refunding issue only (regardless of whether proceeds of the prior issue have become transferred proceeds of the refunding issue).

(f) *Minor portions in refundings.* Beginning on the issue date of the refunding issue, gross proceeds not in excess of a minor portion of the refunding issue qualify for investment in higher yielding investments under section 148(e), and gross proceeds not in excess of a minor portion of the prior issue qualify for investment in higher yielding investments under either section 148(e) or section 149(d)(3)(A)(v), whichever is applicable. *Minor portion* is defined in § 1.148–2(g).

(g) *Certain waivers permitted.* On or before the issue date, an issuer may waive the right to invest in higher yielding investments during any temporary period or as part of a reasonably required reserve or replacement fund. At any time, an issuer may waive the right to invest in higher yielding investments as part of a minor portion.

(h) *Multipurpose issue allocations*—(1) *Application of multipurpose issue allocation rules.* The portion of the bonds of a multipurpose issue reasonably allocated to any separate purpose under this paragraph (h) is treated as a separate issue for all purposes of section 148 except the following—

(i) *Arbitrage yield.* Except to the extent that the proceeds of an issue are allocable to two or more conduit loans that are tax-exempt bonds, determining the yield on a multipurpose issue and the yield on investments for purposes of the arbitrage yield restrictions of section 148 and the arbitrage rebate requirement of section 148(f);

(ii) *Rebate amount.* Except as provided in paragraph (h)(1)(i) of this section, determining the rebate amount for a multipurpose issue, including subsidiary matters with respect to that

determination, such as the computation date credit under § 1.148–3(d)(1), the due date for payments, and the $100,000 bona fide debt service fund exception under section 148(f)(4)(A)(ii);

(iii) *Minor portion.* Determining the *minor portion* of an issue under section 148(e);

(iv) *Reasonably required reserve or replacement fund.* Determining the portion of an issue eligible for investment in higher yielding investments as part of a reasonably required reserve fund under section 148(d); and

(v) *Effective date.* Applying the provisions of § 1.148–11(b) (relating to elective retroactive application of §§ 1.148–1 through 1.148–10 to certain issues).

(2) *Rules on allocations of multipurpose issues*—(i) *In general.* This paragraph (h) applies to allocations of multipurpose issues, including allocations involving the refunding purposes of the issue. Except as otherwise provided in this paragraph (h), proceeds, investments, and bonds of a multipurpose issue may be allocated among the various separate purposes of the issue using any reasonable, consistently applied allocation method. An allocation is not reasonable if it achieves more favorable results under section 148 or 149(d) than could be achieved with actual separate issues. An allocation under this paragraph (h) may be made at any time, but once made may not be changed.

(ii) *Allocations involving certain common costs.* A ratable allocation of common costs (as described in paragraph (h)(3)(ii) of this section) among the separate purposes of the multipurpose issue is generally reasonable. If another allocation method more accurately reflects the extent to which any separate purpose of a multipurpose issue enjoys the economic benefit or bears the economic burden of certain common costs, that allocation method may be used.

(3) *Separate purposes of a multipurpose issue*—(i) *In general.* Separate purposes of a multipurpose issue include refunding a separate prior issue, financing a separate purpose investment, financing a construction issue (as defined in § 1.148–7(f)), and any clearly discrete governmental purpose reasonably expected to be financed by that issue. In general, all integrated or functionally related capital projects that qualify for the same initial temporary period under § 1.148–2(e)(2) are treated as having a single governmental purpose. The separate purposes of a refunding issue include the separate purposes of the prior issue, if any. Separate purposes may be treated as a single purpose if the proceeds used to finance those purposes are eligible for the same initial temporary period under section 148(c). For example, the use of proceeds of a multipurpose issue to finance separate qualified mortgage loans may be treated as a single purpose.

(ii) *Financing common costs.* Common costs of a multipurpose issue are not separate purposes. Common costs include issuance costs, accrued interest, capitalized interest on the issue, a reserve or replacement fund, qualified guarantee fees, and similar costs properly allocable to the separate purposes of the issue.

(iii) *Example.* The following example illustrates the application of this paragraph (h)(3).

Example. On January 1, 1994, Housing Authority of State *A* issues a $10 million issue (the *1994 issue*) at an interest rate of 10 percent to finance qualified mortgage loans for owner-occupied residences under section 143. During 1994, *A* originates $5 million in qualified mortgage loans at an interest rate of 10 percent. In 1995, the market interest rates for housing loans falls to 8 percent and *A* is unable to originate further loans from the 1994 issue. On January 1, 1996, *A* issues a $5 million issue (the *1996 issue*) at an interest rate of 8 percent to refund partially the 1994 issue. Under paragraph (h) of this section, *A* treats the portion of the 1994 issue used to originate $5 million in loans as a separate issue comprised of that group of purpose investments. *A* allocates those purpose investments representing those loans to that separate unrefunded portion of the issue. In addition, *A* treats the unoriginated portion of the 1994 issue as a separate issue and allocates the nonpurpose investments representing the unoriginated proceeds of the 1994 issue to the refunded portion of the issue. Thus, when proceeds of the 1996 issue are used to pay principal on the refunded portion of the 1994 issue that is treated as a separate issue under paragraph (h) of this section, only the portion of the 1994 issue representing unoriginated loan funds invested in nonpurpose investments transfer to become transferred proceeds of the 1996 issue.

(4) *Allocations of bonds of a multipurpose issue*—(i) *Reasonable allocation of bonds to portions of issue.* After reasonable adjustment of the issue price of a multipurpose issue to account for common costs, the portion of the bonds of a multipurpose issue allocated to a separate purpose must have an issue price that bears the same ratio to the aggregate issue price of the multipurpose issue as the portion of the sale proceeds of the multipurpose issue used for that separate purpose bears to the aggregate sale proceeds of the multipurpose issue. For a refunding issue used to refund two or more prior issues, the portion of the sales proceeds allocated to the refunding of a separate prior issue is based on the present value of the refunded debt service on that prior issue, using the yield on investments in the refunding escrow allocable to the entire refunding issue as the discount rate.

(ii) *Safe harbor for pro rata allocation method for bonds.* The use of the relative amount of sales proceeds used for each separate purpose to ratably allocate each bond or a ratable number of substantially identical whole bonds is a reasonable method for allocating bonds of a multipurpose issue.

(iii) *Safe harbor for allocations of bonds used to finance separate purpose investments.* An allocation of a portion of the bonds of a multipurpose issue to a particular purpose investment is generally reasonable if that purpose investment has principal and interest payments that reasonably coincide in time and amount to principal and interest payments on the bonds allocated to that purpose investment.

(iv) *Rounding of bond allocations to next whole bond denomination permitted.* An allocation that rounds each resulting fractional bond up or down to the next integral multiple of a permitted denomination of bonds of that issue not in excess of $100,000 does not prevent the allocation from satisfying this paragraph (h)(4).

(v) *Restrictions on allocations of bonds to refunding purposes.* For each portion of a multipurpose issue that is used to refund a separate prior issue, a method of allocating bonds of that issue is reasonable under this paragraph (h) only if, in addition to the requirements of paragraphs (h)(1) and (h)(2) of this section, the portion of the bonds allocated to the refunding of that prior issue—

(A) Results from a pro rata allocation under paragraph (h)(4)(ii) of this section;

(B) Reflects aggregate principal and interest payable in each bond year that is less than, equal to, or proportionate to, the aggregate principal and interest payable on the prior issue in each bond year;

(C) Results from an allocation of all the bonds of the entire multipurpose issue in proportion to the remaining weighted average economic life of the capital projects financed or refinanced by the issue, determined in the same manner as under section 147(b); or

(D) Results from another reasonable allocation method, but only to the extent that the application of the allocation methods provided in this paragraph (h)(4)(v) is not permitted under state law restrictions applicable

to the bonds, reasonable terms of bonds issued before, or subject to a master indenture that became effective prior to, July 1, 1993, or other similar restrictions or circumstances. This paragraph (h)(4)(v)(D) shall be strictly construed and is available only if it does not result in a greater burden on the market for tax-exempt bonds than would occur using one of the other allocation methods provided in this paragraph (h)(4)(v). (See also § 1.148–11(c)(2).)

(5) *Limitation on multi-generation allocations.* This paragraph (h) does not apply to allocations of a multipurpose refunded issue unless that refunded issue is refunded directly by an issue to which this paragraph (h) applies. For example, if a 1994 issue refunds a 1984 multipurpose issue, which in turn refunded a 1980 multipurpose issue, this paragraph (h) applies to allocations of the 1984 issue for purposes of allocating the refunding purposes of the 1994 issue, but does not permit allocations of the 1980 issue.

(i) *Operating rules for separation of prior issue into refunded and unrefunded portions*—(1) *In general.* For purposes of paragraph (h)(3)(i) of this section, the separate purposes of a prior issue include the refunded and unrefunded portions of the prior issue. Thus, the refunded and unrefunded portions are treated as separate issues under paragraph (h)(1) of this section. Those separate issues must satisfy the requirements of paragraphs (h) and (i) of this section. The refunded portion of the bonds of a prior issue is based on a fraction the numerator of which is the principal amount of the prior issue to be paid with proceeds of the refunding issue and the denominator of which is the outstanding principal amount of the bonds of the prior issue, each determined as of the issue date of the refunding issue. (See also paragraph (b)(2) of this section.)

(2) *Allocations of proceeds and investments in a partial refunding.* As of the issue date of a partial refunding issue under this paragraph (i), unspent proceeds of the prior issue are allocated ratably between the refunded and unrefunded portions of the prior issue and the investments allocable to those unspent proceeds are allocated in the manner required for the allocation of investments to transferred proceeds under paragraph (c)(1)(ii) of this section.

(3) *References to prior issue.* If the refunded and unrefunded portions of a prior issue are treated as separate issues under this paragraph (i), then, except to the extent that the context clearly requires otherwise (e.g., references to the aggregate prior issue in the mixed escrow rule in paragraph (c)(2) of this section), all references in this section to a prior issue refer only to the refunded portion of that prior issue.

§ 1.148–10 Anti-abuse rules and authority of Commissioner.

(a) *Abusive arbitrage device*—(1) *In general.* Bonds of an issue are arbitrage bonds under section 148 if an abusive arbitrage device under paragraph (a)(2) of this section is used in connection with the issue. This paragraph (a) is to be applied and interpreted broadly to carry out the purposes of section 148, as further described in § 1.148–0. Except as otherwise provided in paragraph (c) of this section, any action that is expressly permitted by section 148 or §§ 1.148–1 through 1.148–11 is not an abusive arbitrage device (e.g., investment in higher yielding investments during a permitted temporary period under section 148(c)).

(2) *Abusive arbitrage device defined.* Any action is an abusive arbitrage device if the action has the effect of—

(i) Enabling the issuer to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage; and

(ii) Overburdening the tax-exempt bond market.

(3) *Exploitation of tax-exempt interest rates.* An action may exploit tax-exempt interest rates under paragraph (a)(2) of this section as a result of an investment of any portion of the gross proceeds of an issue over any period of time, notwithstanding that, in the aggregate, the gross proceeds of the issue are not invested in higher yielding investments over the term of the issue.

(4) *Overburdening the tax-exempt market.* An action overburdens the tax-exempt bond market under paragraph (a)(2)(ii) of this section if it results in issuing more bonds, issuing bonds earlier, or allowing bonds to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the bonds, based on all the facts and circumstances. Whether an action is reasonably necessary to accomplish the governmental purposes of the bonds depends on whether the primary purpose of the transaction is a bona fide governmental purpose (e.g., an issue of refunding bonds to achieve a debt service restructuring that would be issued independent of any arbitrage benefit). An important factor bearing on this determination is whether the action would reasonably be taken to accomplish the governmental purpose of the issue if the interest on the issue were not excludable from gross income under section 103(a) (assuming that the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate). Factors evidencing an overissuance include the issuance of an issue the proceeds of which are reasonably expected to exceed by more than a minor portion the amount necessary to accomplish the governmental purposes of the issue, or an issue the proceeds of which are, in fact, substantially in excess of the amount of sale proceeds allocated to expenditures for the governmental purposes of the issue. One factor evidencing an early issuance is the issuance of bonds that do not qualify for a temporary period under § 1.148–2(e)(2), (e)(3), or (e)(4). One factor evidencing that bonds may remain outstanding longer than necessary is a term that exceeds the safe harbors against the creation of replacement proceeds under § 1.148–1(c)(4)(i)(B). These factors may be outweighed by other factors, however, such as bona fide cost underruns or long-term financial distress.

(b) *Consequences of overburdening the tax-exempt bond market*—(1) *In general.* An issue that overburdens the tax-exempt bond market (within the meaning of paragraph (a)(4) of this section) is subject to the following special limitations—

(i) *Special yield restriction.* Investments are subject to the definition of *materially higher* yield under § 1.148–2(d) that is equal to one-thousandth of 1 percent. In addition, each investment is treated as a separate class of investments under § 1.148–5(b)(2)(ii), the yield on which may not be blended with that of other investments.

(ii) *Certain regulatory provisions inapplicable.* The provisions of § 1.148–5(c) (relating to yield reduction payments) and § 1.148–5(e) (2) and (3) (relating to recovery of qualified administrative costs) do not apply.

(iii) *Restrictive expenditure rule.* Proceeds are not allocated to expenditures unless the proceeds-spent-last rule under § 1.148–6(d)(3)(i) is satisfied, applied by treating those proceeds as proceeds to be used for restricted working capital expenditures. For this purpose, available amount includes a reasonable working capital reserve as defined in § 1.148–6(d)(3)(iii)(B).

(2) *Application.* The provisions of this paragraph (b) only apply to the portion of the issue that overburdens the market for tax-exempt bonds, except that, for an issue that is reasonably expected as of the issue date to overburden the market, these provisions apply to all of the gross proceeds of the issue.

(c) *Anti-abuse rules on excess gross proceeds of advance refunding issues*—(1) *In general.* Except as otherwise provided in this paragraph (c), an abusive arbitrage device is used and bonds of an advance refunding issue are arbitrage bonds if the issue has excess gross proceeds.

(2) *Definition of excess gross proceeds.* Excess gross proceeds means all gross proceeds of an advance refunding issue that exceed an amount equal to 1 percent of sale proceeds of the issue, other than gross proceeds allocable to—

(i) Payment of principal, interest, or call premium on the prior issue;

(ii) Payment of pre-issuance accrued interest on the refunding issue, and interest on the refunding issue that accrues for a period up to the completion date of any capital project for which the prior issue was issued, plus one year;

(iii) A reasonably required reserve or replacement fund for the refunding issue or investment proceeds of such a fund;

(iv) Payment of costs of issuance of the refunding issue;

(v) Payment of administrative costs allocable to repaying the prior issue, carrying and repaying the refunding issue, or investments of the refunding issue;

(vi) Transferred proceeds allocable to expenditures for the governmental purpose of the prior issue;

(vii) Interest on purpose investments;

(viii) Replacement proceeds in a sinking fund for the refunding issue; and

(ix) Qualified guarantee fees for the refunding issue or the prior issue.

(3) *Special treatment of transferred proceeds.* For purposes of this paragraph (c), all unspent proceeds of the prior issue as of the issue date of the refunding issue are treated as transferred proceeds of the advance refunding issue.

(4) *Special rule for crossover refundings.* An advance refunding issue is not an issue of arbitrage bonds under this paragraph (c) if all excess gross proceeds of the refunding issue are used to pay interest that accrues on the refunding issue before the prior issue is discharged, and no gross proceeds of any refunding issue are used to pay interest on the prior issue or to replace funds used directly or indirectly to pay such interest (other than transferred proceeds used to pay interest on the prior issue that accrues for a period up to the completion date of the project for which the prior issue was issued, plus one year, or proceeds used to pay principal that is attributable to accrued original issue discount).

(5) *Special rule for gross refundings.* This paragraph (c)(5) applies if an advance refunding issue (the *series B issue*) is used together with one or more other advance refunding issues (the *series A issues*) in a gross refunding of a prior issue, but only if the use of a gross refunding method is required under bond documents that were effective prior to November 6, 1992. These advance refunding issues are not arbitrage bonds under this paragraph (c) if—

(i) All excess gross proceeds of the series B issue and each series A issue are investment proceeds used to pay principal and interest on the series B issue;

(ii) At least 99 percent of all principal and interest on the series B issue is paid with proceeds of the series B and series A issues or with the earnings on other amounts in the refunding escrow for the prior issue;

(iii) The series B issue is discharged not later than the prior issue; and

(iv) As of any date, the amount of gross proceeds of the series B issue allocated to expenditures does not exceed the aggregate amount of expenditures before that date for principal and interest on the series B issue, and administrative costs of carrying and repaying the series B issue, or of investments of the series B issue.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Mortgage sale. In 1982, City issued its revenue issue (the *1982 issue*) and lent the proceeds to Developer to finance a low-income housing project under former section 103(b)(4)(A) of the 1954 Code. In 1994, Developer encounters financial difficulties and negotiates with City to refund the 1982 issue. City issues $10 million in principal amount of its 8 percent bonds (the *1994 issue*). City lends the proceeds of the 1994 issue to Developer. To evidence Developer's obligation to repay that loan, Developer, as obligor, issues a note to City (the *City note*). Bank agrees to provide Developer with a direct-pay letter of credit pursuant to which Bank will make all payments to the trustee for the 1994 issue necessary to meet Developer's obligations under the City note. Developer pays Bank a fee for the issuance of the letter of credit and issues a note to Bank (the *Bank note*). The Bank note is secured by a mortgage on the housing project and is guaranteed by FHA. The Bank note and the 1982 issue have different prepayment terms. The City does not reasonably expect to treat prepayments of the Bank note as gross proceeds of the 1982 issue. At the same time or pursuant to a series of related transactions, Bank sells the Bank note to Investor for $9.5 million. Bank invests these monies together with its other funds. In substance, the transaction is a loan by City to Bank, under which Bank enters into a series of transactions that, in effect, result in Bank retaining $9.5 million in amounts treated as proceeds of the 1994 issue. Those amounts are invested in materially higher yielding investments that provide funds sufficient to equal or exceed the Bank's liability under the letter of credit. Alternatively, the letter of credit is investment property in a sinking fund for the 1994 issue provided by Developer, a substantial beneficiary of the financing. Because, in substance, Developer acquires the $10 million principal amount letter of credit for a fair market value purchase price of $9.5 million, the letter of credit is a materially higher yielding investment. Neither result would change if Developer's obligation under the Bank note is contingent on Bank performing its obligation under the letter of credit. Each characterization causes the bonds to be arbitrage bonds.

Example 2. Bonds outstanding longer than necessary for yield-blending device. (i) *Longer bond maturity to create sinking fund.* In 1994, Authority issues an advance refunding issue (the *refunding issue*) to refund a 1982 prior issue (the *prior issue*). Under current market conditions, Authority will have to invest the refunding escrow at a yield significantly below the yield on the refunding issue. Authority issues its refunding issue with a longer weighted average maturity than otherwise necessary primarily for the purpose of creating a sinking fund for the refunding issue that will be invested in a guaranteed investment contract. The weighted average maturity of the refunding issue is less than 120 percent of the remaining average economic life of the facilities financed with the proceeds of the prior issue. The guaranteed investment contract has a yield that is higher than the yield on the refunding issue. The yield on the refunding escrow blended with the yield on the guaranteed investment contract does not exceed the yield on the issue. The refunding issue uses an abusive arbitrage device and the bonds of the issue are arbitrage bonds under section 148(a).

(ii) *Refunding of noncallable bonds.* The facts are the same as in paragraph (i) of this *Example 2* except that instead of structuring the refunding issue to enable it to take advantage of sinking fund investments, Authority will also refund other long-term, non-callable bonds in the same refunding issue. There are no savings attributable to the refunding of the non-callable bonds (e.g., a *low-to-high* refunding). The Authority invests the portion of the proceeds of the refunding issue allocable to the refunding of the non-callable bonds in the refunding escrow at a yield that is higher than the yield on the refunding issue, based on the relatively long escrow period for this portion of the refunding. The Authority invests the other portion of the proceeds of the refunding issue in the refunding escrow at a yield lower than the yield on the refunding issue. The blended yield on all the investments in the refunding escrow for the prior issues does not exceed the yield on the refunding issue. The portion of the refunding issue used to refund the noncallable bonds, however, was not

otherwise necessary and was issued primarily to exploit the difference between taxable and tax-exempt rates for that long portion of the refunding escrow to minimize the effect of lower yielding investments in the other portion of the escrow. The refunding issue uses an abusive arbitrage device and the bonds of the issue are arbitrage bonds.

(iii) *Governmental purpose.* In paragraphs (i) and (ii) of this *Example 2*, the existence of a governmental purpose for the described financing structures would not change the conclusions unless Authority clearly established that the primary purpose for the use of the particular structure was a bona fide governmental purpose. The fact that each financing structure had the effect of eliminating significant amounts of negative arbitrage is strong evidence of a primary purpose that is not a bona fide governmental purpose. Moreover, in paragraph (i) of this *Example 2*, the structure of the refunding issue coupled with the acquisition of the guaranteed investment contract to lock in the investment yield associated with the structure is strong evidence of a primary purpose that is not a bona fide governmental purpose.

Example 3. Window refunding. (i) Authority issues its 1994 refunding issue to refund a portion of the principal and interest on its outstanding 1985 issue. The 1994 refunding issue is structured using zero-coupon bonds that pay no interest or principal for the 5-year period following the issue date. The proceeds of the 1994 refunding issue are deposited in a refunding escrow to be used to pay only the interest requirements of the refunded portion of the 1985 issue. Authority enters into a guaranteed investment contract with a financial institution, *G*, under which *G* agrees to provide a guaranteed yield on revenues invested by Authority during the 5-year period following the issue date. The guaranteed investment contract has a yield that is no higher than the yield on the refunding issue. The revenues to be invested under this guaranteed investment contract consist of the amounts that Authority otherwise would have used to pay principal and interest on the 1994 refunding issue. The guaranteed investment contract is structured to generate receipts at times and in amounts sufficient to pay the principal and redemption requirements of the refunded portion of the 1985 issue. A principal purpose of these transactions is to avoid transferred proceeds. Authority will continue to invest the unspent proceeds of the 1985 issue that are on deposit in a refunding escrow for its 1982 issue at a yield equal to the yield on the 1985 issue and will not otherwise treat those unspent proceeds as transferred proceeds of the 1994 refunding issue. The 1994 refunding issue is an issue of arbitrage bonds since those bonds involve a transaction or series of transactions that overburdens the market by leaving bonds outstanding longer than is necessary to obtain a material financial advantage based on arbitrage. Specifically, Authority has structured the 1994 refunding issue to make available for the refunding of the 1985 issue replacement proceeds rather than proceeds so that the unspent proceeds of the 1985 issue will not become transferred proceeds of the 1994 refunding issue.

(ii) The result would be the same in each of the following circumstances:

(A) The facts are the same as in paragraph (i) of this *Example 3* except that Authority does not enter into the guaranteed investment contract but instead, as of the issue date of the 1994 refunding issue, reasonably expects that the released revenues will be available for investment until used to pay principal and interest on the 1985 issue.

(B) The facts are the same as in paragraph (i) of this *Example 3* except that there are no unspent proceeds of the 1985 issue and Authority invests the released revenues at a yield materially higher than the yield on the 1994 issue.

(C) The facts are the same as in paragraph (i) of this *Example 3* except that Authority uses the proceeds of the 1994 issue for capital projects instead of to refund a portion of the 1985 issue.

Example 4. Sale of conduit loan. On January 1, 1994, Authority issues a conduit financing issue (the *1994 conduit financing issue*) and uses the proceeds to purchase from City, an unrelated party, a tax-exempt bond of City (the *City note*). The proceeds of the 1994 conduit financing issue are to be used to advance refund a prior conduit financing issue that was issued in 1988 and used to make a loan to City. The 1994 conduit financing issue and the City note each have a yield of 8 percent on January 1, 1994. On June 30, 1996, interest rates have decreased and Authority sells the City note to D, a person unrelated to either City or Authority. Based on the sale price of the City note and treating June 30, 1996 as the issue date of the City note, the City note has a 6 percent yield. Authority deposits the proceeds of the sale of the City note into an escrow to redeem the bonds of the 1994 conduit financing issue on January 1, 2001. The escrow is invested in nonpurpose investments having a yield of 8 percent. For purposes of section 149(d), City and Authority are related parties and, therefore, the issue date of the City note is treated as being June 30, 1996. Thus, the City note is an advance refunding of Authority's 1994 conduit financing issue. Interest on the City note is not exempt from Federal income tax from the date it is sold to D under section 149(d), because, by investing the escrow investments at a yield of 8 percent instead of a yield not materially higher than 6 percent, the sale of the City note employs a device to obtain a material financial advantage, based on arbitrage, apart from the savings attributable to lower interest rates. In addition, the City note is not a tax-exempt bond because the note is the second advance refunding of the original bond under section 149(d)(3). The City note also employs an abusive arbitrage device and is an arbitrage bond under section 148.

Example 5. Re-refunding. (i) On January 1, 1984, City issues a tax-exempt issue (the *1984 issue*) to finance the cost of constructing a prison. The 1984 issue has a 7 percent yield and a 30-year maturity. The 1984 issue is callable at any time on or after January 1, 1994. On January 1, 1990, City issues a refunding issue (the *1990 issue*) to advance refund the 1984 issue. The 1990 issue has an 8 percent yield and a 30-year maturity. The 1990 issue is callable at any time on or after January 1, 2000. The proceeds of the 1990 issue are invested at an 8 percent yield in a refunding escrow for the 1984 issue (the *original 1984 escrow*) in a manner sufficient to pay debt service on the 1984 issue until maturity (i.e., an escrow to maturity). On January 1, 1994, City issues a refunding issue (the *1994 issue*). The 1994 issue has a 6 percent yield and a 30-year maturity. City does not invest the proceeds of the 1994 issue in a refunding escrow for the 1990 issue in a manner sufficient to pay a portion of the debt service until, and redeem a portion of that issue on, January 1, 2000. Instead, City invests those proceeds at a 6 percent yield in a new refunding escrow for a portion of the 1984 issue (the *new 1984 escrow*) in a manner sufficient to pay debt service on a portion of the 1984 issue until maturity. City also liquidates the investments allocable to the proceeds of the 1990 issue held in the original 1984 escrow and reinvests those proceeds in an escrow to pay a portion of the debt service on the 1990 issue itself until, and redeem a portion of that issue on, January 1, 2000 (the *1990 escrow*). The 1994 bonds are arbitrage bonds and employ an abusive device under section 149(d)(4). Although, in form, the proceeds of the 1994 issue are used to pay principal on the 1984 issue, this accounting for the use of the proceeds of the 1994 issue is an unreasonable, inconsistent accounting method under § 1.148–6(a). Moreover, since the proceeds of the 1990 issue were set aside in an escrow to be used to retire the 1984 issue, the use of proceeds of the 1994 issue for that same purpose involves a replacement of funds invested in higher yielding investments under section 148(a)(2). Thus, using a reasonable, consistent accounting method and giving effect to the substance of the transaction, the proceeds of the 1994 issue are treated as used to refund the 1990 issue and are allocable to the 1990 escrow. The proceeds of the 1990 issue are treated as used to refund the 1984 issue and are allocable to the investments in the new 1984 escrow. The proceeds of the 1990 issue allocable to the nonpurpose investments in the new 1984 escrow become transferred proceeds of the 1994 issue as principal is paid on the 1990 issue from amounts on deposit in the 1990 escrow. As a result, the yield on nonpurpose investments allocable to the 1994 issue is materially higher than the yield on the 1994 issue, causing the bonds of the 1994 issue to be arbitrage bonds. In addition, the transaction employs a device under section 149(d)(4) to obtain a material financial advantage based on arbitrage, other than savings attributable to lower interest rates.

(ii) The following changes in the facts do not affect the conclusion that the 1994 issue consists of arbitrage bonds—

(1) The 1990 issue is a taxable issue;

(2) The original 1984 escrow is used to pay the 1994 issue (rather than the 1990 issue); or

(3) The 1994 issue is used to retire the 1984 issue within 90 days of January 1, 1994.

(e) *Authority of the Commissioner to clearly reflect the economic substance of a transaction.* If an issuer enters into a transaction for a principal purpose of obtaining a material financial advantage based on the difference between tax-exempt and taxable interest rates in a manner that is inconsistent with the purposes of section 148, the Commissioner may exercise her discretion to depart from the rules of § 1.148–1 through § 1.148–11 as necessary to clearly reflect the economic substance of the transaction. For this purpose, the Commissioner may recompute yield on an issue or on investments, reallocate payments and receipts on investments, recompute the rebate amount on an issue, or otherwise adjust any item whatsoever bearing upon the investments and expenditures of gross proceeds of an issue.

(f) *Authority of the Commissioner to require an earlier date for payment of rebate.* If the Commissioner determines that an issue is likely to fail to meet the requirements of § 1.148–3 and that a failure to serve a notice of demand for payment on the issuer will jeopardize the assessment or collection of tax on interest paid or to be paid on the issue, the date that the Commissioner serves notice on the issuer is treated as a required computation date for payment of rebate for that issue.

(g) *Authority of the Commissioner to waive regulatory limitations.* Notwithstanding any specific provision in §§ 1.148–1 through 1.148–11, the Commissioner may prescribe extensions of temporary periods, larger reasonably required reserve or replacement funds, or consequences of failures or remedial action under section 148 in lieu of or in addition to other consequences of those failures, or take other action, if the Commissioner finds that good faith or other similar circumstances so warrant, consistent with the purposes of section 148.

§ 1.148–11 Effective dates.

(a) *In general.* Except as otherwise provided in this section, the provisions of § 1.148–1 through § 1.148–11 apply to all issues issued after June 30, 1993.

(b) *Elective retroactive application in whole*—(1) *In general.* Except as otherwise provided in this section and subject to the applicable effective dates of the corresponding statutory provisions, an issuer may apply the provisions of § 1.148–1 through § 1.148–11 in whole, but not in part, to any issue that is outstanding on June 30, 1993, and is subject to section 148(f) or to sections 103(c)(6) or 103A(i) of the Internal Revenue Code of 1954, in lieu of otherwise applicable regulations under those sections.

(2) *No elective retroactive application for 18-month spending exception.* The provisions of § 1.148–7(d) (relating to the 18-month spending exception) may not be applied to any issue issued on or before June 30, 1993.

(c) *Elective retroactive application of certain provisions and special rules*—(1) *In general.* An issuer may apply any of the following individual provisions of § 1.148–1 through § 1.148–11 to outstanding issues issued on or before August 15, 1993, in the indicated manner—

(i) *Certain commingled funds.* If paragraph (a) of this section applies to an issue, and that issue has a commingled fund to which the provisions of § 1.148–6(e)(6) (relating to commingled reserves) apply, that provision may be applied to all issues secured by that commingled reserve.

(ii) *Certain applications of the universal cap.* The provisions of § 1.148–5(c)(3)(i)(F) (and related provisions) may be applied to satisfy the requirements of section 148 (or applicable prior law) if the application of the universal cap results in amounts in a refunding escrow becoming replacement proceeds of an issue issued on or before June 30, 1993.

(2) *Certain allocations of multipurpose issues.* An allocation of bonds to a refunding purpose under § 1.148–9(h) may be adjusted as necessary to reflect allocations made between May 18, 1992, and August 15, 1993, in connection with the issuance of a refunding issue issued during that period if the allocations satisfied the corresponding prior provision of § 1.148–11(j)(4) under applicable prior regulations.

(3) *Special limitation.* The provisions of § 1.148–9 apply to issues issued before August 15, 1993, only if the issuer in good faith estimates the present value savings, if any, associated with the effect of the application of that section on refunding escrows, using any reasonable accounting method, and applies those savings, if any, to redeem outstanding tax-exempt bonds of the applicable issue at the earliest possible date on which those bonds may be redeemed or otherwise retired. These savings are not reduced to take into account any administrative costs associated with applying these provisions retroactively.

(d) *Transition rule excepting certain state guarantee funds from the definition of replacement proceeds*—(1) *Certain perpetual trust funds.* A guarantee by a fund created and controlled by a State and established pursuant to its constitution does not cause the amounts in the fund to be pledged funds treated as replacement proceeds if—

(i) Substantially all of the corpus of the fund consists of nonfinancial assets, revenues derived from these assets, gifts, and bequests;

(ii) The corpus of the guarantee fund may be invaded only to support specifically designated essential governmental functions (*designated functions*) carried on by political subdivisions with general taxing powers;

(iii) Substantially all of the available income of the fund is required to be applied annually to support designated functions;

(iv) The issue guaranteed consists of general obligations that are not private activity bonds substantially all of the proceeds of which are to be used for designated functions;

(v) The fund satisfied each of the requirements of paragraphs (d)(1)(i) through (d)(1)(iii) of this section on August 16, 1986; and

(vi) The guarantee is not attributable to a deposit to the fund made after May 14, 1989, unless—

(A) The deposit is attributable to the sale or other disposition of fund assets; or

(B) Prior to the deposit, the outstanding amount of the bonds guaranteed by the fund did not exceed 250 percent of the lower of the cost or fair market value of the fund.

(2) *Permanent University Fund.* Replacement proceeds do not include amounts allocable to investments of the fund described in section 648 of Public Law 98–369.

(e) *Transition rule regarding special allowance payments.* Section 1.148–5(b)(5) applies to any bond issued after January 5, 1990, except a bond issued exclusively to refund a bond issued before January 6, 1990, if the amount of the refunding bond does not exceed 101 percent of the amount of the refunded bond, and the maturity date of the refunding bond is not later than the date that is 17 years after the date on which the refunded bond was issued (or, in the case of a series of refundings, the date on which the original bond was issued).

(f) *Transition rule regarding applicability of yield reduction rule.* Section 1.148–5(c) applies to nonpurpose investments allocable to replacement proceeds of an issue that are held in a reserve or replacement fund to the extent that—

(1) Amounts must be paid into the fund under a constitutional provision, statute, or ordinance adopted before May 3, 1978;

(2) Under that provision, amounts paid into the fund (and investment earnings thereon) can be used only to pay debt service on the issues; and

(3) The size of the payments made into the fund is independent of the size of the outstanding issues or the debt service thereon.

(g) *Extension of due date for rebate payments.* Payments of rebate under section 148(f) that are otherwise due after June 30, 1993, and before September 1, 1993, may be paid by September 1, 1993.

(h) *Elective application of existing regulations.* For an issue issued after June 30, 1993 and before August 15, 1993, an issuer may apply the provisions of T.D. 7627, sections 1.103–13, 1.103–14, 1.103–15, 1979–2 C.B. 45, (see § 601.601(d)(2)(ii)(*b*)) of this chapter, as amended by T.D. 8418, 1992–1 C.B. 29; T.D. 8345, section 1.103–13T, 1991–1 C.B. 33; and T.D. 8418, sections 1.148–0 through 1.148–11, 1.149(d)–1 and 1.150–1, 1992–1 C.B. 29, in whole, but not in part, in lieu of applying these regulations under paragraph (a) of this section, without regard to § 1.148–0(b)(2)(ii)(D) of those provisions.

§§ 1.148–12T and 1.148–13T [Removed]

Par. 5a. Sections 1.148–12T and 1.148–13T are removed.

Par. 6. Section 1.149(b)–1 is added to read as follows:

§ 1.149(b)–1 Federally guaranteed bonds.

(a) *General rule.* Under section 149(b) and this section, nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued as part of an issue that is federally guaranteed.

(b) *Exceptions.* Pursuant to section 149(b)(3)(B), section 149(b)(1) and paragraph (a) of this section do not apply to—

(1) Investments in obligations issued pursuant to § 21B(d)(3) of the Federal Home Loan Bank Act, as amended by § 511 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or any successor provision; or

(2) Any investments that are held in a refunding escrow (as defined in § 1.148–1).

(c) *Effective date.* This section applies to investments made after June 30, 1993.

§ 1.149(b)(3)–1T [Removed]

Par. 7. Section § 1.149(b)(3)–1T is removed.

Par. 8. Section 1.149(d)–1 is revised to read as follows:

§ 1.149(d)–1 Limitations on advance refundings.

(a) *General rule.* Under section 149(d) and this section, nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued as part of an issue described in paragraphs (2), (3), or (4) of section 149(d).

(b) *Advance refunding issues that employ abusive devices*—(1) *In general.* An advance refunding issue employs an abusive device and is described in section 149(d)(4) if the issue violates any of the anti-abuse rules under § 1.148–10.

(2) *Failure to pay required rebate.* An advance refunding issue is described in section 149(d)(4) if the issue fails to meet the requirements of § 1.148–3. This paragraph (b)(2) applies to any advance refunding issue issued after August 31, 1986.

(3) *Mixed escrows invested in tax-exempt bonds.* An advance refunding issue is described in section 149(d)(4) if—

(i) Any of the proceeds of the issue are invested in a refunding escrow in which a portion of the proceeds are invested in tax-exempt bonds and a portion of the proceeds are invested in nonpurpose investments;

(ii) The yield on the tax-exempt bonds in the refunding escrow exceeds the yield on the issue;

(iii) The yield on all the investments (including investment property and tax-exempt bonds) in the refunding escrow exceeds the yield on the issue; and

(iv) The weighted average maturity of the tax-exempt bonds in the refunding escrow is more than 25 percent greater or less than the weighted average maturity of the nonpurpose investments in the refunding escrow, and the weighted average maturity of nonpurpose investments in the refunding escrow is greater than 60 days.

(4) *Tax-exempt conduit loans.* For purposes of applying section 149(d) to a conduit financing issue that finances any conduit loan that is a tax-exempt bond, the actual issuer of a conduit financing issue and the conduit borrower of that conduit financing issue are treated as related parties. Thus, the issue date of the conduit loan does not occur prior to the date on which the actual issuer of the conduit financing issue sells, exchanges, or otherwise disposes of that conduit loan, and the use of the proceeds of the disposition to pay debt service on the conduit financing issue causes the conduit loan to be a refunding issue. See § 1.148–10(d), *Example 4.*

(c) *Unrefunded debt service remains eligible for future advance refunding.* For purposes of section 149(d)(3)(A)(i), any principal or interest on a prior issue that has not been paid or provided for by any advance refunding issue is treated as not having been advance refunded.

(d) *Application of arbitrage regulations*—(1) *Application of multipurpose issue rules.* For purposes of sections 149(d)(2) and (3)(A)(i), (ii), and (iii), the provisions of the multipurpose issue rule in § 1.148–9(h) apply.

(2) *General mixed escrow rules.* For purposes of section 149(d), the provisions of § 1.148–9(c) (relating to mixed escrows) apply, except that those provisions do not apply for purposes of section 149(d)(2) and (d)(3)(A) (i) and (ii) to amounts that were not gross proceeds of the prior issue before the issue date of the refunding issue.

(3) *Temporary periods and minor portions.* Section 1.148–9(d) and (f) contains rules applicable to temporary periods and minor portions for advance refunding issues.

(4) *Definitions.* Section 1.148–1 applies for purposes of section 149(d).

(e) *Taxable refundings*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, for purposes of section 149(d)(3)(A)(i), an advance refunding issue the interest on which is not excludable from gross income under section 103(a) (i.e., a taxable advance refunding issue) is not taken into account. In addition, for this purpose, an advance refunding of a taxable issue is not taken into account unless the taxable issue is a conduit loan of a tax-exempt conduit financing issue.

(2) *Use to avoid section 149(d)(3)(A)(i).* A taxable issue is taken into account under section 149(d)(3)(A)(i) if it is issued to avoid the limitations of that section. For example, in the case of a refunding of a tax-exempt issue with a taxable advance refunding issue that is, in turn, currently refunded with a tax-exempt issue, the taxable advance refunding issue is taken into account under section 149(d)(3)(A)(i) if the two tax-exempt issues are outstanding concurrently for more than 90 days.

(f) *Redemption at first call date*—(1) *General rule.* Under sections 149(d)(3)(A) (ii) and (iii) (the *first call requirement*), bonds refunded by an advance refunding must be redeemed on their first call date if the savings test under section 149(d)(3)(B)(i) (the *savings test*) is satisfied. The savings test is satisfied if the issuer may realize present value debt service savings

(determined without regard to administrative expenses) in connection with the issue of which the refunding bond is a part.

(2) *First call date. First call date* means the earliest date on which a bond may be redeemed (or, if issued before 1986, on the earliest date on which that bond may be redeemed at a redemption price not in excess of 103 percent of par). If, however, the savings test is not met with respect to the date described in the preceding sentence (i.e., there are no present value savings if the refunded bonds are retired on that date), the first call date is the first date thereafter on which the bonds can be redeemed and on which the savings test is met.

(3) *Savings test.* Except as provided below, the multipurpose issue allocation rules apply for purposes of the savings test. The savings test is satisfied and the first call requirement applies to a bond if the refunding of that bond increases the aggregate present value debt service savings on the entire refunding issue when compared with the aggregate present value debt service savings if that bond were not refunded.

(g) *Effective date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to bonds issued after June 30, 1993, to which §§ 1.148–1 through 1.148–11 apply, including conduit loans that are treated as issued after June 30, 1993, under paragraph (b)(4) of this section. In addition, this section applies to any issue to which the election described in § 1.148–11(b)(1) is made.

(2) *Special effective date for paragraph (b)(3).* Paragraph (b)(3) of this section applies to any advance refunding issue issued after May 28, 1991.

Par. 9. Section 1.149(g)–1 is added to read as follows:

§ 1.149(g)–1 Hedge bonds.

(a) *Certain definitions.* Except as otherwise provided, the definitions set forth in § 1.148–1 apply for purposes of section 149(g) and this section. In addition, the following terms have the following meanings:

Reasonable expectations means reasonable expectations (as defined in § 1.148–1), as modified to take into account the provisions of section 149(f)(2)(B).

Spendable proceeds means net sale proceeds (as defined in § 1.148–1).

(b) *Applicability of arbitrage allocation and accounting rules.* Section 1.148–6 applies for purposes of section 149(g), except that an expenditure that results in the creation of replacement proceeds (other than amounts in a bona fide debt service fund or a reasonably required reserve or replacement fund) is not an expenditure for purposes of section 149(g).

(c) *Refundings*—(1) *Investment in tax-exempt bonds.* A bond issued to refund a bond that is a tax-exempt bond by virtue of the rule in section 149(g)(3)(B) is not a tax-exempt bond unless the gross proceeds of that refunding bond (other than proceeds in a refunding escrow for the refunded bond) satisfy the requirements of section 149(g)(3)(B).

(2) *Anti-abuse rule.* A refunding bond is treated as a hedge bond unless there is a significant governmental purpose for the issuance of that bond (e.g., an advance refunding bond issued to realize debt service savings or to relieve the issuer of significantly burdensome document provisions, but not to otherwise hedge against future increases in interest rates).

(d) *Effective date.* This section applies to bonds issued after June 30, 1993 to which §§ 1.148–1 through 1.148–11 apply. In addition, this section applies to any issue to which the election described in § 1.148–11(b)(1) is made.

Par. 10. Section 1.150–1 is revised to read as follows:

§ 1.150–1 Definitions.

(a) *Scope and effective date*—(1) *In general.* Except as otherwise provided, the definitions in this section apply for all purposes of sections 103 and 141 through 150.

(2) *Effective date.* This section applies to issues issued after June 30, 1993 to which §§ 1.148–1 through 1.148–11 apply. In addition, this section (other than paragraph (c)(3) of this section) applies to any issue to which the election described in § 1.148–11(b)(1) is made.

(b) *Certain general definitions.* The following definitions apply:

Bond means any obligation of a State or political subdivision thereof under section 103(c)(1).

Capital expenditure means any cost of a type that is properly chargeable to capital account (or would be so chargeable with a proper election or with the application of the definition of placed in service under § 1.150–2(c)) under general Federal income tax principles. For example, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are capital expenditures. Whether an expenditure is a capital expenditure is determined at the time the expenditure is paid with respect to the property. Future changes in law do not affect whether an expenditure is a capital expenditure.

Conduit borrower means the obligor on a purpose investment (as defined in § 1.148–1). For example, if an issuer invests proceeds in a purpose investment in the form of a loan, lease, installment sale obligation, or similar obligation to another entity and the obligor uses the proceeds to carry out the governmental purpose of the issue, the obligor is a conduit borrower.

Conduit financing issue means an issue the proceeds of which are used or are reasonably expected to be used to finance at least one purpose investment representing at least one conduit loan to one conduit borrower.

Conduit loan means a purpose investment (as defined in § 1.148–1).

Governmental bond means any bond of an issue of tax-exempt bonds in which none of the bonds are private activity bonds.

Issuance costs means costs to the extent incurred in connection with, and allocable to, the issuance of an issue within the meaning of section 147(g). For example, issuance costs include the following costs but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters' spread; counsel fees; financial advisory fees; rating agency fees; trustee fees; paying agent fees; bond registrar, certification, and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than for qualified guarantees (as defined in § 1.148–4(f)); and similar costs.

Issue date means, in reference to an issue, the first date on which the issuer receives the purchase price in exchange for delivery of the evidence of indebtedness representing any bond included in the issue. Issue date means, in reference to a bond, the date on which the issuer receives the purchase price in exchange for that bond. In no event is the issue date earlier than the first day on which interest begins to accrue on the bond or bonds for Federal income tax purposes.

Obligation means any valid evidence of indebtedness under general Federal income tax principles.

Pooled financing issue means an issue the proceeds of which are to be used to finance purpose investments representing conduit loans to two or more conduit borrowers, unless those conduit loans are to be used to finance a single capital project.

Private activity bond means a private activity bond (as defined in section 141).

Qualified mortgage loan means a mortgage loan with respect to an owner-occupied residence acquired with the proceeds of an obligation described in

section 143(a)(1) or 143(b) (or applicable prior law).

Qualified student loan means a student loan acquired with the proceeds of an obligation described in section 144(b)(1).

Related party means, in reference to a governmental unit or a 501(c)(3) organization, any member of the same controlled group, and, in reference to any person that is not a governmental unit or 501(c)(3) organization, a related person (as defined in section 144(a)(3)).

Taxable bond means any obligation the interest on which is not excludable from gross income under section 103.

Tax-exempt bond means any bond the interest on which is excludable from gross income under section 103(a). Tax-exempt bond includes an interest in a regulated investment company to the extent that at least 95 percent of the income to the holder of the interest is interest that is excludable from gross income under section 103(a).

Working capital expenditure means any cost that is not a capital expenditure. Generally, current operating expenses are working capital expenditures.

(c) *Definition of issue*—(1) *In general.* The provisions of this paragraph (c) apply for all purposes of sections 103 and 141 through 150. Except as otherwise provided in this paragraph (c), two or more bonds are treated as part of the same issue if all of the following factors are present:

(i) *Sold at substantially the same time.* The bonds are sold at substantially the same time. Bonds are treated and sold at substantially the same time if they are sold less than 15 days apart. For this purpose only, a variable yield bond is treated and sold on its issue date.

(ii) *Sold pursuant to the same plan of financing.* The bonds are sold pursuant to the same plan of financing. Factors material to the plan of financing include the purposes for the bonds and the structure of the financing. For example, generally—

(A) Bonds to finance a single facility or related facilities are part of the same plan of financing;

(B) Short-term bonds to finance working capital expenditures and long-term bonds to finance capital projects are not part of the same plan of financing; and

(C) Certificates of participation in a lease and general obligation bonds secured by tax revenues are not part of the same plan of financing.

(iii) *Payable from same source of funds.* The bonds are reasonably expected to be paid from substantially the same source of funds, determined without regard to guarantees from unrelated parties.

(2) *Exception for taxable bonds.* Taxable bonds and tax-exempt bonds are not part of the same issue under this paragraph (c). The issuance of tax-exempt bonds in a transaction (or series of related transactions) that includes taxable bonds, however, may constitute an abusive arbitrage device under § 1.148–10(a) or a device to avoid other limitations in sections 103 and 141 through 150 (for example, structures involving *windows* or unreasonable allocations of bonds).

(3) *Exception for certain bonds financing separate purposes*—(i) *In general.* Bonds may be treated as part of separate issues if the requirements of this paragraph (c)(3) are satisfied. Each of these separate issues must finance a separate purpose (e.g., refunding a separate prior issue, financing a separate purpose investment, financing integrated or functionally related capital projects, and financing any clearly discrete governmental purpose). Each of these separate issues independently must be a tax-exempt bond (e.g., a governmental bond or a qualified mortgage bond). The aggregate proceeds, investments, and bonds in such a transaction must be allocated between each of the separate issues using a reasonable, consistently applied allocation method. If any separate issue consists of refunding bonds, the allocation rules in § 1.148–9(h) must be satisfied. An allocation is not reasonable if it achieves more favorable results under sections 103 and 141 to 150 than could be achieved with actual separate issues. All allocations under this paragraph (c)(3) must be made in writing on or before the issue date.

(ii) *Exceptions.* This paragraph (c)(3) does not apply for purposes of sections 141(b)(5), 141(c)(1), 141(d)(1), 144(a), 148, 149(d), and 149(g).

(4) *Special rules for draw-down loans and commercial paper*—(i) *Draw-down loans.* Bonds issued pursuant to a draw-down loan are treated as part of a single issue. The issue date of that issue is the first date on which the aggregate draws under the loan exceed the lesser of $50,000 or 5 percent of the issue price.

(ii) *Commercial paper*—(A) *In general.* Short-term bonds having a maturity of 270 days or less (*commercial paper*) issued pursuant to the same commercial paper program may be treated as part of a single issue, the issue date of which is the first date the aggregate amount of commercial paper issued under the program exceeds the lesser of $50,000 or 5 percent of the aggregate issue price of the commercial paper in the program. A commercial paper program is a program to issue commercial paper to finance or refinance the same governmental purpose pursuant to a single master legal document. Commercial paper is not part of the same commercial paper program unless issued during an 18-month period, beginning on the deemed issue date. In addition, commercial paper issued after the end of this 18-month period may be treated as part of the program to the extent issued to refund commercial paper that is part of the program, but only to the extent that—

(*1*) There is no increase in the principal amount outstanding; and

(*2*) The program does not have a term in excess of—

(*i*) 30 years; or

(*ii*) The period reasonably necessary for the governmental purposes of the program.

(B) *Safe harbor.* The requirement of paragraph (c)(4)(ii)(A)(*2*) of this section is treated as satisfied if the weighted average maturity of the issue does not exceed 120 percent of the weighted average expected economic life of the property financed by the issue.

(5) *Anti-abuse rule.* In order to prevent the avoidance of sections 103 and 141 through 150 and the general purposes thereof, the Commissioner may treat bonds as part of the same issue or as part of separate issues to clearly reflect the economic substance of a transaction.

(d) *Definition of refunding issue and related definitions*—(1) *General definition of refunding issue. Refunding issue* means an issue of obligations the proceeds of which are used to pay principal, interest, or redemption price on another issue (a *prior issue*, as more particularly defined in paragraph (d)(5) of this section), including the issuance costs, accrued interest, capitalized interest on the refunding issue, a reserve or replacement fund, or similar costs, if any, properly allocable to that refunding issue.

(2) *Exceptions and special rules.* For purposes of paragraph (d)(1) of this section, the following exceptions and special rules apply—

(i) *Payment of certain interest.* An issue is not a refunding issue if the only principal and interest that is paid with proceeds of the issue (determined without regard to the multipurpose issue rules of § 1.148–9(h)) is interest on another issue that—

(A) Accrues on the other issue during a one-year period including the issue date of the issue that finances the interest;

(B) Is a capital expenditure; or

(C) Is a working capital expenditure to which the de minimis rule of § 1.148–6(d)(3)(ii)(A) applies.

(ii) *Certain issues with different obligors*—(A) *In general.* An issue is not a refunding issue to the extent that the obligor (as defined in paragraph (d)(2)(ii)(B) of this section) of one issue is neither the obligor of the other issue nor a related party with respect to the obligor of the other issue.

(B) *Definition of obligor.* The *obligor* of an issue means the actual issuer of the issue, except that the obligor of the portion of an issue properly allocable to an investment in a purpose investment means the conduit borrower under that purpose investment. The obligor of an issue used to finance qualified mortgage loans, qualified student loans, or similar program investments (as defined in § 1.148–1) does not include the ultimate recipient of the loan (e.g., the homeowner, the student).

(iii) *Certain special rules for purpose investments.* For purposes of this paragraph (d), the following special rules apply:

(A) *Refunding of a conduit financing issue by a conduit loan refunding issue.* Except as provided in paragraph (d)(2)(iii)(B) of this section, the use of the proceeds of an issue that is used to refund an obligation that is a purpose investment (a *conduit refunding issue*) by the actual issuer of the conduit financing issue determines whether the conduit refunding issue is a refunding of the conduit financing issue (in addition to a refunding of the obligation that is the purpose investment).

(B) *Recycling of certain payments under purpose investments.* A conduit refunding issue is not a refunding of a conduit financing issue to the extent that the actual issuer of the conduit financing issue reasonably expects as of the date of receipt of the proceeds of the conduit refunding issue to use those amounts within 6 months (or, if greater, during the applicable temporary period for those amounts under section 148(c) or under applicable prior law) to acquire a new purpose investment. Any new purpose investment is treated as made from the proceeds of the conduit financing issue.

(C) *Application to tax-exempt loans.* For purposes of this paragraph (d), obligations that would be purpose investments (absent section 148(b)(3)(A)) are treated as purpose investments.

(iv) *Substance of transaction controls.* In the absence of other applicable controlling rules under this paragraph (d), the determination of whether an issue is a refunding issue is based on the substance of the transaction in light of all the facts and circumstances.

(v) *Certain integrated transactions in connection with asset acquisition not treated as refunding issues.* If, within six months before or after a person assumes (including taking subject to) obligations of an unrelated party in connection with an asset acquisition (other than a transaction to which section 381(a) applies if the person assuming the obligation is the acquiring corporation within the meaning of section 381(a)), the assumed issue is refinanced, the refinancing issue is not treated as a refunding issue.

(3) *Current refunding issue. Current refunding issue* means:

(i) Except as provided in paragraph (d)(3)(ii) of this section, a refunding issue that is issued not more than 90 days before the last expenditure of any proceeds of the refunding issue for the payment of principal or interest on the prior issue; and

(ii) In the case of a refunding issue issued before 1986—

(A) A refunding issue that is issued not more than 180 days before the last expenditure of any proceeds of the refunding issue for the payment of principal or interest on the prior issue; or

(B) A refunding issue if the prior issue had a term of less than 3 years and was sold in anticipation of permanent financing, but only if the aggregate term of all prior issues sold in anticipation of permanent financing was less than 3 years.

(4) *Advance refunding issue. Advance refunding issue* means a refunding issue that is not a current refunding issue.

(5) *Prior issue. Prior issue* means an issue of obligations all or a portion of the principal, interest, or call premium on which is paid or provided for with proceeds of a refunding issue. A prior issue may be issued before, at the same time as, or after a refunding issue. If the refunded and unrefunded portions of a prior issue are treated as separate issues under § 1.148–9(i), for the purposes for which that section applies, except to the extent that the context clearly requires otherwise, references to a prior issue refer only to the refunded portion of that prior issue.

(e) *Controlled group* means a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of this paragraph (e).

(1) *Direct control.* The determination of direct control is made on the basis of all the relevant facts and circumstances. One entity or group of entities (the *controlling entity*) generally controls another entity or group of entities (the *controlled entity*) for purposes of this paragraph if the controlling entity possesses either of the following rights or powers and the rights or powers are discretionary and non-ministerial—

(i) The right or power both to approve and to remove without cause a controlling portion of the governing body of the controlled entity; or

(ii) The right or power to require the use of funds or assets of the controlled entity for any purpose of the controlling entity.

(2) *Indirect control.* If a controlling entity controls a controlled entity under the test in paragraph (e)(1) of this section, then the controlling entity also controls all entities controlled, directly or indirectly, by the controlled entity or entities.

(3) *Exception for general purpose governmental entities.* An entity is not a controlled entity under this paragraph (e) if the entity possesses substantial taxing, eminent domain, and police powers. For example, a city possessing substantial amounts of each of these sovereign powers is not a controlled entity of the state.

Par. 11. Section 1.150–2 is added to read as follows:

§ 1.150–2 Proceeds of bonds used for reimbursement.

(a) *Table of contents.* This table of contents contains a listing of the headings contained in § 1.150–2.

(a) Table of contents.
(b) Scope.
(c) Definitions.
(d) General operating rules for reimbursement expenditures.
(1) Official intent.
(2) Reimbursement period.
(3) Nature of expenditure.
(e) Official intent rules.
(1) Form of official intent.
(2) Project description in official intent.
(3) Reasonableness of official intent.
(f) Exceptions to general operating rules.
(1) De minimis exception.
(2) Preliminary expenditures exception.
(g) Special rules on refundings.
(1) In general—once financed, not reimbursed.
(2) Certain proceeds of prior issue used for reimbursement treated as unspent.
(h) Anti-abuse rules.
(1) General rule.
(2) One-year step transaction rule.
(i) Authority of the Commissioner to prescribe rules.
(j) Effective date.
(1) In general.
(2) Transitional rules.

(b) *Scope.* This section applies to reimbursement bonds (as defined in paragraph (c) of this section) for all purposes of sections 103 and 141 to 150.

(c) *Definitions.* The following definitions apply:

Issuer means—

(1) For any private activity bond (excluding a qualified 501(c)(3) bond, qualified student loan bond, qualified mortgage bond, or qualified veterans' mortgage bond), the entity that actually issues the reimbursement bond; and

(2) For any bond not described in paragraph (1) of this definition, either the entity that actually issues the reimbursement bond or, to the extent that the reimbursement bond proceeds are to be loaned to a conduit borrower, that conduit borrower.

Official intent means an issuer's declaration of intent to reimburse an original expenditure with proceeds of an obligation.

Original expenditure means an expenditure for a governmental purpose that is originally paid from a source other than a reimbursement bond.

Placed in service means, with respect to a facility, the date on which, based on all the facts and circumstances—

(1) The facility has reached a degree of completion which would permit its operation at substantially its design level; and

(2) The facility is, in fact, in operation at such level.

Reimbursement allocation means an allocation in writing that evidences an issuer's use of proceeds of a reimbursement bond to reimburse an original expenditure. An allocation made within 30 days after the issue date of a reimbursement bond may be treated as made on the issue date.

Reimbursement bond means the portion of an issue allocated to reimburse an original expenditure that was paid before the issue date.

(d) *General operating rules for reimbursement expenditures.* Except as otherwise provided, a reimbursement allocation is treated as an expenditure of proceeds of a reimbursement bond for the governmental purpose of the original expenditure on the date of the reimbursement allocation only if:

(1) *Official intent.* Not later than 60 days after payment of the original expenditure, the issuer adopts an official intent for the original expenditure that satisfies paragraph (e) of this section.

(2) *Reimbursement period*—(i) *In general.* The reimbursement allocation is made not later than 18 months after the later of—

(A) The date the original expenditure is paid; or

(B) The date the project is placed in service or abandoned, but in no event more than 3 years after the original expenditure is paid.

(ii) *Special rule for small issuers.* In applying paragraph (d)(2)(i) of this section to an issue that satisfies section 148(f)(4)(D)(i) (I) through (IV), the "18 month" limitation is changed to "3 years" and the "3-year" maximum reimbursement period is disregarded.

(iii) *Special rule for long-term construction projects.* In applying paragraph (d)(2)(i) to a construction project for which both the issuer and a licensed architect or engineer certify that at least 5 years is necessary to complete construction of the project, the maximum reimbursement period is changed from "3 years" to "5 years."

(3) *Nature of expenditure.* The original expenditure is a capital expenditure, a cost of issuance for a bond, an expenditure described in § 1.148–6(d)(3)(ii)(B) (relating to certain extraordinary working capital items), a grant (as defined in § 1.148–6(d)(4)), a qualified student loan, a qualified mortgage loan, or a qualified veterans' mortgage loan.

(e) *Official intent rules.* An official intent satisfies this paragraph (e) if:

(1) *Form of official intent.* The official intent is made in any reasonable form, including issuer resolution, action by an appropriate representative of the issuer (e.g., a person authorized or designated to declare official intent on behalf of the issuer), or specific legislative authorization for the issuance of obligations for a particular project.

(2) *Project description in official intent*—(i) *In general.* The official intent generally describes the project for which the original expenditure is paid and states the maximum principal amount of obligations expected to be issued for the project. A project includes any property, project, or program (e.g., *highway capital improvement program, hospital equipment acquisition,* or *school building renovation*).

(ii) *Fund accounting.* A project description is sufficient if it identifies, by name and functional purpose, the fund or account from which the original expenditure is paid (e.g., *parks and recreation fund—recreational facility capital improvement program*).

(iii) *Reasonable deviations in project description.* Deviations between a project described in an official intent and the actual project financed with reimbursement bonds do not invalidate the official intent to the extent that the actual project is reasonably related in function to the described project. For example, *hospital equipment* is a reasonable deviation from *hospital building improvements.* In contrast, a *city office building rehabilitation* is not a reasonable deviation from *highway improvements.*

(3) *Reasonableness of official intent.* On the date of the declaration, the issuer must have a reasonable expectation (as defined in § 1.148–1(b)) that it will reimburse the original expenditure with proceeds of an obligation. Official intents declared as a matter of course or in amounts substantially in excess of the amounts expected to be necessary for the project (e.g., *blanket declarations*) are not reasonable. Similarly, a pattern of failure to reimburse actual original expenditures covered by official intents (other than in extraordinary circumstances) is evidence of unreasonableness. An official intent declared pursuant to a specific legislative authorization is rebuttably presumed to satisfy this paragraph (e)(3).

(f) *Exceptions to general operating rules*—(1) *De minimis exception.* Paragraphs (d)(1) and (d)(2) of this section do not apply to costs of issuance of any bond or to an amount not in excess of the lesser of $100,000 or 5 percent of the proceeds of the issue.

(2) *Preliminary expenditures exception.* Paragraphs (d)(1) and (d)(2) of this section do not apply to any preliminary expenditures, up to an amount not in excess of 20 percent of the aggregate issue price of the issue or issues that finance or are reasonably expected by the issuer to finance the project for which the preliminary expenditures were incurred. Preliminary expenditures include architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project, other than land acquisition, site preparation, and similar costs incident to commencement of construction.

(g) *Special rules on refundings*—(1) *In general—once financed, not reimbursed.* Except as provided in paragraph (g)(2) of this section, paragraph (d) of this section does not apply to an allocation to pay principal or interest on an obligation to reimburse an original expenditure paid by another obligation. Instead, such an allocation is analyzed under rules on refunding issues. See § 1.148–9.

(2) *Certain proceeds of prior issue used for reimbursement treated as unspent.* In the case of a refunding issue (or series of refunding issues), proceeds of a prior issue purportedly used to reimburse original expenditures are treated as unspent proceeds of the prior issue unless the purported reimbursement was a valid expenditure under applicable law on reimbursement expenditures on the issue date of the prior issue.

(h) *Anti-abuse rules*—(1) *General rule.* A reimbursement allocation is not an expenditure of proceeds of an issue under this section if the allocation employs an abusive arbitrage device under § 1.148–10 to avoid the arbitrage restrictions or to avoid the restrictions under sections 142 through 147.

(2) *One-year step transaction rule*—(i) *Creation of replacement proceeds.* A purported reimbursement allocation is invalid and thus is not an expenditure of proceeds of an issue if, within 1 year after the allocation, funds corresponding to the proceeds of a reimbursement bond for which a reimbursement allocation was made are used in a manner that results in the creation of replacement proceeds (as defined in § 1.148–1) of that issue or another issue. The preceding sentence does not apply to amounts deposited in a bona fide debt service fund (as defined in § 1.148–1).

(ii) *Example.* The provisions of paragraph (h)(2)(i) of this section are illustrated by the following example.

Example. On January 1, 1994, County *A* issues an issue of 7 percent tax-exempt bonds (the *1994 issue*) and makes a purported reimbursement allocation to reimburse an original expenditure for specified capital improvements. *A* immediately deposits funds corresponding to the proceeds subject to the reimbursement allocation in an escrow fund to provide for payment of principal and interest on its outstanding 1991 issue of 9 percent tax-exempt bonds (the *prior issue*). The use of amounts corresponding to the proceeds of the reimbursement bonds to create a sinking fund for another issue within 1 year after the purported reimbursement allocation invalidates the reimbursement allocation. The proceeds retain their character as unspent proceeds of the 7 percent issue upon deposit in the escrow fund. Accordingly, the proceeds are subject to the 7 percent yield restriction of the 1994 issue instead of the 9 percent yield restriction of the prior issue.

(i) *Authority of the Commissioner to prescribe rules.* The Commissioner may by revenue ruling or revenue procedure (see § 601.601(d)(2)(ii)(*b*) of this chapter) prescribe rules for the expenditure of proceeds of reimbursement bonds in circumstances that do not otherwise satisfy this section.

(j) *Effective date*—(1) *In general.* The provisions of this section apply to all allocations of proceeds of reimbursement bonds issued after June 30, 1993.

(2) *Transitional rules*—(i) *Official intent.* An official intent is treated as satisfying the official intent requirement of paragraph (d)(1) of this section if it—

(A) Satisfied the applicable provisions of § 1.103–8(a)(5) as in effect prior to July 1, 1993, (as contained in 26 CFR part 1 revised as of April 1, 1993) and was made prior to that date, or

(B) Satisfied the applicable provisions of § 1.103–18 as in effect between January 27, 1992, and June 30, 1993, (as contained in 26 CFR part 1 revised as of April 1, 1993) and was made during that period.

(ii) *Certain expenditures of private activity bonds.* For any expenditure that was originally paid prior to August 15, 1993, and that would have qualified for expenditure by reimbursement from the proceeds of a private activity bond under T.D. 7199, section 1.103–8(a)(5), 1972–2 C.B. 45 (see § 601.601(d)(2)(ii)(*b*)) of this chapter, the requirements of that section may be applied in lieu of this section.

PART 6a—TEMPORARY REGULATIONS UNDER TITLE II OF THE OMNIBUS RECONCILIATION ACT OF 1980

Par. 12. The authority for part 6a is revised to read as follows:

Authority: 26 U.S.C. 7805.

Sections 6a.103A–2(k), (l), and (m) also issued under 26 U.S.C. 103A(j) (3), (4), and (5).

Par. 13. Section 6a.103A–2 is amended by adding a new paragraph (i)(3)(v) to read as follows:

§ 6a.103A–2 Qualified mortgage bond.

* * * * *

(i) * * *

(3) * * *

(v) *Bonds issued after June 30, 1993.* Section 1.148–2(f)(2)(iv) applies to bonds issued after June 30, 1993, in lieu of this paragraph (i)(3).

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 14. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. Section 602.101(c) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * *	* *
1.148–2	1545–1347
1.148–3	1545–1347
1.148–4	1545–1347
1.148–7	1545–1347
1.148–11	1545–1347
* * *	* *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 4, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 93–14092 Filed 6–14–93; 9:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Permanent Regulatory Program

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

ACTION: Notice of informal conference.

SUMMARY: On May 28, 1993, the Acting Director, Office of Surface Mining Reclamation and Enforcement (OSM), notified the Montana Department of State Lands that OSM had reason to believe that serious problems exist which are adversely affecting the effective implementation, administration, maintenance, and enforcement of Montana's approved regulatory program.

By letter dated June 4, 1993, the Montana Department of State Lands requested that the Acting Director hold an informal conference to discuss the facts surrounding the Acting Director's notification. Accordingly, the Acting Director hereby notifies Montana and the public that OSM will hold an informal conference on June 30, 1993, at the address below.

DATES: OSM has scheduled an informal conference on June 30, 1993, at 9 a.m. All interested persons may attend the informal conference.

ADDRESSES: The informal conference will be held at: The Billings Sheraton, 27 North 27th Street, Billings, Montana 59101. Telephone: 406–252–7400.

Copies of documents referenced in this notice are available for public inspection and copying during normal business hours at:

Office of Surfacing Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street NW., Washington, DC 20240. Telephone: 202–343–5492.

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East 'B' Street, room 2128, Casper, Wyoming 82601. Telephone: 307–261–5776.

Montana Department of State Lands, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620. Telephone: (406)–444–2074.

FOR FURTHER INFORMATION CONTACT: Allen D. Klein, Assistant Director, Field Operations, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone: (202)–208–2625; or Guy Padgett, Casper Field Office Director, Office of Surface Mining Reclamation and Enforcement, 100 East 'B' Street, room 2128, Casper, Wyoming 82601. Telephone: (307)–261–5776.

SUPPLEMENTARY INFORMATION: On April 1, 1980, the Secretary of the Department of the Interior conditionally approved the Montana program (45 FR 21560, April 1, 1980). On May 28, 1993, the Acting Director, OSM, notified the Administrator, Reclamation Division, Montana Department of State Lands (MDSL), that OSM had reason to believe that serious problems exist which are adversely affecting the effective implementation, administration, maintenance, and enforcement of Montana's approved permanent regulatory program under SMCRA.

Since the approval of the Montana program, and in keeping with its policy of working closely with the State, OSM has had numerous discussions with officials from the MDSL about the State's performance. Recent discussions and investigations have centered on inadequacies of MDSL's implementation of its approved program raised in a 30 CFR 733.12 petition filed March 1, 1993, as described below:

1. Administrative Rule Montana (ARM) 26.4.401(3) requires that, upon receipt of notice of MDSL's determination of administrative completeness, the applicant place an advertisement in a newspaper of general circulation in the locality of the proposed activity at least once a week for four consecutive weeks. The advertisement must contain, at a minimum, certain information listed in the regulations which serves to alert the public of the activity and explains the right of public comment and the time restriction for the comment period. The applicant in question, did not comply with this requirement. Although MDSL realized the applicant had not complied with this provision before the permit was approved, the MDSL did not require the applicant to comply.

2. ARM 26.4.401(5) requires MDSL, immediately upon issuance of a determination of administrative completeness, to issue written notification of the proposed activity requesting written comments to Federal, State, and local governmental agencies having an interest in the area; to governmental planning agencies; sewage and water treating agencies; and Federal or State agencies with authority to issue all other permits and licenses required by the applicant. MDSL did not comply with this requirement.

3. ARM 26.4.325(3)(f)(ii) requires that no permit may be approved by MDSL unless it finds in writing that the proposed operation will not interrupt, discontinue, or preclude farming on an alluvial valley floor and that the proposed operation will not materially damage the quantity or quality of water in surface and underground water systems that supply alluvial valley floors. MDSL approved the permit without making the written decision as required by this provision.

4. ARM 26.4.405(6) requires that MDSL may not approve an application unless it makes a written finding that the application is complete and accurate, the applicant has complied with the State Act and rules, and the applicant has demonstrated that reclamation can be accomplished. MDSL made such a written finding although the written record demonstrates (1) MDSL knew that the application was not complete concerning the protection of the alluvial valley floor's water supply, and (2) the applicant had not demonstrated that reclamation could be achieved.

5. ARM 26.4.409(2) and Montana Code Annotated (MCA) 82–4–221(3) provide for revisions to permits and require that an operator may not implement any revision before obtaining MDSL's approval. Item 3 under the terms of modification of the permit in question, allows authorized agents of MDSL to temporarily modify the plan, pending final approval by the Board of Land Commissioners.

6. ARM 26.4.912 requires MDSL to make a determination that subsidence will not cause material damage to the perennial streams within the permit. MDSL did not make the required determination.

7. ARM 26.4.405(6)(c) requires that MDSL may not approve an application unless it finds in writing that the cumulative hydrologic impacts will not result in material damage to the hydrologic balance outside the permit area. MDSL did not make this finding.

Pursuant to 30 CFR 733.12(b), the Acting Director specified a proposed schedule for MDSL to correct the deficiencies identified in its program.

30 CFR 733.12(c) requires, in part, that the Acting Director provide the State regulatory authority an opportunity for an informal conference within 15 days after the expiration of the time period specified at 30 CFR 733.12(b)(3). On June 4, 1993, the MDSL requested that the Acting Director hold such an informal conference. The informal conference may pertain to the facts or time period for accomplishing remedial actions as specified in the Acting Director's notification.

Subsequent to the informal conference and review of all available information, including the conference transcript, the Acting Director will publish his findings on the status of Montana's program implementation in accordance with the provisions of 30 CFR 733.12(e).

Conference Rules

The informal conference is an opportunity for the Acting Director to discuss the status of the implementation of Montana's program with Montana officials.

Minutes will be kept for the Administrative Record for review by interested parties.

Dated: June 15, 1993.

W. Hord Tipton,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 93–14407 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 2E4056/R1193; FRL–4580–7]

RIN 2070–AB78

Pesticide Tolerance for Paraquat

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the pesticide paraquat in or on the raw agricultural commodity cacao beans. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective June 18, 1993.

ADDRESSES: Written objections, identified by the document control

number, [PP 2E4056/R1193], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section, Registration Division (H7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: No. 1, 6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1993 (58 FR 13234), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 2E4056 to EPA on behalf of the Agricultural Experiment Station of Hawaii. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for residues of the herbicide paraquat (1,1'-dimethyl-4,4' bipyridinium-ion) derived from application of either the bis(methyl sulfate) or the dichloride salt (both calculated as the cation) in or on the raw agricultural commodity cacao beans at 0.05 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: June 3, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.205, by amending paragraph (a) in the table therein by adding and alphabetically inserting the commodity, to read as follows:

§ 180.205 Paraquat; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cacao beans	0.05
* * * * *	

* * * * *

[FR Doc. 93-14421 Filed 6-17-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7576]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: As shown in the fifth column of the tables below.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures.

The communities listed in this document no longer meet the statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will

be suspended on the effective date in the fifth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirement, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

§ 64.6 [Amended]

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

State and community name	County	Community No.	Effective date
Regular Program Conversions			
Iowa: Newell, city of	Buena Vista	190334	July 5, 1993.
Pennsylvania:			
Bristol, township of	Bucks	420984	Do.
Rockdale, township of	Crawford	422394	Do.
Roseville, borough of	Tioga	420826	Do.
South Shenango, township of	Crawford	422397	Do.
Turbot, township of	Northumberland	420744	Do.
Uniondale, borough of	Susquehanna	422584	Do.
Upper Oxford, township of	Chester	422278	Do.
Valley, township of	Chester	421206	Do.
Venango, township of	Crawford	421574	Do.
Woodcock, borough of	Crawford	422403	Do.

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

Issued: June 14, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–14409 Filed 6–17–93; 8:45 am]

BILLING CODE 6718–21–P

44 CFR Part 64

[Docket No. FEMA–7575]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

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

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

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker

serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638–7418.

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Impact Analysis

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

Paperwork Reduction Act

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Nebraska: Table Rock, village of Pawnee County	310172	May 3, 1993	Sept. 25, 1979.
Oklahoma: Craig County, unincorporated areas	400540	.....do	Do.
Wyoming: Hot Springs County, unincorporated areas	560097	.....do	Do.
Texas: Briarcliff, village of Travis County	481649	May 12, 1993	Do.
New Hampshire: Albany, town of Carroll County	330174	May 17, 1993	Jan. 17, 1975.
Iowa: Reasnor, city of Jasper County	190167	May 24, 1993	Feb. 20, 1976.
Texas:			
Red Oak, city of Ellis County	481650	.....do	Do.
Westlake, town of Tarrant and Denton Counties [1]	480614	.....do	Do.
Colorado: Cedaredge, town of Delta County	080304	May 27, 1993	Do.
Illinois: Christian County, unincorporated areas	170926	.....do	Apr. 7, 1978.
Oklahoma: Blaine County, unincorporated areas	400011	May 28, 1993	Do.
New Eligibles—Regular Program			
Texas: Westminster, city of Collin County [2]	481648	May 10, 1993	Do.
Minnesota: Rushford Village, city of Fillmore County	270131	May 24, 1993	Sept. 4, 1987.
Texas: Rose City, city of Orange County	481061	.....do	Jan. 6, 1983.
Reinstatements—Regular Program			
Pennsylvania: New Milford, township of Susquehanna County.	422089	Jan. 26, 1976, Emerg.; Apr. 3, 1989, Reg.; Apr. 3, 1989, Susp.; May 3, 1993, Rein.	Apr. 3, 1989.
New York: Unadilla, town of Otsego County	361281	Jan. 2, 1976, Emerg.; Sept. 30, 1987, Reg.; Sept. 30, 1987, Susp.; May 12, 1993, Rein.	Sept. 30, 1987.
Illinois: Markham, city of Cook County	175169	Apr. 14, 1972, Emerg.; July 27, 1973, Reg.; Mar. 15, 1993, Susp.; May 19, 1993, Rein.	Apr. 17, 1984.
New Jersey: Mine Hill, township of Morris County	340556	Apr. 28, 1981, Emerg.; Sept. 17, 1982, Reg.; May 3, 1993, Susp.; May 20, 1993, Rein.	May 3, 1993.
Iowa: Ely, city of Linn County	190440	Apr. 29, 1991, Emerg.; Feb. 17, 1993, Reg.; Feb. 17, 1993, Susp.; May 27, 1993, Rein.	Feb. 17, 1993.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Minnesota: Litchfield, city of Meeker County	270285	July 18, 1975, Emerg.; Feb. 15, 1991, Reg.; Feb. 15, 1991, Susp.; May 27, 1993, Rein.	Feb. 15, 1991.
Pennsylvania: Elk, township of Tioga County	421154	Apr. 15, 1974, Emerg.; May 1, 1987, Reg.; Mar. 15, 1993, Susp.; May 27, 1993, Rein.	May 1, 1987.
Pennsylvania: Mercersburg, borough of Franklin County.	420471	Aug. 6, 1975, Emerg.; Mar. 1, 1976, Rein.; Sept. 3, 1992, Susp.; May 27, 1993, Rein.	Mar. 1, 1986.
Wisconsin: Wood County, unincorporated areas	550513	Mar. 5, 1971, Emerg.; Mar. 15, 1978, Reg.; Feb. 17, 1993, Susp.; May 28, 1993, Rein.	Feb. 17, 1993.
Regular Conversions—Region I			
Maine:			
Perry, town of Washington County	230319	May 3, 1993, suspension withdrawn	May 3, 1993.
Robbinston, town of Washington County	230321	.....do	Do.
Region V			
Michigan: Novi, city of Oakland County	260175	.....do	Do.
Ohio: Westerville, city of Franklin and Delaware Counties.	390179	.....do	Do.
Region IX			
California: Fontana, city of San Bernadino County	060274	.....do	Do.
Region III			
Virginia: Augusta County, unincorporated areas	510013	May 17, 1993, suspension withdrawn	May 17, 1993.
Pennsylvania: Springfield, township of Montgomery County.	425388	.....do	Do.
Region VI			
Louisiana: East Baton Rouge Parish, unincorporated areas.	220058	.....do	Do.
Region IV			
South Carolina: Manning, city of Clarendon County	450052	.....do	Apr. 15, 1986.
Region V			
Illinois: Pontoon Beach, village of Madison County	170447	.....do	Feb. 5, 1982.

[1] The Town of Westlake's FIRM will become effective on *June 2, 1993*. The town will be converted to the Regular Program effective June 2, 1993.

[2] The City of Westerminster has adopted Collin County's FIRM dated 9–4–91 for floodplain management and insurance purposes. The county's CID number is 480130.

Code for reading third column: Emer.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

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

Issued: June 14, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–14410 Filed 6–17–93; 8:45 am]

BILLING CODE 6718–21–P

44 CFR Part 64

[Docket No. FEMA–7577]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Regular Program Conversions—Region II				
New York:				
Schoharie, town of Schoharie County	361198	Oct. 10, 1975, Emerg.; May 1, 1985, Reg.; July 5, 1993, Susp.	July 5, 1993	July 5, 1993
Schoharie, village of Schoharie County.	361061	Sept. 11, 1975, Emerg.; Aug. 1, 1987, Reg.; July 5, 1993, Susp.	.....do	Do.
Region IV				
Georgia: Fannin County, unincorporated areas.	130249	Oct. 11, 1990, Emerg.; Aug. 19, 1991, Reg.; July 5, 1993, Susp.	.....do	Do.
Region I				
Maine: St. George, town of Knox County	230229	Mar. 30, 1976, Emerg.; Sept. 1, 1988, Reg.; July 19, 1993, Susp.	July 19, 1993	July 19, 1993
Region IV				
North Carolina: Cherokee County, unincorporated areas.	370059	July 18, 1979, Emerg.; Feb. 2, 1989, Reg.; July 19, 1993, Susp.	.....do	Do.
Tennessee: Rogersville, city of Hawkins County.	470086	Sept. 12, 1975, Emerg.; June 3, 1986, Reg.; July 19, 1993, Susp.	.....do	Do.
Region VI				
Oklahoma: Sand Springs, city of Tulsa and Sage Counties.	400211	Aug. 5, 1974, Emerg.; June 15, 1981, Reg.; July 19, 1993, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

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

Issued: June 14, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–14411 Filed 6–17–93; 8:45 am]

BILLING CODE 6718–21–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 76

[MM Docket No. 92–266; FCC 93–304]

Cable TV Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Temporary rule; deferral of effective date of final rules; extension of termination date.

SUMMARY: The Commission has adopted an Order deferring the effective date of its cable rate regulations until October 1, 1993, and continuing it rate freeze for regulated cable services. This action will provide time for the Commission and local authorities to implement the Commission's rate regulations adopted on April 1, 1993, in response to the Cable Act of 1992. This action will ensure that the freeze of regulated cable service rates that became effective on April 5, 1993, will continue through November 15, 1993.

DATES: The effective date of the amendments to parts 0 and 76 published at 58 FR 29737 (May 21, 1993) is deferred until October 1, 1993.

The amendment in this rule to § 76.1090(a), originally published at 58 FR 17530 (April 5, 1993), and the authority citation for part 76 is effective July 19, 1993.

The termination date of § 76.1090, originally published at 58 FR 17530 (April 5, 1993) and amended in this rule, is extended until November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Manner, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in MM Docket No. 92–266, FCC No. 93–304, adopted and released June 15, 1993.

The complete text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., at (202) 632–7513, room 246, 1919 M Street, NW., Washington, DC 20554. The complete text of this Order will also be published in the FCC Record.

Synopsis of the Order

I. Introduction

1. In this Order, we defer implementation of cable service rate regulation from June 21, 1993 until October 1, 1993,[1] and extend the "freeze" of regulated cable service rates from August 4, 1993 until November 15, 1993.[2] We additionally dismiss without prejudice petitions filed by Intermedia Partners ("Intermedia"), and the Coalition of Small System Operators and Prime Cable of Alaska, L.P. ("Coalition"), seeking a stay of implementation of cable rate regulation.

II. Deferral of Implementation of Cable Service Rate Regulation

2. In the Report and Order, the Commission adopted a comprehensive regulatory framework for the implementation of cable service rate regulation as required by the Cable Act of 1992 that imposes significant new responsibilities on the Commission.[3] These new responsibilities occur at a time when the Commission is already operating under a budget shortfall of $18 million for Fiscal Year 1993. As a result of this shortfall, we are projecting a potential need to furlough all employees for up to five days during Fiscal Year 1993. In order to meet the additional responsibilities of the Cable Act of 1992, the Commission has worked closely with the Office of Management and Budget to estimate its additional resource needs and requested $12 million in supplemental funding from Congress for Fiscal Year 1993. While our funding requests have made significant progress,[4] Congress has not yet enacted a supplemental appropriation. In addition, when supplemental funds are appropriated, it may take an additional period of time for the supplemental appropriation to be effectively utilized by the Commission. Therefore, the Commission will be unable as of the current effective date of cable service rate regulation, to fully implement the rate regulation provisions of the Cable Act of 1992.[5]

3. In addition, we believe that an additional period of time for implementation of cable service rate regulation will provide franchising authorities and cable operators greater opportunity to ensure a smooth transition to rate regulation. We recognize that rate regulation of cable service imposes significant new obligations on cable operators. In addition, cable systems will be taking a series of steps to notify subscribers of the changes being implemented under these regulations, and we continue to be concerned that these notices be given sufficiently in advance to minimize confusion and service disruption.[6] We believe that an additional period of time afforded to cable operators to establish compliance with rate regulation requirements, including any necessary rate reductions, and to prepare and disseminate subscriber notices, will

[1] *See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1993, Rate Regulation, *Report and Order and Further Notice of Proposed Rulemaking* ("*Report and Order*"), MM Docket 92–266, FCC 93–177 (released May 3, 1993), 58 Fed. Reg. 29736 (May 21, 1993), adopting regulations implementing Sections 623 (cable service rate regulation), 612 (commercial leased access), and 622(c) (subscriber bill itemization) of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992"). Those regulations are scheduled to become effective June 21, 1993.

[2] *See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation ("*Rate Freeze Order*"), MM Docket 92–266, 8 FCC Rcd 2921, 58 Fed. Reg. 17530 (April 5, 1993), *clarified*, 8 FCC Rcd 2917, 58 Fed. Reg. 21929 (April 26, 1993). In that *Order* we established a freeze of cable service rates from April 5, 1993 until August 4, 1993.

[3] For example, under the rate regulations adopted in the *Report and Order*, the Commission must, *inter alia*: print and distribute certification forms; process franchise certifications; review petitions for reconsideration and revocations of certification approvals; review showings by franchise authorities concerning their inability to regulate basic service rates; address cable operators' requests for effective competition data from competitors; process appeals from basic service rate determinations; regulate the basic service tier where local franchise authority certification is denied or revoked or where the authority is otherwise unable to regulate; print and distribute complaint forms for cable programming services; print and distribute Form 393, which cable operators will use to determine initial regulated rates; adjudicate complaints regarding cable programming services by reviewing benchmark and cost-of-service showings; publish and distribute forms used to determine external costs; review external cost showings; and adjudicate leased access rate complaints.

[4] On June 8, 1993, the Senate Appropriations Committee approved $11.5 million in supplemental funding for the Commission.

[5] We observe that in response to the Cable Act of 1992, we have initiated and/or completed numerous proceedings to prescribe regulations necessary for the implementation of the Act. By the end of this month, the Commission will have completed promptly and on schedule 32 formal actions under the Act, e.g. Notices of Proposed Rulemakings, Reports and Orders, clarifications. To finish implementation of this law, we estimate that we will have to complete at least 27 more formal actions in the next few months.

[6] Continental Cablevision, Inc. has filed a petition requesting a clarification as to whether cable operators may make retroactive charges and credits for the first full billing cycle occurring after the effective date of the Commission's rate regulations. Petition for Clarification or Reconsideration of Order of May 14, 1993, filed May 20, 1993 by Continental Cablevision, Inc. This petition raises issues that the Commission may need to address in connection with implementation of rate regulation on October 1, 1993. Therefore, the Commission is continuing to consider the Continental petition.

promote the purposes of the Cable Act of 1992 and facilitate the transition to rate regulation of cable service. An additional period of time prior to full implementation of cable service rate regulation will also afford local franchise authorities a further opportunity to prepare for exercise of their rate regulation responsibilities.

4. Accordingly, on reconsideration on our own motion of the effective date set forth in the Report and Order, we will defer the effective date of our cable service rate regulations until October 1, 1993.[7] This deferral will apply to all regulations adopted in the Report and Order.[8] Thus, the Commission will not accept until October 1, 1993 certifications by local franchising authorities to regulate the basic service tier or complaints invoking the Commission's regulatory oversight over cable programming service rates.[9] During this deferral period, we will continue to work with Congress to assure adequate funding for implementation of the Cable Act of 1992.[10]

III. Extension of the Rate Freeze

5. In the Rate Freeze Order, we froze until August 3, 1993 rates for cable service, other than premium channels and pay-per-view services, provided by systems subject to rate regulation under the Cable Act of 1992. We stated that we were concerned that during the period between adoption of our rules and the earliest practical opportunity for local franchising authorities to establish regulation of the basic service tier, and for consumers to file complaints with the Commission concerning rates for cable programming services, cable operators could raise rates. This could effectively undermine the statutory requirement that the Commission assure that rates for cable service are reasonable.[11] Given our deferral of the effective date of the rate regulations until October 1, 1993, we remain concerned that cable operators could unreasonably raise rates after the current expiration date of the freeze. Thus, in order to protect consumers during the period that we are deferring implementation of the cable rate regulations, we are extending the freeze established in the Rate Freeze Order through November 15, 1993.[12] This extension will provide sufficient time, as a legal and practical matter, for local franchising authorities to become certified to regulate the basic service tier and for consumers to be able to exercise their rights to invoke Commission oversight over cable programming services.[13] During the period of this freeze we will entertain petitions for emergency relief from cable operators who make detailed and particularized showings that the freeze would impose severe economic hardships or threaten the viability of continued cable service. We will endeavor to act on such petitions expeditiously.

IV. Intermedia and Coalition Requests for Stay

6. Coalition requests a stay of rate regulation pending reconsideration of the Commission's benchmark approach to rate regulation of cable service and the final promulgation of cost-of-service standards. Intermedia also requests the Commission to stay implementation of rate regulation pending adoption of cost-of-service standards. In view of our determination to defer implementation of cable service rate regulation until October 1, 1993, we do not find it necessary to address at this time the Coalition and Intermedia requests for stay of implementation of cable service rate regulation. Accordingly, we will dismiss without prejudice the Coalition and Intermedia petitions.

V. Ordering Clauses

7. Accordingly, it is ordered, pursuant to Sections 4 (i) and (j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 (i), (j), and 405, and Section 1.108 of the Commission's rules, 47 CFR Section 1.108, that the Commission's rules adopted in Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking ("Report and Order"), MM Docket 92–266, FCC 93–177 (released May 3, 1993), 58 FR 29736 (May 21, 1993), shall be effective October 1, 1993.

8. *It is further ordered,* that the freeze of cable service rates established in Order, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket 92–266, 8 FCC Rcd 2921, 58 FR 17530 (April 5, 1993), *clarified,* 8 FCC Rcd 2917, 58 FR 21929 (April 26, 1993), is extended until November 15, 1993 and that effective 30 days from publication in the **Federal Register**, § 76.1090(a) of the Commission's rules is amended as set forth below.

9. *It is further ordered,* that the petitions for stay filed by Intermedia Partners and Coalition of Small System Operators and Prime Cable of Alaska, L.P. are dismissed without prejudice.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna Searcy,

Secretary.

Rule Change

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION

1. The authority cite for part 76 is revised to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.1090(a) is revised to read as follows:

§ 76.1090 Temporary freeze of cable rates.

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under Section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined

[7] Under 47 CFR 1.108, the Commission may, on its own motion, reconsider and set aside any Commission action taken within thirty days from the date of public notice of the action. See 47 U.S.C. 405. Public notice of our rate regulations was published on May 21, 1993. 58 FR 29736 (May 21, 1993). See also 47 CFR 1.4(b)(1).

[8] See footnote 1, *supra.* The Commission will issue a separate order modifying those rate regulations (e.g. refund liability for basic and cable programming services) that include dates based on the June 21 effective date to conform to the new effective date. The effective dates of other regulations implementing the Cable Act of 1992 remain unchanged.

[9] Refund liability for the basic service tier will extend from the date the operator implements a prospective rate reduction back to October 1, 1993, or one year, whichever is shorter. For a cable programming services tier, refund liability will extend from the date the operator implements a prospective rate reduction back to the date a complaint was filed concerning the rate for the tier. The Commission will begin accepting such complaints on October 1, 1993.

[10] In Implementation of Sections of the Cable Television and Consumer Protection Act of 1992, Rate Regulation, Order, MM Docket No. 92–266, FCC 93–264, 58 FR 29553 (May 21, 1993), we denied a request for stay until August 3, 1993 of implementation of rate regulation filed by the National Cable Television Association. At that time, the Commission believed that the additional resources necessary to implement the Cable Act of 1992 could be available by June 21, 1993, or very shortly thereafter, to permit implementation of cable rate regulation on that date.

[11] Rate Freeze Order, para. 3.

[12] We observe that Intermedia and Coalition both state that the rate freeze properly could be extended in conjunction with their proposed stay, of cable service rate regulation. Coalition Petition for Stay, p. 15; Intermedia Petition for Stay, p. 21.

[13] This freeze is applicable to the basic service tier, the cable programming service tier (or tiers), and provision of regulated equipment.

under rates in effect on April 5, 1993, until November 15, 1993.

* * * * *

[FR Doc. 93–14464 Filed 6–14–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Final Rule To Delist the Plant Tumamoca Macdougalii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) removes *Tumamoca macdougalii* (Tumamoc globeberry) from the List of Endangered and Threatened Plants. The range of this species includes south-central Arizona and extends southward into southern Sonora, Mexico. Given the large range of the species, its non-specific habitat requirements, the number of known populations, the remote nature of much of the habitat, and the ability of the species to withstand some habitat degradation, the Service determines that the Tumamoc globeberry is not in danger of extinction throughout all or a significant portion of its range. This action removes the protection of the Endangered Species Act for the Tumamoc globeberry.

EFFECTIVE DATE: June 18, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85020.

FOR FURTHER INFORMATION CONTACT: Sue Rutman, at the above address (602/379–4720).

SUPPLEMENTARY INFORMATION:

Background

Tumamoca macdougalii was first collected on Tumamoc Hill, west of Tucson, Arizona, on July 31, 1908, by D.J. Macdougal, a scientist at the Carnegie Desert Laboratory. The specimen was sent to J.N. Rose, a botanist at the U.S. National Herbarium, who described it as a new genus and species in honor of the type locality and its collector (Rose 1912).

Tumamoca macdougalii is a delicate perennial vine in the gourd family (Cucurbitaceae). The plants are found under trees or shrubs, which act as nurse plants and provide physical support for the vines. The stems arise from large tuber-like roots, begin annual growth during the late summer in response to summer rains, and continue growing until the onset of cool weather and short days in November. The thin leaves have three main lobes, each divided into narrow segments. The flowers are small and pale greenish-yellow, with both male and female flowers occurring on a plant. The majority of flowers are produced in August. Mature fruits are spherical to ovoid, succulent, and bright red (Reichenbacher 1985a, F.W. Reichenbacher and Associates 1990).

In 1986, when the species was listed as endangered under the Endangered Species Act of 1973, as amended (Act), thirty isolated populations of Tumamoc globeberry had been located in Pima County, Arizona and five were known from Sonora, Mexico. The total number of known individuals was 2,300 in the U.S. and 60 in Mexico (April 29, 1986; 51 FR 15906). All populations were found in the Arizona Upland Subdivision of Sonoran Desertscrub Biotic Community. The eastern and western limits of the U.S. range of the species were known to include the Tucson area and extended west about 193 kilometers (120 miles) to the vicinity of Organ Pipe Cactus National Monument. The exact northern and southern range boundaries were unknown but extended about 400 kilometers (250 miles) south of the U.S./Mexico border to the vicinity of Guaymas, Sonora.

Surveys and studies completed after the May 1985 publication of the proposed rule to list *Tumamoca macdougalii* have improved our understanding of the range and ecology of this species (Reichenbacher 1985a, Reichenbacher 1985b, Tierra Madre Consultants and Cornett & Associates 1985, Reichenbacher 1987, Biosystems Analysis 1988). Numerous surveys have been conducted on smaller tracts of land. The locations of most populations are contained in the Non-game Data Management System of the Arizona Game and Fish Department.

A survey and study in the U.S. and Mexico contracted by the Bureau of Reclamation greatly increased our understanding of *Tumamoca macdougalii* (F.W. Reichenbacher and Associates 1990). The study was required by a June 30, 1986, jeopardy biological opinion under Section 7 of the Act on the Central Arizona Project (pipeline and canal) and was conducted during the summers of 1988 and 1989. The report summarized the current range, distribution, and ecological information on *Tumamoca*.

The U.S./Mexico survey extended the northern and southern boundaries of the known range of *Tumamoca* (F.W. Reichenbacher and Associates 1990), although the eastern and western boundaries were essentially unchanged. The southern boundary, while not yet fully defined, was extended south to within 80 kilometers (50 miles) of the northern border of Sinaloa, Mexico. The northern boundary was extended to include southern Pinal and Maricopa Counties, Arizona. The distance between the northern and southern boundaries is more than 643 kilometers (400 miles). F.W. Reichenbacher and Associates (1990) estimated the potential habitat of *Tumamoca* in the U.S. and Mexico to be 72,862 square kilometers (27,959 square miles).

Tumamoca is less habitat-specific than was believed at the time it was listed. The species occurs below 914 meters (3,000 feet) elevation in a variety of desert habitats and vegetation types, including the Arizona Upland, Lower Colorado Valley, Plains of Sonora, and Central Gulf Coast Subdivisions of the Sonoran Desertscrub Biotic Community and the Sinaloan Thornscrub Biotic Community (F.W. Reichenbacher and Associates 1990) (biotic communities defined by Turner and Brown 1982). The species is found associated with a variety of nurse plants and in soil types ranging from sandy soils of valley bottoms to rocky soils of upper bajada slopes (F.W. Reichenbacher and Associates 1990). In the U.S., *Tumamoca* occurs in isolated, discrete populations separated by large areas of apparently suitable but unoccupied habitat (Reichenbacher 1985a, F.W. Reichenbacher and Associates 1990). In Mexico, the species is widely scattered at a relatively low frequency throughout suitable habitat, with some areas of higher densities (F.W. Reichenbacher and Associates 1990). Depending on the site, habitat condition ranges from excellent or good to severely degraded or modified.

Surveys of potential habitat in the U.S. and Mexico showed the species to be more common than known at the time it was listed. Less than one percent of the potential habitat in the U.S. and Mexico was searched in 1988 and 1,242 plants were located (F.W. Reichenbacher and Associates 1990). This search involved 444 quadrats in Sonora and 261 in Arizona. All quadrats were approximately 8 hectare (20 acre) rectangles. *Tumamoca* was found in 6 Arizona quadrats (2 percent) and 89 Sonora quadrats (20 percent). The new

Tumamoca localities in Mexico were scattered fairly evenly throughout a 52,600 square kilometer (20,300 square mile) region. A statistically reliable extrapolation of the U.S./Mexico survey data can not be made due to sampling constraints; however, many more plants and populations almost certainly exist.

Most of the habitat of *Tumamoca* is remote desert, where few threats exist or are expected to occur. In more densely human populated areas of *Tumamoca's* range, habitat is being lost to urban and agricultural development, habitat conversion to livestock pasture, and off-road vehicle traffic. F.W. Reichenbacher and Associates (1990) estimates that only 2–3 percent of *Tumamoca* habitat has been lost to agriculture and urban expansion. This estimate does not include desertscrub in Mexico converted to livestock pasture. A substantial number of quadrats in Mexico had to be relocated from their originally intended sites because of unmapped, presumably recently developed, livestock pasture. Habitat degradation is occurring due to erosion from a variety of sources, including historic and present livestock overgrazing, cross-desert dikes, and roads. Nevertheless, the large range of *Tumamoca* and the extreme remoteness of much of the habitat in both the U.S. and Mexico strongly suggest that significant portions of the range are secure for the foreseeable future.

Javelina (*Dicotyles tajacu*) dig up the moisture-rich tuber-like roots and are an important source of *Tumamoca* mortality. Although this consumption may produce local population declines, it is unlikely javelina can seriously impact a species with such a broad range and widely scattered populations.

Federal government actions on this species began on December 15, 1980, when the Service published in the **Federal Register** (45 FR 82480) a notice of review covering plants being considered for classification as endangered or threatened. In that notice, *Tumamoca macdougalii* was included as a Category 1 candidate species. Category 1 candidates are those for which the Service presently has sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered species.

Section 2(b)(1) of the 1982 amendments requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the species included in the December 15, 1980, notice of review were considered under petition, all the taxa contained in the notice, including *Tumamoca macdougalii*, were treated as being newly petitioned on October 13, 1982.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on petitions within 12 months of their receipt. In 1983 and 1984, the Service found that the listing of *Tumamoca macdougalii* was warranted but precluded by other listing actions of higher priority and that additional data on vulnerability and threats were still being gathered. A proposed rule to list *Tumamoca macdougalii* as endangered, published on May 20, 1985 (50 FR 20806), found that the petitioned action was warranted in accordance with section 4(b)(3)(B)(ii) of the Act. The final rule listing *Tumamoca macdougalii* as endangered was published in the **Federal Register** on April 29, 1986 (51 FR 15906). Critical habitat was not designated.

Federal involvement with *Tumamoca* subsequent to listing has included population surveys, life history and biological studies, a transplanting project, and monitoring. These projects mostly resulted from Federal activities requiring either informal or formal consultation with the Service under section 7 of the Act. Bureau of Reclamation (BR) construction of the Central Arizona Project, Tucson Aqueduct, Phase B, has been the most significant Federal activity involving *Tumamoca*. To comply with reasonable and prudent alternatives of a jeopardy biological opinion for this project issued by the Service June 30, 1986, BR purchased a 32-hectare (80-acre) preserve for *Tumamoca*, transplanted plants in the path of aqueduct into the preserve, and monitored the success of the transplants for five years (Reichenbacher and Perrill 1991). After initial high mortality in the transplanted population, the rate of mature plant deaths declined to a number similar to the control population. Additionally, recruitment is occurring in the transplanted population and a prediction matrix analysis indicates the population should continue to rebound through the year 2000 when it will be 125 percent of the original 403 transplanted plants (Reichenbacher and Perrill 1991).

Surveys for *Tumamoca*, most often to comply with section 7 requirements, have been conducted throughout the predicted range of the species in the U.S. and Mexico. These surveys have shown *Tumamoca* to be more common and much more evenly distributed across its range than previously believed.

Summary of Comments and Recommendations

In the August 21, 1992, proposed rule (57 FR 37941) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Tucson Citizen* and *Arizona Daily Star* on September 4, 1992, which invited general public comment. Four comments were received and are discussed below. No public hearing was requested.

Comments on the proposal were received from the Arizona Game and Fish Department, the Arizona State Office of the BLM, the Papago Agency of the Bureau of Indian Affairs, and Dr. Dennis M. Kearns, Missouri Botanical Garden, an expert on the genus *Tumamoca*. The BLM indicated it will continue to treat *Tumamoca macdougalii* as a sensitive species, effective on the date of delisting, and would continue monitoring the species' demographic characteristics and other factors in the Safford and Phoenix Districts. Dr. Kearns noted that *Tumamoca macdougalii* is no longer a monotypic genus. A new species of *Tumamoca* has been discovered from Zacatecas, Mexico. The Service incorporated this information in the "Background" section of this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Tumamoca macdougalii* should be removed from the List of Threatened and Endangered Plants (50 CFR 17.12). Procedures found at Section 4(a)(1) of the Act and promulgating regulations (50 CFR Part 424) to implement the listing provisions of the Act were followed. The Service's listing regulations provide for a review of the following five factors when delisting a species (50 CFR 424.11). These factors and their application to *Tumamoca macdougalii* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Tumamoca* populations are scattered throughout an estimated 72,862 square kilometers (27,959 square miles) of habitat in five different vegetation types. As might be expected, some habitat loss and degradation is occurring within this

area. However, F.W. Reichenbacher and Associates (1990) estimated less than three percent of *Tumamoca* habitat has been lost to agriculture and urban expansion. These losses tend to be concentrated along major watercourses or drainages, and urban centers such as Hermosillo, Sonora, and Tucson, Arizona.

Habitat loss from the Central Arizona Project was mitigated by the purchase and fencing of preserves and the transplanting and monitoring of plants that would have been lost to canal construction. The transplanting effort and subsequent monitoring have yielded valuable information on *Tumamoca* biology.

The Service has no information to indicate that *Tumamoca* is negatively affected when habitat is destabilized and erosion is accelerated. In fact, *Tumamoca* populations exist and are apparently stable in the Avra and Vekol Valleys (C. Button, Bureau of Land Management, pers. comm. 1991), where habitat conditions are poor and erosion is a serious problem.

Some areas in southern Arizona and Sonora are being converted from desertscrub to monotypic stands of buffelgrass (*Cenchrus ciliarus*) to provide livestock forage. Buffelgrass outcompetes native plant species, including *Tumamoca*. Conversely, natural grassy areas, especially savanna grasslands in central Sonora, have been denuded and replaced by desertscrub that may actually provide better habitat for *Tumamoca* than do grasslands (F.W. Reichenbacher and Associates 1990). This pattern of shrub encroachment due to overgrazing and conversion of desertscrub to pasture is expected to continue. Despite this habitat alteration, the future of *Tumamoca* should be secure in the large areas of undisturbed habitat that remain.

Recreation, which occurs mostly near large urban areas, has probably caused a small amount of habitat loss or degradation, mostly due to off-road vehicle use. A popular picnic area on the Coronado National Forest contains a population of *Tumamoca macdougalii*. Despite the heavy recreational use of this area, the population appears to be stable (Reichenbacher 1989).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The final rule to list this species identified scientific collection as a potentially significant threat due to the rarity of the species and the small size of many populations. *Tumamoca* is now more common than previously believed, and the amount of damage that could be caused to the species from possible scientific collecting is, therefore, proportionally less. No significant commercial, recreational, scientific, or educational overuse of this species is known to have occurred.

C. *Disease or predation.* Javelina uproot the *Tumamoca* tuber-like roots to eat the succulent tissues, which sometimes kills the plant or reduces its vigor or reproductive output. Significant damage is also done by lagomorphs and/or rodents. Many plants are found with their stems clipped at or above ground level. This is likely seldom fatal, but undoubtedly affects the ability of the plant to store photosynthate and moisture for the next growing season (Reichenbacher 1985a). These predators are all native species and *Tumamoca* has undoubtedly evolved to cope with the level of damage inflicted. Perhaps the scattered occurrences and absence of plants in apparently suitable habitat is, in part, a response to pressure from predators. Nonetheless, disease or predation are not considered a significant threat to the species at the population level.

D. *The inadequacy of existing regulatory mechanisms. Tumamoca macdougalii* currently receives the protection of the Arizona Native Plant Law and the Endangered Species Act. It is considered a sensitive species by the Forest Service and the BLM, a provision which offers some management protection. If *Tumamoca macdougalii* is removed from the Endangered Species List, the Forest Service and BLM have indicated the species will remain on their sensitive species lists. In addition, pursuant to section 4(g) of the Act, the Service is required to monitor delisted species for at least five years to ensure that any remaining threats or downward population trends will be detected.

E. *Other natural or manmade factors affecting its continued existence.* When *Tumamoca* was listed, low numbers and limited range were thought to make it vulnerable to natural stresses such as prolonged drought. With our present knowledge of distribution and abundance it seems doubtful any natural stresses would affect *Tumamoca* in more than a portion of its range.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that the data supporting the original classification were incomplete. After conducting a review of the status of the species, the Service concludes that the best scientific and commercial data available at present show that removing *Tumamoca macdougalii* from the List of Endangered and Threatened Plants is warranted.

The Service has determined that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become an endangered or threatened species within the foreseeable future throughout all or significant portion of its range. Given its large range, the number of known populations, the remote habitat, ability to withstand some habitat degradation, and non-specific habitat needs, the Service has determined that the Tumamoc globeberry does not warrant the protection of the Act.

In accordance with 5 U.S.C. 553(d), the Service has determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting formal section 7 consultation on actions which may affect a species no longer in need of the protection under the Act. Relieving the existing restriction associated with this listed species, will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the Tumamoc globeberry.

Effect of Delisting

This action results in the removal of this species from the List of Endangered and Threatened Plants. Federal agencies will no longer be required to consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *Tumamoca macdougalii*. Federal prohibitions under section 9 of the Act will no longer apply.

To fulfill the requirements to monitor the species for five years following delisting, a Service contractor will visit sites with known Tumamoc globeberry populations throughout the U.S. and Mexico. At each site, the contractor will note whether or not the population is still extant, take photographs of the surrounding landscape, and note whether or not any significant land use changes have occurred in the area during the monitoring period. The sites will be chosen to represent a variety of habitat types and be spread across the range of the species. A form for use by field workers will be prepared by the contractor, in cooperation with the Service. Visits will occur during years one, three, and five, of the monitoring period, with progress reports developed and provided to the Service upon completion of each field season.

The BLM has established permanent plots to monitor Tumamoc globeberry and is committed to continuing this

monitoring effort during the five-year post-delisting period. These plots are located on BLM-managed lands in the Avra and Vekol Valleys. The Coronado National Forest will continue to collect demographic data for the population in the Santa Catalina Mountains, which is the only population on National Forest lands.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Sue Rutman (See **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by removing the entry "*Tumamoca macdougalii*" under CUCURBITACEAE from the List of Endangered and Threatened Plants.

Dated: May 24, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–14360 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 282

[Docket No. 930639–3139; I.D. 042893A]

RIN 0648–AE18

South Pacific Tuna Fisheries

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues interim regulations to implement the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) and the South Pacific Tuna Act of 1988 (Act).

On May 13, 1992, the Annexes to the Treaty were amended and extended for 10 years. This interim final rule implements the new licensing fee structure, places restrictions on the transshipment of tunas, changes vessel identification requirements, implements new requirements for reporting to the South Pacific Forum Fisheries Agency (FFA), and makes other revisions to the existing regulations implementing provisions required by the amended Treaty. This rule also eliminates NMFS' role as administrator of the industry fees required under the Treaty and terminates the license allocation system, which allocated licenses in the event that the number of applications received were greater than the number of available licenses.

DATES: This interim final rule is effective June 14, 1993. Comments are invited and will be accepted if received before August 13, 1993.

ADDRESSES: Comments, requests for license applications, copies of the Treaty and amended annexes, and further information should be addressed to Dr. Gary Matlock, Acting Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner, NMFS, (310) 980–4034.

SUPPLEMENTARY INFORMATION: NMFS issues interim regulations to implement the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) and the South Pacific Tuna Act of 1988 (Act). The Act authorizes the Secretary of Commerce (Secretary) to issue regulations as may be necessary to carry out the purposes and objectives of the Treaty. Under the original 5-year Treaty, all U.S. fishing vessels, except those using trolling gear to fish for albacore tuna outside of the 200-nautical mile fisheries zones of the Pacific Island States, are required to obtain licenses from the South Pacific Forum Fisheries Agency (FFA) to fish for tuna in an area of the South Pacific Ocean, known as the Licensing Area, which is approximately 26 million km² (10 million square miles).

The South Pacific Tuna Treaty was amended and extended in May 1992, to ensure access for U.S. tuna purse seine vessels to fishing grounds in the South Pacific Ocean for at least 10 more years. Among the amendments going into effect June 15, 1993, are a new license fee structure, new reporting requirements, and new vessel and gear identification requirements with which license holders must comply. It is crucial to have interim regulations in place by June 15, 1993, to implement the new Treaty requirements.

The background and specifics of the Treaty have been published (54 FR 4033, Jan. 27, 1989; 56 FR 19312, Apr. 26, 1991) and are not repeated here. The Treaty has operated smoothly since it entered into force on June 15, 1988, and has proven to be of great benefit to the United States and the Pacific Island States. As a result, the U.S. Government and the Pacific Island States agreed, on May 13, 1992, to amend and extend the Treaty for 10 years from June 15, 1993. Under the original agreement, the United States provided the 16 island nations participating under the Treaty, known as the Pacific Island Parties, a cash grant of $50 million over 5 years to support economic development. In addition, the U.S. tuna fishing industry contributed $2 million in license fees and technical assistance during the first year of the Treaty, and subsequent annual payments of $250,000 in technical assistance and $50,000 per vessel in licensing fees. Under the amended Treaty, the Pacific Island Parties will receive a cash grant of $140 million over 10 years from the U.S. Government and annual payments from the U.S. tuna industry of (1) $4 million, which will cover technical assistance and any number of licenses up to 55; and (2) additional sums related to the observer program set out in part 7 of Annex I to the Treaty.

New provisions under the amended Treaty include the following:

(1) Operators of fishing vessels are required to provide 48 hours notice to the Treaty Administrator (Administrator) and the appropriate Pacific Island Party of an intent to transship any or all of the vessel's catch;

(2) Transshipment of tuna at sea may only occur at times and places authorized by the Pacific Island Parties and details regarding all transshipments must be included with telexed reports to the Administrator;

(3) Weekly reports must be sent to the Pacific Island Party in whose zone the vessel is located;

(4) The regional register number, trip commencement date, and intended action must be included in the weekly reports to the Administrator; and

(5) Vessels must be identified in accordance with the 1989 FAO standard specifications for the marking and identification of fishing vessels.

The U.S. Government will continue to forward complete vessel license applications to the FFA, investigate alleged violations, and enforce certain Treaty provisions. After June 15, 1993, however, NMFS will no longer be responsible for the collection and transfer of licensing fees (including technical assistance and contributions for observer costs) from vessel owners to the FFA. The vessel owners seeking licenses will coordinate the collection of all industry payments and their transfer to the FFA. Because the payment of fees was a key element in the license allocation system and NMFS will no longer have oversight of when or whether an applicant has paid the appropriate fees, the allocation system will be discontinued and questions regarding an applicant's priority in the application process will be settled by the FFA.

NMFS recognizes that the licenses are worth a great deal to tuna fishing enterprises and that concerns for arbitrariness and favoritism might arise in the absence of established procedures for license allocation. In the upcoming licensing period, the absence of a license allocation system is not expected to be critical because the number of license applications is not expected to exceed the number of available licenses. However, the number of applications may exceed the available licenses in the future. Therefore, NMFS specifically invites comments regarding the termination of the license allocation system and the direct payment of licensing, technical assistance, and observer fees by an industry-designated entity to the FFA.

Vessel licenses in § 282.3 were previously cleared for purposes of the Paperwork Reduction Act under OMB Control Number 0648–0218.

Title 50 CFR part 204 incorrectly associates the OMB control number for this part with § 282.4 Compliance with applicable national laws, rather than with § 282.5 Reporting requirements. This interim final rule corrects that reference.

Comments and Responses

Letters were received from three individuals commenting on the interim final rule (56 FR 19312, April 26, 1991) establishing the license allocation system. Although the license allocation system is discontinued, some of the comments dealt with administrative procedures for reviewing and forwarding license applications to the Department of State. Those comments are summarized and responded to below:

Comment 1: One commenter suggested that NMFS clarify the reconsideration provision for an applicant whose license application is not forwarded to the administrator.

Response: The reconsideration provision has been expanded and clarified. A license application that is not forwarded will be reconsidered by the Regional Director only if the applicant submits, within 15 days of notification, a petition for reconsideration accompanied by new or additional information.

Comment 2: One commenter noted that § 282.9(a)(6) is awkwardly written and suggested alternate language.

Response: NMFS agrees and has adopted much of the suggested language.

Comment 3: One commenter pointed out that under the current license application system, a situation might exist wherein a potential vessel owner would not be granted a loan to purchase a vessel if he or she does not have a license to fish in the Treaty area, and NMFS will not forward a license application if the applicant cannot provide vessel registry documentation, which requires proof of ownership.

Response: NMFS lacks the resources to review applications from applicants who are potential vessel owners and cannot approve and forward a license application without proof that the vessel is actually owned by the applicant and registered in the United States.

Comment 4: One commenter suggested that the vessel ownership interests of the vessels on the list should be published or be made available on a regular basis to non-vessel owners.

Response: NMFS does not collect information regarding ownership interests of corporations that may own vessels applying for licenses. The U.S. Coast Guard is responsible for implementing documentation law and makes available ownership information contained in the Certificate of Documentation. A complete list of vessels and registered owners is available upon request from the Regional Director (see **ADDRESSES**).

Classification

NMFS prepared an environmental assessment (EA) for the 1989 interim rule, which this action does not significantly alter. Therefore, this action is categorically excluded from the National Environmental Policy Act requirement to prepare an EA in accordance with NOAA Administrative Order 216–6.

This action is exempt from the provisions of Executive Order 12291 under section 1(a)(2) of that Order because this rule implements an international fisheries agreement now in force and, thus, involves a foreign affairs function of the United States.

Because it involves a foreign affairs function of the United States, this action also is not subject to section 553 of the Administrative Procedure Act. Thus, this rule may be made immediately effective.

Since notice and opportunity for comment is not required by law to be given for this rule, preparation of a regulatory flexibility analysis is not required by the Regulatory Flexibility Act and none was prepared.

This rule includes no changes in collection-of-information requirements subject to the Paperwork Reduction Act.

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

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

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 282

Fisheries, Reporting and recordkeeping requirements, Treaties.

Dated: June 14, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 204 and 282 are amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by removing in the first column, "282.4" and adding, in its place, "282.5".

PART 282—SOUTH PACIFIC TUNA FISHERIES

3. The authority citation for part 282 continues to read as follows:

Authority: 16 U.S.C. 973–973r; TIAS 11,100, 26 I.L.M. 1048 (1987).

4. In § 282.2, a new definition for *Transship* is added in alphabetical order and the definitions of *Regional Director* and *Treaty* are revised to read as follows:

§ 282.2 Definitions

* * * * *

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213, telephone (310) 980–4001, or a designee.

* * * * *

Transship means to unload any or all of the fish on board a licensed vessel either ashore or onto another vessel.

Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed in Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements, as amended, May 13, 1992, in Auckland, New Zealand.

* * * * *

5. Section 282.3 is revised to read as follows:

§ 282.3 Vessel licenses.

(a) Each vessel fishing in the Licensing Area must have a license issued by the Administrator for the licensing period being fished, unless excepted by § 282.10. Each licensing period begins on June 15 and ends on June 14 of the following year.

(b) Upon receipt, the license or a duly certified copy, facsimile or telex confirmation must be carried on board the vessel when in the Licensing Area or Closed Areas and must be produced at the request of Authorized Officers, Authorized Party Officers, or Authorized Inspectors. Prior to receipt of the license, but after issuance, a vessel may be used to fish provided the number of the issued license is available on board.

(c) Application forms for licenses to use a vessel to fish in the Licensing Area may be requested from, and upon completion, must be returned to, the Regional Director. All of the information requested on the form and the following must be supplied before the application will be considered complete:

(1) The licensing period for which the license is requested;

(2) The name of an agent, located in Port Moresby, Papua New Guinea, who, on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty;

(3) Documentation from an insurance company showing that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance;

(4) If the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, reasonable assurances that the owner of charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines; and

(5) A copy of the vessel's U.S. Coast Guard Certificate of Documentation.

(d) The number of available licenses are set forth in schedule 2 of Annex II of the Treaty.

(e) Applications for vessels may be submitted at any time; complete applications will be forwarded to the Secretary of State for transmittal to the Administrator.

(f) The Secretary, in consultation with the Secretary of State, may determine that a license application for a vessel should not be forwarded to the Administrator if:

(1) The application is not in accord with the Treaty, Act, or regulations;

(2) The owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, and reasonable financial assurances have not been provided to the Secretary that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines;

(3) The owner or charterer has not established to the satisfaction of the Secretary that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance; or

(4) The owner or charterer has not paid any final penalty assessed by the Secretary in accordance with the Act.

(g) An applicant will be promptly notified if that applicant's license application will not be forwarded to the Administrator, and of the reasons therefor. Within 15 days of notification by the Regional Director that the application will not be forwarded, an applicant may request reconsideration by providing a petition for reconsideration accompanied by new or additional information.

6. In § 282.5, paragraph (a) is revised to read as follows:

§ 282.5 Reporting requirements.

(a) License holders shall comply with the reporting requirements of parts 4 and 5 of Annex I to the Treaty.

* * * * *

7. Section 282.6 is revised to read as follows:

§ 282.6 Vessel and gear identification.

While a vessel is in the Licensing Area, a Limited Area closed to fishing, or a Closed Area, a recent and up-to-date copy of the International Code of Signals (INTERCO) shall be on board and accessible at all times. The operator shall comply with the 1989 FAO standard specifications for the marking and identification of fishing vessels. The international radio call sign of the vessel

shall be painted in white on a black background, or in black on a white background, and be clear, distinct, and uncovered, in the following manner:

(a) On both sides of the vessel's hull or superstructure, with each letter and number being at least 1 m high and having a stroke width of 16.7 cm, with the background extending to provide a border around the mark of not less than 16.7 cm;

(b) On the vessel's deck, on the body of any helicopter and on the hull of any skiff, with each letter and number being at least 30 cm high, and having a stroke width of 5 cm with the background extending to provide a border around the mark of not less than 5 cm;

(c) On any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, with each letter and number being at least 10 cm high and having a stroke width of 1.7 cm, with the background extending to provide a border around the mark of not less than 1.7 cm.

8. Section 282.8 is revised to read as follows:

§ 282.8 Radio monitoring.

The international distress frequency, 2.182 MHz, and 156.8 MHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the Parties.

9. In § 282.9, paragraph (a)(6) is revised and paragraph (a)(16) is added to read as follows:

§ 282.9 Prohibitions.

(a) * * *

(6) In any matter material to the administration of the Act, the Treaty, or any regulation promulgated pursuant to the Act: To falsify or conceal a material fact; to make any false, fictitious, or fraudulent statements or representations; to make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or, to fail to report to the Secretary immediately any change in circumstances that has the effect of rendering the information false, incomplete, or misleading;

* * * * *

(16) To transship fish on board a vessel that fished in the Licensing Area except in accordance with the conditions set out in parts 3 and 4 of Annex I to the Treaty.

* * * * *

10. In § 282.14, paragraph (a)(2) is revised to read as follows:

§ 282.14 Observers.

(a) * * *

(2) Without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel that the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas that may be used to hold, process, weigh and store fish; remove samples; have full access to vessel's records, including its log and documentation for the purpose of inspection and copying; have reasonable access to navigation equipment, charts, and radios, and gather any other information relating to fisheries in the Licensing Area;

* * * * *

11. Section 282.15 is revised to read as follows:

§ 282.15 Other inspections.

The operator and each member of the crew of any vessel from which any fish taken in the Licensing Area is unloaded or transshipped shall allow, or arrange for, and assist any Authorized Inspector, Authorized Party Officer, or Authorized Officer to have full access to any place where the fish is unloaded or transshipped, to remove samples, to have full access to the vessel's records including its log and documentation for the purpose of inspection and photocopying, and to gather any other information relating to fisheries in the Licensing Area without interfering unduly with the lawful operation of the vessel.

[FR Doc. 93–14379 Filed 6–14–93; 5:07 pm]
BILLING CODE 3510–22–M

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50 CFR Part 630

[Docket No. 930530–3130; I.D. 042293A]

RIN 0648–AE82

Atlantic Swordfish Fishery

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

ACTION: Interim final rule and request for comments.

SUMMARY: This action sets 1993 fishing year initial specifications for harvest of the Atlantic swordfish resource. NMFS announces that, as a result of its annual evaluation of the Atlantic swordfish resource, there will be no change for 1993 in the total allowable catch (TAC), the directed-fishery quota, the bycatch quota, bycatch limits in the non-directed fishery, and the harpoon gear set-aside. However, as a result of a correction in the historical catch data upon which the allocations between specific gears were based, this interim final rule changes the drift gillnet quota to 138,572 pounds (62,855 kg) and the longline and harpoon quota to 6,861,428 pounds (3,112,291 kg) (all weights are dressed weight). The intent of this action is to protect the swordfish resource while allowing harvests consistent with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: Effective June 18, 1993. Written comments must be received on or before August 2, 1993.

ADDRESSES: Copies of documents supporting this action may be obtained from and comments on rule should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish (FMP) and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA).

Under the framework procedure of the FMP, NMFS has evaluated the TAC, the directed-fishery quota, the bycatch quota, bycatch limits in the non-directed fishery, and the harpoon gear set-aside. The evaluation was done in accordance with the factors and procedures specified in 50 CFR 630.24(d).

The 1992 stock assessment indicates some improvement in the status of the North Atlantic swordfish stock. Fishing mortality rates and catch levels have declined since 1988; however, the extent of discard mortality is unknown. The latest virtual population analysis (VPA) shows some improvement in adult stock size in the last year, and VPA projections indicate that 1991 catch levels could allow for some increase in age 5+ stock by 1993. The degree of potential increase depends on the relative strength of recent year classes, which are highly uncertain. Production model analyses indicate that 1991 North Atlantic catch is about 1,000 metric tons below the estimated maximum sustainable yield (MSY), but about the same as the estimated equilibrium yield at current stock sizes. The estimate of current stock biomass is 16 percent below the biomass level that can produce MSY. Production model estimates of the fishing mortality rate

indicate that the 1991 fishing mortality (F) was close to F_{MSY}, the rate of fishing mortality that produces the maximum average yield in the long term, while the VPA model estimates and yield per recruit analyses indicate that 1991 F was greater than $F_{0.1}$ and F_{max}, other commonly referenced fishing mortality rates. In either case, the assessment results do not take into account discard mortality of undersized fish and, therefore, could be overly optimistic. The assessment indicates that the population decline has slowed or stabilized. However, sustained higher levels of yield can probably be achieved in the long term under lower mortality rates.

Despite the more optimistic results of the latest assessment, NMFS remains concerned about the status of the resource, particularly given the uncertainties regarding recruitment levels and discard mortality. NMFS believes that a future reduction of fishing effort may still be necessary to rebuild the stock to the level that could produce MSY. NMFS will continue to pursue this position and establishment of an appropriate stock rebuilding target and rebuilding schedule through ICCAT.

Notwithstanding the above concern, NMFS is making no change in the TAC for the 1993 fishing year. At the 1992 ICCAT meeting, a resolution was approved to limit to current levels the catch levels or fishing capacity by all countries in 1993–1994. Therefore, TAC remains at the current level, 7.56 million pounds (3.43 million kg), for 1993.

Since the 1993 TAC remains at 7.56 million pounds (3.43 million kg), there is no change in the directed fishery quotas—except for minor corrections to the drift gillnet and longline/harpoon quotas resulting from a revised estimation of the 1988 (base year) drift gillnet landings.

NMFS has received documentation indicating that drift gillnet landings in 1988 were underestimated. Accordingly, NMFS has corrected the drift gillnet quota, consistent with the best available information and the established procedure for calculating the quotas. This correction increases the annual drift gillnet quota from 95,166 pounds (43,167 kg) to 138,572 pounds (62,856 kg); thus, the semiannual quotas are 69,286 pounds (31,428 kg). Because the increase associated with the correction involved a revised estimation of the percent taken by longline and drift gillnet fisheries in 1988 and not additional landings, the poundage necessary to accommodate the increase, 43,406 pounds (19,689 kg), is deducted from the longline/harpoon portion of the directed fishery quota. The resulting annual longline/harpoon quota is 6,861,428 pounds (3,112,323 kg), divided into semiannual quotas of 3,430,714 pounds (1,556,162 kg).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this interim final rule is necessary for the conservation and management of the Atlantic swordfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator determined that this interim final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Assistant Administrator finds that the changes in the directed fisheries quotas in this interim final rule are necessary to bring existing regulations into conformity with the recommendations of ICCAT. The Assistant Administrator also finds the changes must be finalized as early in the fishing year as possible to provide a firm basis for fishermen to plan their fishing activities. Accordingly, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), the Assistant Administrator finds that good cause exists to conclude that prior notice and public comment on this rule are unnecessary and contrary to the public interest. For the same reasons, the Assistant Administrator, pursuant to section 553(d)(3) of the APA, finds that good cause exists not to delay for 30 days the rule's effective date.

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

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: June 14, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.24, paragraphs (b)(1)(i) and (b)(1)(ii) are revised to read as follows:

§ 630.24 Quotas.

* * * * *

(b) * * *

(1) * * *

(i) For the semi-annual period January 1 through June 30—

(A) 69,286 pounds (31,428 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 3,430,714 pounds (1,556,162 kg), dressed weight, that may be harvested by longline and harpoon.

(ii) For the semi-annual period July 1 through December 31—

(A) 69,286 pounds (31,428 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 3,430,714 pounds (1,556,162 kg), dressed weight, that may be harvested by longline and harpoon.

* * * * *

[FR Doc. 93–14380 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 116
Friday, June 18, 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 Part 20

Radiological Criteria for Decommissioning of NRC-Licensed Facilities; Generic Environmental Impact Statement (GEIS) for Rulemaking, Notice of Intent To Prepare a GEIS and To Conduct a Scoping Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to prepare a Generic Environmental Impact Statement (GEIS), to conduct a scoping process for the GEIS, and to conduct scoping meetings.

SUMMARY: The Commission is proposing to codify radiological criteria for termination of licenses and release of land and structures after levels of residual contamination have been appropriately reduced. This proposed action would provide a clear and consistent regulatory basis for determining the extent to which radioactive materials must be removed from lands and structures before a site can be released. This notice indicates the Commission's intent to prepare a Generic Environmental Impact Statement in conjunction with this proposed action and to conduct a scoping process that will include public scoping meetings.

DATES: Written comments on matters covered by this notice received by August 15, 1993, will be considered in developing the scope of the GEIS. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

Public scoping meetings will be held as follows:

July 21, 1993—Washington, DC, 2:30–5:30 p.m. and 7–10 p.m.

July 26, 1993—San Francisco, CA, 2:30–5:30 p.m. and 7–10 p.m.

July 27, 1993—Oklahoma City, OK, 2:30–5:30 p.m. and 7–10 p.m.

July 28, 1993—Cleveland, OH, 2:30–5:30 p.m. and 7–10 p.m.

ADDRESSES: Written comments on the matters covered by this notice and/or the Scoping Meetings should be sent 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. on Federal workdays.

Scoping meetings to be held at:

Washington, DC—Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

San Francisco, CA—room 1194 of the State Building, 455 Golden Gate Avenue.

Oklahoma City, OK—Holiday Inn North, 12001 Northeast Expressway.

Cleveland, OH—Cleveland State University, University Center Auditorium, room 6, 212 Euclid Avenue.

FOR FURTHER INFORMATION CONTACT: Robert Meck, Office of Nuclear Regulatory Research, Washington, DC 20555, Telephone: 301–492–3737, or Frank Cardile, Office of Nuclear Regulatory Research, Washington, DC 20555, Telephone: 301–492–3774.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) has the statutory responsibility for protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to assure safe and timely decommissioning of nuclear facilities which it licenses. This responsibility can be partially fulfilled by providing guidance to licensees on how to plan for and prepare their sites for decommissioning. Decommissioning, as defined in the NRC's regulations in 10 CFR 30.4, 40.4, 50.2, 70.4, and 72.3, means to remove nuclear facilities safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license.

During licensed operations, radioactive contamination may spread into various areas within the facility by the movement of water or other fluids containing the radioactive materials through or along piping, equipment, walls, floors, drains, etc. In addition, sites surrounding buildings can become contaminated by the movement or placement of materials, equipment, and people into and out of the areas containing the radioactive material, although NRC's contamination control requirements tend to limit such spread of material.

Once licensed activities have ceased, licensees are required, in existing NRC regulations, to decommission their facilities so that their licenses can be terminated. This requires that radioactivity in buildings, equipment, soil, groundwater, and surface water resulting from the licensed operation be reduced to acceptably low levels that allow the property to be released for unrestricted use. Licensees must then demonstrate by a site radiological survey that residual contamination in all facilities and environmental media have been properly reduced or eliminated and that, except for any residual radiological contamination found to be acceptable to remain at the site, radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

Nuclear facilities licensed by the NRC that require decommissioning include those involved with the nuclear fuel cycle (e.g., activities related to the generation of electricity through nuclear power generation) and those licensed to use nuclear material for other non-fuel cycle related purposes (e.g., health care, research, and manufacturing). The types of nuclear fuel cycle facilities that require decommissioning include nuclear power plants, nonpower (research and test) reactors, fuel fabrication plants, uranium hexafluoride production plants, and independent spent fuel storage installations. Some effort to reduce radioactive contamination to acceptable levels will generally be necessary at these facilities before they can be safely released and the licenses terminated. Non-fuel cycle facilities include universities, medical institutions, radioactive source manufacturers, and companies that use radioisotopes for industrial purposes. Over 75% of NRC's non-fuel cycle materials licensees use either sealed radioactive sources or small amounts of short-lived radioactive materials. Decommissioning of these facilities

should be relatively simple because there is usually little or no residual radioactive contamination to be removed and disposed of.

Several hundred NRC and Agreement State licenses are currently terminated each year. The majority of these licenses involve limited operations, produce little or no radioactive contamination, and do not present complex decommissioning problems or potential risks to public health or the environment from residual contamination.

Need for Proposed Action

Current NRC regulations do not explicitly contain radiological criteria for decommissioning. At the present time, the NRC continues to use existing criteria and practices contained in several NRC guidance documents which have been in use for a number of years. This approach ensures protection of public health and safety by guiding decommissioning decisions and generally keeping potential radiological doses to a small fraction of NRC's public dose limit in 10 CFR part 20. However as the nuclear industry matures, it is expected that more and more of the larger nuclear facilities which have been operating for a number of years will reach the end of their useful lives and have to be decommissioned. Because both the number and complexity of facilities that will require decommissioning are expected to increase, NRC believes it is necessary to codify radiological criteria for decommissioning.

The Commission believes that codifying radiological criteria for decommissioning in its regulations is needed because it would—

(1) Result in more efficient use of NRC and licensee resources;

(2) Lead to more consistent and uniform regulation of decommissioning;

(3) Provide a more stable basis for decommissioning planning;

(4) Eliminate protracted delays in decommissioning which results as licensees wait for generic regulatory criteria before proceeding with decommissioning of their facilities; and

(5) Provide an opportunity to reassess the basis for the residual contamination levels contained in existing guidance in light of changes in basic radiation protection standards and decommissioning experience obtained during the past 15 years.

Pending completion of the rulemaking on radiological criteria for decommissioning, the NRC will continue to consider existing guidance, criteria and practices to determine whether contamination at sites listed on NRC's Site Decommissioning Management Plan (SDMP) has been sufficiently reduced so that they may be released for unrestricted use. These criteria are listed in NRC's Action Plan to Ensure Timely Cleanup of SDMP Sites, 57 FR 13389; April 16, 1992. The criteria will be applied on a site-specific basis with emphasis on residual contamination levels that are as low as is reasonably achievable (ALARA). If a licensee or responsible party has cleaned up a site, or was in the process of cleaning up a site, under an NRC-approved decommissioning plan, the NRC will not require the licensee to conduct additional cleanup in response to NRC criteria or standard established after NRC approval of the plan. An exception to this case would be in the event that additional contamination, or noncompliance with the plan, is found indicating a significant threat to public health and safety.

Description of Proposed Action

The Commission proposes to incorporate into its regulations radiological criteria for decommissioning of nuclear facilities. This proposed action would provide a clear and consistent regulatory basis for determining the extent to which radioactive contamination must be removed or reduced in lands and structures before a site can be released and the license terminated.

Preparation of Generic Environmental Impact Statement

Under the National Environmental Policy Act (NEPA), all Federal agencies must consider the effect of their actions on the environment. Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decision-making processes. NRC regulations implementing NEPA are contained in 10 CFR part 51. To fulfill NRC's responsibilities under NEPA, the NRC intends to prepare a generic environmental impact statement (GEIS) by analyzing alternative courses of action and the costs and impacts associated with those alternatives.

This notice announces the NRC's intent to prepare a GEIS.

In keeping with the requirements of 10 CFR part 51, the GEIS will analyze alternatives for establishing radiological criteria for decommissioning of licensed nuclear facilities. The facilities included in the GEIS are those described in the "Background" section of this document. All reasonable alternatives associated with the proposed action, including "no action" will be analyzed to determine the impact and costs associated with the proposed action. The GEIS will not attempt to analyze site-specific issues which may arise in the licensing process involved with the decommissioning of specific facilities, rather its principal intent is to provide a decision analysis leading to the establishment of technical requirements regarding acceptable residual radioactive contamination levels for decommissioning. However, depending on the particular regulatory alternative that is ultimately selected, portions of the GEIS analysis may be applicable to the NEPA process for a specific site. The extent to which the GEIS may be applicable to the site specific NEPA process will be described in the draft GEIS and draft rulemaking.

The Scoping Process

The Commission's regulations in 10 CFR part 51 contain requirements for conducting a scoping process prior to preparation of a GEIS. It is indicated in 10 CFR 51.26 that whenever the NRC determines that an environmental impact statement will be prepared by NRC in connection with a proposed action that NRC will publish a notice of intent in the Federal Register stating that a GEIS will be prepared, and conduct an appropriate scoping process. In addition, 10 CFR 51.26 indicates that this scoping process may include the holding of a public scoping meeting.

In 10 CFR 51.27 requirements are indicated regarding the content of the notice of intent, in particular that it should describe the proposed action and, to the extent that sufficient information is available, also describe possible alternatives. In addition, the notice of intent is to describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

In accord with 10 CFR 51.26 and 51.27, the proposed action and possible alternative approaches are discussed below. The role of participants in the scoping process for this GEIS includes the following:

(1) Participants may attend and provide oral discussion on the proposed action and possible alternatives at any of eight separate public scoping meetings as follows:

Washington, DC—July 21, 1993, from 2:30 p.m. to 5:30 p.m. and again from 7 p.m. to 10 p.m. at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

San Francisco, California—July 26, 1993, from 2:30 p.m. to 5:30 p.m. and again from 7 p.m. to 10 p.m. in room 1194 of the State Building, 455 Golden Gate Avenue.

Oklahoma City, Oklahoma—July 27, 1993, from 2:30 p.m. to 5:30 p.m. and again from 7 p.m. to 10 p.m. at the Holiday Inn North, 12001 Northeast Expressway.

Cleveland, Ohio—July 28, 1993, from 2:30 p.m. to 5:30 p.m. and again from 7 p.m. to 10 p.m. at the Cleveland State University, University Center Auditorium, room 6, 212 Euclid Avenue.

The NRC previously held seven workshops in Chicago, Philadelphia, Boston, San Francisco, Dallas, Atlanta, and Washington DC as part of the Enhanced Participatory Rulemaking process (see 58 FR 4363; January 14, 1993). While these workshops were not part of the scoping process, they discussed alternative regulatory approaches, and specifically discussed—

(a) The ways in which the alternative approaches protect human health, safety and the environment;

(b) The waste management implications of each alternative approach; and

(c) The extent that costs, technical capabilities, and other implementation considerations, including nonradiological risks and costs, should be considered in evaluating the alternative approaches.

The seven workshops and related comments will be considered during the scoping process and comments need not be resubmitted for this scoping process.

(2) The Commission will also accept written comments on the proposed action and alternatives from the public, as well as from meeting participants. Written comments should be submitted by August 15, 1993, and should be sent 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 am and 4:15 pm on Federal workdays.

According to 10 CFR 51.29, the scoping process is to be used to address the topics which follow. Participants may make written comments, or verbal comments at the scoping meeting, on the following (current preliminary NRC staff approaches with regard to each topic are included for information):

(a) *Define the proposed action to be the subject of the GEIS.* The NRC is proposing to codify radiological criteria for decommissioning of lands and structures.

(b) *Determine the scope of the GEIS and the significant issues to be analyzed in depth.* The NRC is proposing to analyze the costs and impacts associated with alternative regulatory approaches to establish radiological criteria for decommissioning. The following proposed outline for the GEIS reflects the current NRC staff view on the scope and major topics to be dealt with in the GEIS and in this rulemaking:

Proposed Outline: Generic Environmental Impact Statement

Abstract—Executive Summary

Table of Contents

1. Introduction
   - 1.1 Background
   - 1.2 Need for Proposed Action
   - 1.3 Description of Proposed Action
   - 1.4 Purpose of this GEIS
   - 1.5 Scope of the GEIS
   - 1.6 Approach in Preparation of the Draft GEIS
   - 1.7 Structure of the Draft GEIS
2. The Current Regulatory Structure
   - 2.1 The Decommissioning Process
   - 2.2 The Current Regulatory Structure for Decommissioning
   - 2.3 Existing Radiological Criteria for Decommissioning
   - 2.4 Decommissioning Experience Under the Current Regulatory Approach
3. Description of the Affected Environment
   - 3.1 Introduction
   - 3.2 Description of Nuclear Fuel Cycle Facilities to be Covered in the GEIS—includes buildings and site lands, contamination levels at shutdown and decommissioning methodology for an estimated:
     - (a) 112 nuclear power reactors
     - (b) 74 nonpower (research and test reactors) reactors
     - (c) 14 fuel fabrication plants
     - (d) 2 UF6 plants
     - (e) 49 uranium mill facilities (other than mill tailings disposal)
     - (f) 9 independent spent fuel storage installations
   - 3.3 Description of Non-fuel Cycle Nuclear Facilities to be Covered in the GEIS—includes buildings and site lands, contamination levels at shutdown, and decommissioning methodology. There are a total of about 7500 non-fuel cycle facilities licensed by NRC. In addition, NRC Agreement States license about 15,000 non-fuel cycle facilities. About 75% of these facilities use sealed radioactive sources or small amounts of short-lived radioactive materials. Of the remaining 25%, a small number (e.g., radioactive source manufacturers, radiopharmaceutical producers, and radioactive ore processors) conduct operations requiring significant efforts to remove or reduce residual contamination.
   - 3.4 Affected Environment
     - (a) Background radiation
     - (b) Pathways of exposure for occupancy of site buildings following unrestricted release
     - (c) Pathways of exposure for residence on site lands following unrestricted release
   - 3.5 Summary
4. Regulatory Alternatives Analyzed and Method of Approach for the Analysis
   - 4.1 General Information on Approach and Method of Analysis of Regulatory Alternatives—a preliminary list of alternatives to be considered was developed for use in discussion at the seven workshops described above. A rulemaking issues paper on these alternatives was produced to focus discussion at the workshops, and a single copy is available, free of charge, upon request to Frank Cardile, Office of Nuclear Regulatory Research, Washington, DC 20555, Telephone: 301–492–3774. The alternatives listed in Section 4.2 reflect the alternatives discussed at the workshops.
   - 4.2 Alternatives Considered—each of the alternatives represent alternate regulatory actions directed at establishing radiological criteria for decommissioning. No consideration is being given to an alternative in which a licensee would abandon or leave a facility after operations without some remediation because this alternative was already rejected in a 1988 rulemaking which set general decommissioning requirements (53 FR 24018).
     - (a) Alternative 1, No Regulatory Change—would continue the current NRC practice of using existing NRC radiological guidance on a case-by-case basis in dealing with decommissioning of licensed facilities; therefore, under this alternative, NRC would not issue amended regulations explicitly containing radiological criteria for decommissioning.
     - (b) Alternative 2, Risk Limit—would establish a limit above which the risks to the public would be unacceptable and additional criteria to further reduce to the extent practical exposures to levels below the limit. In practical terms, this alternative would mean that the radioactivity remaining at the site must be at or below the limit established by the NRC's amended regulations, and that, in addition, exposures would be further reduced

below this limit to levels which are "As Low As is Reasonably Achievable" (ALARA) taking into account various factors of practical implementation (cost vs. benefit) and socioeconomic considerations. The risk limit would have to be quantified in terms of risk or dose, and methods for determining ALARA would have to be determined;

(c) Alternative 3, Risk Goal—would establish a goal at a level of public risk below which the risks are considered trivial, and require remediation to levels which are either below the goal or as close to the goals as practical. In practical terms, this alternative would mean that if the levels of residual radioactivity at the site were below the risk goal, the site would be acceptable for release for unrestricted use and no further remediation would be required even if feasible. Residual radioactivity levels remaining at the site that would pose a risk in excess of the goal would be acceptable if they were as close as reasonably achievable to the risk goal. The risk goal would have to be quantified in terms of risk or dose, and methods for determining allowable levels above the goal would have to be determined;

(d) Alternative 4, Best Effort—would establish criteria representing what is achievable using the "best" available technology and requiring the use of this technology in decommissioning. A site would be released for unrestricted use if the only residual radioactivity remaining at the site is that material which cannot be removed or measured using the best available technology.

(e) Alternative 5, Return to Background—would establish criteria requiring removal of all radioactivity attributable to licensed activities. A site would be released for unrestricted use if all radioactivity attributable to licensed activity were removed, and if it were demonstrated that background levels had been achieved.

(f) Alternative 6, Restricted use of some sites—would establish criteria that would allow for land use restrictions after decommissioning to ensure protection of humans and the environment by limiting exposure to residual radioactivity. This alternative would be a departure from the NRC's current requirement that sites be released for unrestricted use.

4.3 Method of Analysis of Regulatory Alternatives

(a) Define a range of alternative regulatory actions with regard to establishing radiological criteria (see Section 4.2);

(b) Evaluate the alternative regulatory actions with respect to: (1) The incremental impact to workers, members of the public, and the environment, both radiological and nonradiological, resulting from each alternative and (2) the costs associated with each regulatory alternative. For the alternatives involving limits or goals, incremental impacts and costs are evaluated for a subset of residual radioactivity dose/risk levels including the range of dose values discussed during the rulemaking workshops (e.g., 60 mrem/yr to 0.03 mrem/yr) corresponding to a range of lifetime risks of excess fatal cancer of approximately 2 in 1000 to 1 in 1,000,000. Evaluations of impacts and costs are contained in Sections 5 through 5 below;

(c) Perform a comparative evaluation of the regulatory alternatives based on the impacts and costs of each alternative from 4.4(b).

5. Radiological Impacts from Regulatory Alternatives
   - 5.1 Dose Calculational Methodology
   - 5.2 Estimate of Radiological Impacts for Alternatives 1–6
   - 5.3 Uncertainties in Assessing Dose Impacts for Generic Facilities
6. Nonradiological Impacts from Regulatory Alternatives
   - 6.1 Human Health Impacts
   - 6.2 Transportation Impacts
   - 6.3 Impacts on Biota
   - 6.4 Economic Impacts
   - 6.5 Land Use Impacts
   - 6.6 Societal Impacts
7. Costs Associated with Regulatory Alternatives
   - 7.1 General Information on Decommissioning Costs
   - 7.2 Major costs of decommissioning
   - 7.3 Costs that are Sensitive to Alternate Residual Radioactivity Criteria
   - 7.4 Cost Estimate Methodology for this GEIS
     - (a) General
     - (b) Decontamination and disposal costs
     - (c) Survey costs
   - 7.5 Estimate of Costs Associated with Alternatives 1–6
   - 7.6 Uncertainties in Assessing Generic Costs Assocatiated with Alternative Rulemakings
8. Comparison of Impacts and Costs for Regulatory Alternatives
   - 8.1 Method and Rationale Used in Comparing Impacts and Costs
   - 8.2 Results of Comparison of Impacts and Costs
9. Conclusion and Preliminary Recommendation Regarding Proposed Course of Action

(c) *Identify and eliminate from detailed study issues which are not significant or which are peripheral or which have been covered by prior environmental review.* The NRC has not yet eliminated any nonsignificant issues. However, NRC is considering elimination of the following issues from the scope of this GEIS because they have been previously analyzed in a previous GEIS (NUREG–0586) and included in an earlier rulemaking (53 FR 24018, June 28, 1988): (i) Planning necessary to conduct decommissioning operations in a safe manner; (ii) assurance that sufficient funds are available to pay for decommissioning; (iii) the time period in which decommissioning should be completed; and (iv) whether facilities should not be left abandoned, but instead remediated to appropriate levels. The GEIS presently being prepared will assess how current issues being addressed could affect the conclusions made in NUREG–0586 and in the 1988 rulemaking. In addition, requirements were recently proposed in a separate rulemaking regarding timeliness of decommissioning for 10 CFR parts 30, 40, and 70 licensees (58 FR 4099; January 13, 1993).

This GEIS is principally intended to provide a decision analysis establishing overall residual radioactive criteria for decommissioning of structures and lands. The GEIS does not analyze site-specific issues which may arise in the licensing process involved with the decommissioning of specific facilities. However, depending on the particular regulatory alternative that is ultimately selected, portions of the GEIS analysis may be applicable to the NEPA process for a specific site. The extent to which the GEIS may be applicable to the site specific NEPA process will be described in the draft GEIS and draft rulemaking. Also, criteria for release of contaminated equipment, components, piping, and other similar materials, are outside the scope of this rulemaking.

(d) *Identify any EAs or GEIS which are being or which will be prepared that are related but are not part of the scope of this GEIS.* A draft EA on the timeliness of decommissioning has been prepared as part of a separate rulemaking on decommissioning timeliness (58 FR 4099; January 13, 1993) and will be finalized.

(e) *Identify other environmental review or consultation requirements*

related to the proposed action. The NRC has contracted with Sanford Cohen and Associates to provide technical assistance in the preparation of the GEIS. In addition, the NRC has contracted with Battelle Pacific Northwest Laboratory to provide specific technical assistance regarding decontamination technology, and plans to obtain specific technical assistance regarding the capability of radiation survey instruments to practically and accurately detect radioactive contamination at levels near background. Discussions are underway with the Environmental Protection Agency involving their assuming cooperating agency status in preparation of the GEIS.

(f) *Indicate the relationship between the timing of the preparation of environmental analysis and the Commission's tentative planning and decision making schedule.* It is the NRC's intent to prepare and issue for public comment a draft GEIS in June 1994 simultaneous with publication of a proposed rule for public comment containing radiological criteria for decommissioning. The comment period would be for 90 days. The final rule and final GEIS are scheduled for publication in June 1995.

(g) *Describe the means by which the GEIS will be prepared.* It is anticipated NRC will prepare the draft GEIS according to its regulations in 10 CFR part 51. Specifically, in accord with 10 CFR 51.71, the draft GEIS will be prepared in accordance with considerations of the scoping process and will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical and other benefits of the proposed action.

In accomplishing the purpose of the scoping process, participants are invited to speak or submit written comments, as noted above, on any or all of the seven areas described above. In accordance with 10 CFR 51.29, at the conclusion of the scoping process, a concise summary of the determinations and conclusions reached, including the significant issues identified, will be prepared and a copy sent to each participant in the scoping process.

For the U.S. Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research

[FR Doc. 93–14442 Filed 6–17–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–220–AD]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes Equipped With a Cargo Conversion Modification Installed in Accordance with Supplemental Type Certificate (STC) SA1802SO or SA421NW

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 McDonnell Douglas Model DC–8 series airplanes, that currently requires a revision to the FAA-approved Airplane Flight Manual Supplement to include detailed procedures for use of the cargo door warning light system; and repetitive inspections of the cargo door warning system wiring to detect damage to the wiring or the door latching roller mechanism, and repair or replacement of damaged components. This action would revise the existing AD by requiring that the cargo door indicating light circuit breaker not be disabled. This proposal is prompted by the FAA's review of data indicating that disabling of that circuit breaker may deprive the flight crew of necessary information. The actions specified by the proposed AD are intended to prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane.

DATES: Comments must be received by August 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–220–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.

FOR FURTHER INFORMATION CONTACT: Ozzie Lopez, Aerospace Engineer, Airframe Branch, ACE–120A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–2910; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–220–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–220–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 23, 1991, the FAA issued AD 92–02–05, Amendment 39–8141 (57 FR 180, January 3, 1992), as a "final rule, request for comments." That AD requires a revision to the FAA-approved Airplane Flight Manual Supplement to include detailed procedures for use of the cargo door warning light system; and repetitive inspections of the cargo door warning system wiring to detect damage to the wiring or the door latching roller mechanism, and repair or replacement of damaged components. That action was prompted by two occurrences of

inadvertent in-flight openings of the cargo door on certain modified Model DC–8–63 series airplanes. The requirements of that AD are intended to prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane.

Paragraph (a) of AD 92–02–05 requires that the flight crew pull all cargo door circuit breakers prior to takeoff. In its comments submitted to the Rules Docket, one commenter requests that this requirement be revised to limit circuit breaker disabling to the door operating system only; the commenter states that the cargo door indicating light circuit breaker should not be disabled. The commenter asserts that the annunciator light can provide valuable information to the flight crew, both prior to takeoff and during flight. The commenter indicates that if the cargo door light illuminates prior to takeoff, the takeoff could be aborted, and if the cargo door light illuminates during flight, the airplane could be maneuvered safely to the nearest suitable airport.

The FAA has reviewed all data submitted and agrees that the cargo door indicating system should not be disabled. Consequently, paragraph (a) of this proposal would require that only the cargo door circuit breakers labeled "pump" and "valve" must be pulled prior to takeoff.

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 92–02–05 to require a new revision to the FAA-approved Airplane Flight Manual Supplement to include detailed procedures for use of the cargo door warning light system; and to continue to require repetitive inspections of the cargo door warning system wiring to detect damage to the wiring or the door latching roller mechanism, and repair or replacement of damaged components. The proposed AD would limit circuit breaker disabling to the door operating system.

The FAA estimates that 58 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour 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 $3,190, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8141 (57 FR 180, January 3, 1992), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 92–NM–220–AD. Supersedes AD 92–02–05, Amendment 39–8141.

Applicability: Model DC–8–61, -62, -63, and -73 series airplanes equipped with a cargo conversion modification installed in accordance with Supplemental Type Certificate (STC) SA1802SO; and Model DC–8–21, -32, -33, and -51 series airplanes equipped with a cargo conversion modification installed in accordance with STC SA421NW; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane, accomplish the following:

(a) Within 7 days after the effective date of this AD, revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) by replacing item 5 in the AFMS for SA1802SO, and item 6 in the AFMS for SA421NW, with the following. (This may be accomplished by inserting a copy of this AD into the AFMS.)

"Prior to initiating the cargo door closing sequence, a flight crew member must verify that the cargo door warning light is illuminated. After the door closing sequence is complete, and visual verification has been made that the latches are closed and the lockpins are properly engaged, a flight crew member must verify that the cargo door warning light is extinguished, and then conduct a PRESS-TO-TEST of the warning light to ensure that the light is operational. Pull the cargo door circuit breakers labeled "pump" and "valve" prior to takeoff. Methods for documentation of compliance with the preceding procedures must be approved by the FAA Principal Maintenance Inspector (PMI)."

(b) Within 7 days after January 21, 1992 (the effective date of AD 92–02–05, Amendment 39–8141), and thereafter at intervals not to exceed 100 hours time-in-service, perform the following inspections:

(1) Inspect the cargo door wire bundle between the exit point of the cargo liner and the attachment point on the cargo door to detect crimped, frayed, or chafed wires; and inspect for damaged, loose, or missing hardware mounting components. Prior to further flight, repair any damaged wiring or hardware mounting components in accordance with FAA-approved maintenance procedures.

(2) Inspect the cargo door latch rollers in the lower sill of the cargo door opening of the airplane to ensure that all twelve rollers can be freely rotated by hand. Prior to further flight, replace any discrepant roller components found, and repair any rollers that cannot be rotated freely by hand, in accordance with FAA-approved maintenance procedures.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE–115A, FAA, Small 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, Atlanta ACO.

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

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

Issued in Renton, Washington, on June 14, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14390 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–61–AD]

Airworthiness Directives; Short Brothers, PLC, Model SD–3–30 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 all Short Brothers Model SD3–30 series airplanes, that currently requires inspection and modification of various structural and system components, and replacement of damaged, worn, or corroded parts. That action was prompted by reports of fatigue cracking, corrosion, and/or wear in these structural and system components. The actions specified by that AD are intended to prevent reduced structural capability of the wing. This action would lengthen the intervals between inspections following repair of the rear or forward bay.

DATES: Comments must be received by August 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–61–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 Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–61–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–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 21, 1992, the FAA issued AD 92–19–09, Amendment 39–8367 (57 FR 46772, October 13, 1992), to require (1) installation of a new closing panel in the aft baggage compartment; (2) inspection and sealing of the fuselage crown; (3) inspection and modification of the wing drag links, and replacement of damaged parts; (4) inspections to detect corrosion or wear in the horizontal stabilizer (tailplane)-to-fuselage fittings, pins, and bushings, and replacement of worn or corroded parts; (5) inspections to detect cracked or broken rib/skin attachment cleats, and repair, if necessary; and (6) modification of the power control circuit. That action was prompted by reports of fatigue cracking, corrosion, and/or wear in these structural and system components. The requirements of that AD are intended to prevent failure of the rib/skin attachment cleat, which could compromise the structural capability of the wing.

Since the issuance of that AD, the FAA has determined that, based on service history, cracking in the rib/skin attachment cleats can be detected in a timely manner following repair of the rear or forward bay, if the inspection intervals were lengthened from 4,800 hours time-in-service, as required by the existing AD, to 9,600 hours time-in-service. Analysis of new crack growth data for structure repaired in accordance with Part B or C of the Accomplishment Instructions in Fokker Service Bulletin SD3–57–10, Revision 1, dated October 11, 1982, indicates that the structural capability of the wings would not be compromised by extending the intervals for these inspections. Fatigue cracking, corrosion, and/or wear in these structural and system components, if not detected and corrected, could result in failure of the rib/skin attachment cleat, and subsequently, reduce the structural capability of the wing.

Short Brothers, PLC, has issued Service Bulletin SD3–57–10, Revision 2, dated January 4, 1993, that describes procedures for x-ray inspections to detect cracking in the upper skin flanges of the rib/skin attachment cleats at left wing station 160 and repair of the rear and forward bays on airplanes having serial numbers SH3002 through SH3090, inclusive. Stronger cleats have been installed, prior to delivery, on airplanes having serial numbers SH3091 and subsequent. The Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom, classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the United Kingdom CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the United Kingdom CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92–19–09 to require inspections of the rib/skin attachment cleats following repair of the rear or forward bay at intervals of 9,600 hours time-in-service. This action would be required to be accomplished on airplanes having serial numbers SH3002 through SH3090, inclusive, in accordance with the revised service bulletin described previously or the original issue of the service bulletin.

This AD action would continue to require inspection and modification of various structural and system components, replacement of damaged, worn, or corroded parts on all Model SD3-30 series airplanes.

The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 180 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $3,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $283,800, or $12,900 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8367 (57 FR 46772, October 13, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Short Brothers, PLC: Docket 93-NM-61-AD. Supersedes AD 92-19-09, Amendment 39-8367.

Applicability: All Model SD3-30 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a), (b), (c), and (f) of this AD restate the requirements of paragraphs A., B., C., and F. of AD 84-07-06 R1, Amendment 39-6036. As allowed by the phrase, "unless accomplished previously," if the requirements of paragraphs A., B., C., and F. of AD 84-07-06 R1 have been accomplished previously, paragraphs (a), (b), (c), and (f) of this AD do not require that they be repeated.

Note 2: Paragraph (d) of this AD restates the requirement for repetitive inspections contained in paragraph D. of AD 84-07-06 R1, and paragraph (e) of this AD restates the requirement for repetitive inspections contained in paragraph (e) of AD 92-19-09, Amendment 39-8367. The first inspection required by this AD must be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraph D. of AD 84-07-06 R1 and paragraph (e) of AD 92-19-09.

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

(a) Within 180 days after November 3, 1988 (the effective date of AD 84-07-06 R1, Amendment 39-6036), install a new closing panel in the aft baggage compartment in accordance with Short Brothers Service Bulletin SD3-25-30, dated January 8, 1982.

(b) Within 180 days after November 3, 1988 (the effective date of AD 84-07-06 R1, Amendment 39-6036), inspect to detect fuel leakage and seal the fuselage crown in accordance with Short Brothers Service Bulletins SD3-53-01, Revision 2, dated January 19, 1977; SD3-53-18, dated November 25, 1977; and SD3-53-41, dated May 21, 1980.

(c) Within 600 hours time-in-service after November 3, 1988 (the effective date of AD 84-07-06 R1, Amendment 39-6036), or prior to the accumulation of 4,800 total hours time-in-service, whichever occurs later, inspect to detect cracking and modify the wing drag links in accordance with Short Brothers Service Bulletin SD3-53-48, Revision 1, dated January 5, 1983. Replace damaged parts prior to further flight in accordance with the service bulletin.

(d) Within 90 days after November 3, 1988 (the effective date of AD 84-07-06 R1, Amendment 39-6036), inspect to detect corrosion or wear in the horizontal stabilizer (tailplane)-to-fuselage fittings, pins, and bushings in accordance with Short Brothers Service Bulletin SD3-55-16, Revision 3, dated November 1987. For airplanes that have accumulated less than 4,800 total hours time-in-service and are less than 2 years old as of November 3, 1988 (the effective date of AD 84-07-06 R1, Amendment 39-6036), accomplishment of this inspection may be deferred until the affected airplane reaches 4,800 total hours time-in-service or 2 years of age, whichever occurs first. Replace any worn or corroded parts, prior to further flight, in accordance with the service bulletin.

(1) If no pin has been replaced with a new pin, and if there is no corrosion found on any attachment fitting, repeat this inspection, thereafter, at intervals not to exceed 1,200 flight hours or within 6 months following the immediately preceding inspection, whichever occurs first.

(2) If all the pins on one side have been replaced with new pins, repeat the inspection on that side within the next 4,800 flight hours or 2 years following replacement of the pins, whichever occurs first. Repeat this inspection, thereafter, at intervals not to exceed 2,400 flight hours or 1 year following the immediately preceding inspection, whichever occurs first.

(e) For airplanes having serial numbers SH3002 through SH3090, inclusive: Within 300 hours time-in-service after November 3, 1988 (the effective date of AD 84-07-06 R1, Amendment 39-6036), or prior to the accumulation of 4,800 total hours time-in-service, whichever occurs later, inspect to detect cracked or broken rib/skin attachment cleats at left wing station 160 in accordance with Part A (Inspection) of paragraph 2.A. of the Accomplishment Instructions in Short Brothers Service Bulletin SD3-57-10, Revision 1, dated October 11, 1982; or Revision 2, dated January 4, 1993. Repeat this inspection, thereafter, within 2,400 hours time-in-service following the immediately preceding inspection, or within 300 hours time-in-service after November 17, 1992 (the effective date of AD 92-19-09, Amendment 39-8367), whichever occurs later.

(1) If no crack is found, repeat this inspection of each bay, thereafter, at intervals not to exceed 2,400 hours time-in-service.

(2) If any crack is found, prior to further flight, repair in accordance with Part B (Repair—Rear Bay) and/or Part C (Repair—Forward Bay) of paragraph 2.A. of the Accomplishment Instructions in the service bulletin; and repeat the inspection of the repaired bay, thereafter, at intervals not to exceed 9,600 hours time-in-service.

(f) Within 180 days after November 3, 1988 (the effective date of AD 84-07-06 R1, Amendment 39-6036), modify the power control circuit in accordance with Short Brothers Service Bulletin SD3-76-01, dated September 8, 1981.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

obtained from the Standardization Branch, ANM–113.

(h) 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 June 14, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14389 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Remining; Preexisting Pollutional Discharges

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

ACTION: Proposed rule; withdrawal of proposed rule.

SUMMARY OSM is announcing the withdrawal of proposed rule changes submitted by the State of Maryland to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, 4th and Market Streets, suite 3C, Harrisburg, PA 17101. Telephone (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background Information

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

II. Discussion of Proposed Amendment

By letter dated February 5, 1992, the Maryland Bureau of Mines (Maryland) submitted a program amendment to OSM (Administrative Record No. MD–524.02). The amendment provided for the remining of areas with preexisting pollutional discharges. The amendment included changes to the following sections of the Code of Maryland Administrative Regulations (COMAR):

Regulation	Subject
COMAR 08.13.09.29a	Definitions.
COMAR 08.13.09.29B	Scope.
COMAR 08.13.09.29C	Applicability.
COMAR 08.13.09.29D	Application for Authorization.
COMAR 08.13.09.29E	Approval or Denial of Application.
COMAR 08.13.09.29F	Special Performance Standards for Remining Areas with Pollutional Discharges.
COMAR 08.13.09.29G	Treatment of Discharges.
COMAR 08.13.09.29H	Criteria and Schedule for Bond Release.

On April 17, 1992, OSM published a notice in the **Federal Register** (57 FR 13682) announcing receipt of Maryland's proposed amendment to the Maryland program and inviting public comment on its adequacy. The public comment period ended on May 18, 1992. The public hearing was not held as no one requested an opportunity to testify.

By letter dated June 4, 1993, (Administrative Record No. MD–524.17), Maryland withdrew its February 5, 1992, submission of the proposed remining amendment.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 11, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–14437 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–4668–6]

Open Meeting of the Architectural and Industrial (AIM) Maintenance Coatings Negotiated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The AIM Negotiated Rulemaking Advisory Committee will meet in Washington, DC to attempt to reach consensus that can be used as the basis of a proposed rule.

DATES: The meeting will take place on July 1–2. On July 1, the meeting will start at 8:30 a.m. and run until completion. On July 2, it will start at 8:30 a.m., and end by 2 p.m.

ADDRESSES: The meeting will be held at the Stouffer Mayflower Hotel, 1127 Connecticut Ave NW., Washington, DC, 20036, [202] 347–3000.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Ellen Ducey of EPA's Office of Air Quality Planning and Standards at 919–541–5408. Persons needing further information on meeting logistics should call Barbara Stinson the Committee Co-chair at 303–468–5822.

Dated: June 15, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–14425 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[IL 12–8–5166; FRL–4661–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1990, USEPA promulgated Federal stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry and Will. USEPA also took final rulemaking action on certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP).

Included in USEPA's rule was a requirement that the adhesive lines at Allsteel Incorporated's (Allsteel) metal furniture manufacturing facility in Montgomery (Kane County) be subject to 40 CFR 52.741(u), the "generic" rule for miscellaneous fabricated product manufacturing. However, because USEPA had insufficient time to respond to Allsteel's highly technical comments, USEPA deferred the effective date of the applicable rules with regard to Allsteel for six months.[1] Similarly, USEPA

[1] As discussed later in this document, USEPA later concluded that it would not be able to

deferred action on a site-specific limit for Allsteel's adhesive lines submitted by the State of Illinois for inclusion as a revision to the Illinois SIP.

USEPA has considered the issues raised by Allsteel and is presenting in this **Federal Register** both a discussion of these issues and a newly proposed rulemaking applicable to Allsteel's adhesive operations. USEPA is also proposing rulemaking on a site-specific SIP revision for Allsteel that has been submitted by Illinois. USEPA solicits public comments both on the issues being considered and on USEPA's proposed rulemaking action.

DATES: Comments on this proposal must be received by July 19, 1993 at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to: J. Elmer Bortzer by July 19, 1993 at the address below. Interested persons may call Mr. Bortzer at (312) 886–1430 to see if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604. Again, comments should be strictly limited to the subject matter of this proposal. Docket: Pursuant to section 307(d)(1) (B) and (N) of the Clean Air Act (CAA), 42 U.S.C. 7607(d)(1) (b) and (N) (1991), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, 5–AR–92–6 which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Gloris Butler before visiting the Washington, D.C. location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region V, Regulation Development Branch, Eighteenth Floor, Southeast, 77 West Jackson Street, Chicago, Illinois 60604, (312) 886–6036.

U.S. Environmental Protection Agency, Docket No. 5–AR–91–2, Air Docket (LE–131), Room M1500, Waterside Mall, 401 M Street SW., Washington, DC 20460, (202) 245–3639.

FOR FURTHER INFORMATION CONTACT: Steve Rosenthal, Regulation Development Branch, U.S. Environmental Protection Agency, Region V, (312) 886–6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

In an effort to comply with certain requirements under part D of the CAA, as amended in 1977, 42 U.S.C. 7401 *et seq.* (1990),[2] the Illinois Pollution Control Board (IPCB) adopted an organic emission "generic" rule on April 7, 1988. The purpose of the generic rule was to satisfy the USEPA's requirement that Illinois adopt rules for major (100 tons per year (TPY) and greater) non-CTG sources.[3] This requirement is discussed in the April 4, 1979, General Preamble for Proposed Rulemaking (44 FR 20372).

The Illinois Environmental Protection Agency (IEPA) first proposed to the IPCB to control VOCs through a "generic rule" on May 12, 1986. The first hearings on this rule were held in October 1986. A revised and second revised generic rule subsequently were submitted by IEPA. Hearings on the generic rule were held February 10 and 11, 1987, and April 23 and 24, 1987. At the April 23, 1987, hearing, IEPA presented a fourth proposal (alternative generic proposal), and recommended that it be adopted rather than the original or either of its two revisions.

On August 6, 1987, the IPCB adopted the IEPA's alternative generic proposal for First Notice of Adoption, which was published in the August 28, 1987, Illinois Register. On November 2, 1987, the Illinois Department of Energy and Natural Resources (DENR) filed an Economic Impact Study (EcIS). Two hearings were held on the EcIS (December 14, 1987, and December 18, 1987). On February 4, 1988, the IPCB adopted the alternative rule for Second Notice, and on April 7, 1988, the IPCB adopted, as a final rule, the alternative proposal.

Under the adopted generic rule, Subpart PP, "Miscellaneous Fabricated Product Manufacturing Processes," regulates the "curing of furniture adhesives in an oven which would emit in excess of 10 tons of volatile organic material per year if no air pollution control equipment were used." Subpart PP requires that sources either comply with a 3.5 pounds per gallon (lbs/gal) limit for volatile organic material (VOM) content or an 81 percent reduction in VOM emissions from uncontrolled levels;[4] or that they procure an adjusted RACT emission limitation from the IPCB.

Allsteel testified at the April 24, 1987, hearing on the generic rule and at the December 18, 1987, hearing on the EcIS. At both hearings and in subsequent submittals, Allsteel expressed its opinion that the Montgomery facility was using RACT in its fabrication processes and should be given an adjusted RACT standard under the miscellaneous fabricated product manufacturing process (MFPMP) rule. Further, on March 30, 1988, Allsteel filed a Motion for Correction, claiming that its panel slab curing ovens should be exempted from the rule. In response, the IPCB noted that if Allsteel "has particular problems with the control requirements imposed by the generic rule, it may petition the Board for an alternative controls via the generic rule's adjusted RACT procedures," and it denied Allsteel's motion.

On June 3, 1988, Allsteel filed a Notice of Intent to file a Petition for Adjusted RACT Emission Limitation, and on August 8, 1988, filed the petition. Under the generic rule's adjusted standards procedures, Allsteel was required to show that an 81% reduction in uncontrolled VOM emissions or a limit of 3.5 lbs/gal for coating materials is not RACT for Allsteel; and that the emission levels proposed by Allsteel are RACT and would not interfere with the State's plan for achieving ambient air quality standards.

complete the review before the expiration of this six-month period. USEPA also agreed at that time to reconsider the rules applicable to Allsteel's adhesive operations and issued an administrative stay of the effectiveness of those rules, but only as necessary to complete reconsideration. See 56 FR 24722 (May 31, 1991).

[2] The Clean Air Act was amended on November 15, 1990. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401–7671q (1991). However, EPA's obligation to promulgate a federal implementation plan for the Chicago nonattainment area arose under the pre-amended Act, as did Illinois' obligation to submit the SIP RACT rules that the state submitted in 1988. Therefore, while EPA is procedurally subject to the amended Act in this proposed rulemaking, EPA must refer to the pre-amended Act requirements. To clarify these references, the amended Act will be referred to as the "Act" or the "CAA" and the pre-amended Act will be referred to as the "1977 Act" or the "1977 CAA."

[3] Control techniques guideline (CTG) documents have been prepared by USEPA to assist States in defining RACT for the control of VOC emissions from existing stationary sources. Each individual CTG recommends a presumptive norm of control considered reasonably available to a specific source category. Sources in categories for which no CTG exists are termed "non-CTG sources." See 44 FR 53762 (September 14, 1979). The Group I CTG documents were developed around 1977 and the Group II CTG documents were developed around 1978.

[4] The State of Illinois uses the term "VOM" in its regulations. For the purposes of this RACT analysis, this term is considered equivalent to USEPA's term "volatile organic compounds (VOC)".

On February 23, 1989, the IPCB ruled that an 81% reduction of uncontrolled emissions or a 3.5 lb/gal VOM limit upon adhesives would not constitute RACT for Allsteel's Montgomery facility, and that, instead, Allsteel's current emission levels constituted RACT.

At that time, the IPCB also adopted an adjusted standard for Allsteel (PCB AS–88–3) in which it set the following emission standards for Allsteel. "Allsteel shall not use adhesives which exceed 5.20 pounds per gallon (lb/gal) of VOM for adhesives which are applied as a spray and 5.55 lb/gal of VOM for adhesives which are applied by rollcoating." The IEPA submitted the standard to USEPA as a proposed revision to the Illinois SIP[5] on April 11, 1989.

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin against USEPA and sought a judgment that USEPA, among other requested actions, be required to promulgate revisions to the Illinois ozone SIP for northeastern Illinois. Wisconsin v. Reilly, No. 87–C–0395, (E.D. Wis.). On January 18, 1989, the District Court ordered that USEPA promulgate an ozone implementation plan for northeastern Illinois within 14 months of the date of that order. On September 22, 1989, USEPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed, pending the performance of the settlement agreement.

The settlement agreement calls for the use of a more sophisticated air quality model, allows more time for USEPA to promulgate a Federal implementation plan (FIP) using the model, and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of required VOM RACT rules for Illinois to remedy deficiencies in its State regulations.

On December 27, 1989 (54 FR 53080), USEPA proposed to disapprove the Illinois generic rules (Subparts AA, II, PP, QQ, RR) largely because the applicability criteria were not consistent with USEPA RACT guidance for major non-CTG sources. On that date, USEPA also proposed a number of RACT rules, including a generic MFPMP rule which covered all of Allsteel's adhesive manufacturing operations.

On June 29, 1990 (55 FR 26814), USEPA took final action to disapprove the Illinois generic rules and promulgate the proposed Federal rules, including the generic MFPMP rule. However, USEPA stated at that time that the need to promulgate Federal regulations, under the tight timeframe ordered by the District Court, had prevented the agency from being able to consider fully the merits of the proposed, alternative site-specific limits for Allsteel. Consequently, USEPA deferred the effective date of the applicable rules with regard to Allsteel for six months. 55 FR 26842.

On August 28, 1990, Allsteel filed a petition for review of USEPA's June 29, 1990, rulemaking in the United States Court of Appeals for the Seventh Circuit. Nine other parties filed petitions for review, which were ultimately consolidated by the Court as *Illinois Environmental Regulatory Group ("IERG") et al.* v. *Reilly*, No. 90–2778. In addition, on November 23, 1990, Allsteel filed a formal request that EPA stay the compliance date of the federal rules until a reasonable time after the Court's decision in *IERG* case. As a result, USEPA convened a proceeding for reconsideration pursuant to section 307(d)(7)(B) of the CAA, 42 U.S.C. 7607(d)(7)(B).

On January 4, 1991 (56 FR 460), USEPA announced a three-month partial stay pending reconsideration for Allsteel and two other petitioners. Elsewhere in the January 4, 1991, **Federal Register** (56 FR 463), USEPA proposed to extend the stay beyond the three-month period, only if and as necessary to complete reconsideration of the subject rules (including any appropriate regulatory action), pursuant to USEPA's authority to revise the federal rules by following rulemaking procedures in sections 110(c) and 301(a)(1) of the CAA, 42 U.S.C. 7410(c) and 7601(a)(1). One of the rules for which the stay was proposed was the MFPMP rule only as applied to Allsteel's adhesive application lines, codified at 40 CFR 52.741(u), as well as the July 1, 1991, compliance date, codified at 40 CFR 52.741(u)(4).

On May 31, 1991, (56 FR 24722), USEPA responded to public comments on the proposed extension of the partial stay, and took final action to extend the stay as long as necessary to complete reconsideration of the rules identified in the proposal. Today's notice, in effect, presents the results of USEPA's reconsideration of the issues involved in the case of the Federal generic rule as it applies to Allsteel, and proposes rulemaking based on these results. Technical support for USEPA's results is provided in an Allsteel RACT analysis, dated April 1992.

A. Processes at Allsteel

There are three process operations at Allsteel that are affected by the Federal generic manufacturing processes rule. These processes are the fabrication of panel slabs (for office dividers), the top line (desktops) operation, and the chair packaging (assembly) operation.[6] All three processes utilize solvent-based adhesives with VOM contents greater than the 3.5 lbs/gal limit set forth in the Federal generic rule.

USEPA has determined, based on information from the IEPA, that in 1988 Allsteel emitted approximately 137 TPY of VOM from the top line and the chair packaging operations mentioned above. These emissions result from the use of high solvent contact adhesives in bonding: (1) Paper core and laminates to steel and (2) foam to polypropylene, ABS plastic, wood, and fabric.

The following subsections describe these processes in more detail.

1. Top Line

The top line operation is where desktops are fabricated. The construction involves sandwiching a honeycomb paper core between steel top and bottom pans. The paper core is rollcoated on both sides with an adhesive (solvent content about 5.5 lbs/gal VOM). The two steel pans are then sprayed with another adhesive. The three separate pieces are heated in an oven, assembled, reheated, and then rolled together. Emissions from this operation in 1988 were approximately 58.2 TPY of VOM.

The pre-cut laminate is rollcoated with adhesive, heated in an oven, and is then joined to the steel slab. The side and end laminate strips are reactivated in small infrared ovens at the assembly stations just before being joined to the slab. The steel slab is rollcoated with adhesive in preparation for the laminate. The slab sides are rollcoated with an adhesive having a solvent content over 5.5 lbs/gal VOM. Emissions from the laminating operations in 1988 were approximately 58.8 TPY of VOM.

2. Chair Packaging

The chair packaging area is where materials are assembled to form the core

[5] Under Illinois' regulatory procedures, IEPA does not have the authority to adopt regulations, but must submit recommended proposals for adoption to the IPCB, an independent rulemaking body. IEPA is, however, responsible for submitting such regulations to USEPA as proposed SIP revisions.

[6] Allsteel confirmed in a December 6, 1991, letter to USEPA that all panel slab operations at the Illinois plant have been discontinued.

of office chairs. Substrates include wood, foam, polypropylene, ABS plastic, and fabric. Adhesives are kept in drums at a central location, and operators fill small containers in order to hand brush the adhesives onto the chair materials. Adhesives used have VOM contents of over 5 lbs/gal. Emissions from the chair packaging operation in 1988 are estimated at 19.9 TPY.

B. Allsteel's Comments

During the Federal rulemaking process, Allsteel provided comments to USEPA both at a public hearing held on January 15, 1990, and in writing on March 2, 1990. Allsteel's comments regarding USEPA's proposed action on the adhesive processes can be separated into two basic areas.

First, Allsteel claims that suitable complying adhesives are not available, and thus not RACT. More specifically, Allsteel states that it has tried to use reformulated adhesives, continued a seven-year testing program to identify low-solvent adhesives, and reduced adhesive usage by switching some applications from spray coating to roll coating. Allsteel further asserts that water-based adhesives failed all normally performed quality control testing. Finally, Allsteel claims that IEPA and the IPCB concur in Allsteel's conclusions concerning the lack of complying adhesives.

Second, Allsteel asserts that add-on control technology is economically infeasible and presents various technological and safety problems. More specifically, Allsteel calculated cost-effectiveness values ranging from approximately $2,400/ton to almost $7,000/ton for add-on control. Allsteel maintains that such costs are not RACT. In addition, Allsteel claims that the installation of control equipment in its crowded facility is not technically feasible and would raise safety and other operational concerns. For instance, according to Allsteel, there is not enough room above the ovens to install the control equipment inside the building. The existing furnace ducts would have to be relocated, and there is no place to move them. Equipment relocation would disrupt the efficient flow of materials in the production process.

USEPA has examined these comments. As discussed more fully below, USEPA has concluded that: (1) An emission limit of 3.5 lbs VOC/gallon represents RACT for Allsteel's chair packaging and top line operations, and Allsteel has failed to adequately document the unavailability of coatings meeting that limit; and (2) incineration, while not RACT for the chair packaging operation, is reasonably available for the top line operation (for emission points 1, 2, 10, 11, 12 and 13).

II. Basis for USEPA's Determination

The basis for USEPA's decision noted in the responses stated above is provided in this section. The discussion is broken into two parts, one which discusses the availability of complying adhesives and the other which deals with the feasibility of add-on control.

A. Complying Adhesives

1. Background

Based on USEPA's and Illinois' experience with various types of coaters, USEPA promulgated a coating limit, for major non-CTG sources, of 3.5 lbs VOC/gallon. This requirement is within the range of coating limitations contained in the Group I and Group II CTG documents. A 3.5 lbs VOC/gallon limitation is required for extreme performance miscellaneous metals coatings. This is probably the single most general coating limitation and is, therefore, a reasonable benchmark for evaluating a general major non-CTG limit. Such a conclusion is supported by the fact that the miscellaneous metals coating category contains 96,000 facilities, by far the largest of the groups covered by the nine coating CTGs. By contrast, the numbers of affected facilities for the other nine surface coating CTG source categories are as follows: cans (460), metal coil (180), fabrics (130), paper products (290), automobiles and light-duty trucks (47), metal furniture (1,400), magnet wire (30), large appliances (270), and flat wood paneling (394).

USEPA's approach to the development of the major non-CTG coating limit is similar to that used with the miscellaneous metal parts and products coating CTG, which includes (as stated in this CTG) "hundreds of small to medium sized industries for which written individual guideline documents would be impractical." The general applicability of the 3.5 lbs VOC/gallon limit is also supported by the use of that limit in Illinois' major non-CTG rule for miscellaneous fabricated product coating lines.

In addition, most of the emission limitations in the coating CTGs are less than (and therefore more stringent than) the 3.5 lbs VOC/gallon level. For example, coating limits for fabric (2.9 lbs/gal), automobile and light-duty trucks (3.0 lbs/gal), magnet wire (1.7 lbs/gal), and large appliance (2.8 lbs/gal) all fall below the "backstop" level of 3.5 lbs VOC/gallon. Therefore, USEPA believes that the 3.5 lbs VOC/gallon limitation is both a reasonable and conservative "presumptive norm" for major non-CTG coating sources.

Allsteel is attempting to establish a source-specific revision to this generic major non-CTG rule. Allsteel has presented information concerning its contention that the 3.5 lbs VOC/gallon requirement is inappropriate for its processes. Allsteel maintains that it has actively pursued the availability and use of alternative adhesives (VOM-based adhesives with lower VOM content, water-based adhesives, and exempt compound-based adhesives) that comply with the 3.5 lbs VOC/gallon requirement. Allsteel claims that, to date, none of these efforts have been successful.

For example, Allsteel has conducted a series of tests to assess several water-based adhesives as potential replacements for its solvent contact adhesives. Based on its 100 psi shear test, some production samples using the water-based contact adhesives failed. Because of these failures, Allsteel stopped testing water-based contact adhesives. In addition, Allsteel states that switching to water-based adhesives (assuming one could be found that meets Allsteel protocols) would result in increased cost to pre-heat the steel prior to applying adhesive and increased production cycle time due to longer curing. Allsteel claims these factors would affect costs significantly. Therefore, based on its efforts to find a complying adhesive and the failure of those efforts, Allsteel claims that RACT for its processes are emission limits of 5.20 lbs VOC/gallon for spray applications and 5.55 lbs VOC/gallon for rollcoating applications.

2. Criteria for Evaluating Availability of Complying Coatings

The USEPA has identified VOC control levels, in its CTGs and non-CTG control evaluations, that it presumes constitute RACT for various categories of sources. However, case-by-case RACT determinations may be developed that differ from USEPA's presumptive norm. The USEPA will approve these RACT determinations as long as a demonstration is made that they satisfy the CAA's RACT requirements based on adequate documentation of the economic and technical circumstances of the particular sources being regulated. To make this demonstration, it must be shown that the current SIP requirements do not represent RACT because pollution control technology necessary to reach the requirements is not and is not expected to be reasonably available. The USEPA will determine on

a case-by-case basis whether this demonstration has been made, taking into account all the relevant facts and circumstances concerning each case. A demonstration must be made that reasonable efforts were taken to determine and adequately document the availability of complying coatings or other kinds of controls, as appropriate. See, e.g., 44 FR 53762 (September 17, 1979).

If it is conclusively demonstrated that complying low-solvent coatings are unavailable, then USEPA would consider an alternative RACT determination. Actions that sources could perform to demonstrate the unavailability of complying coatings are contained in Appendix A of the November 9, 1988, Federal Register notice (53 FR 45287) dealing with Easco Aluminum Corporation. These include the following:

(1) An examination of the availability of complying (or lower VOC) coatings used by comparable companies.

(2) Contacting suppliers available to the source to determine if they have complying coatings or other controls.

(3) Contacting trade associations to determine if they know of complying coatings or other controls. This includes both trade associations of similar industries and trade associations representing a large number of manufacturers of low VOC coatings.

(4) A review of trade publications containing information concerning complying coatings or other controls.

(5) Placing two consecutive advertisements in each of three leading coatings trade journals (e.g., Industrial Finishings, Products Finishing, Modern Paint and Coatings, JCT-Journal of Coatings Technology, American Paint and Coatings Journal) and describing the application and product specifications for low solvent adhesives which they are seeking. This advertisement should solicit adhesive companies to provide low VOC products meeting those specifications.

It is not necessary that all of the above actions be taken for a source to demonstrate the unavailability of complying low solvent coatings. However, the extent to which these items were addressed, especially in total, bears upon the adequacy of Allsteel's search for complying coatings.

If a source finds that a complying coating is not available, then the source should identify the coating with the lowest level of VOC emissions that is available for that source. When reporting the response to an advertisement to USEPA, the source should report the lowest VOC content coating that is available for the particular job, even if that coating does not meet the CTG recommended limit (in this case, 3.5 lbs VOC/gallon).

Finally, appendix A notes that USEPA itself may make an independent assessment of the availability of such coatings and the compliance status of other sources in the same source category even if, after reasonable efforts are expended by the source, the source finds that no complying coatings are available.

3. Allsteel's Efforts To Find Complying Coatings

As noted earlier, Allsteel claims that it has actively pursued alternative adhesives. These alternative adhesives include those with lower VOM content, water-based adhesives, and exempt compound based adhesives. The specific alternative adhesives examined were supplied by six different suppliers. Several of these suppliers are current suppliers of solvent-based adhesives to Allsteel. No evidence was presented, however, that showed an effort by Allsteel to solicit widespread input through either the placement of advertisements in leading trade publications or the contact of a leading trade association. In addition, no evidence was presented to indicate that Allsteel had reviewed trade publications containing information concerning complying adhesives.

Through these six suppliers, Allsteel evaluated a number of alternative adhesives. With regard to lower VOM adhesives, Allsteel examined a urethane hot melt adhesive and increased solids adhesives. Allsteel worked with Swift adhesives and Pierce & Stevens on the development of a hot melt to be used on end and side strips. The increased solids adhesives were currently used solvent-based adhesives reformulated with a lower solvent content. Based on an April 7, 1986, internal Allsteel memorandum, it appears that at least two of the high solids, low solvent adhesives initially examined were supplied by National Starch and Wilsonart.

With regard to water-based adhesives, Allsteel initially examined nine different water-based adhesives, which were supplied by the six adhesive manufacturers referred to above. In addition, Allsteel examined a chlorinated solvent adhesive supplied by 3M as well as the use of a Bostik P.U.R. adhesive with a Meltex Spray Adhesive Machine.

As noted earlier, Allsteel states that all of these alternative adhesives were found to be unacceptable. The results of its testing, as discussed in a series of internal memoranda, were submitted to USEPA. Based on the information in these memoranda, the following paragraphs summarize the test results for each type of alternative adhesive.

a. *Hot Melt.* The results of the hot melt adhesive testing were identified in an October 28, 1986, memorandum. According to this memorandum, humidity, low temperature, and temperature shock tests were conducted on four partial tops. Each of the four partial tops passed Allsteel's requirement of no delamination of the laminate to the top under the humidity and the low temperature tests. Three of the four partial tops showed delamination of the laminate to the top upon completion of the temperature shock test. The testing was started on October 22, 1986, and completed on October 27, 1986.

b. *Low-Solvent Adhesives.* Based on information in an April 7, 1986, memorandum, Allsteel appears to have tested two low solvent adhesives along with a number of water-based adhesives (which are discussed below). Both adhesives were found to perform poorly in Allsteel's shear pull test. Of the 22 samples tested, 19 were reported as having failed the shear pull test.

c. *Water-Based Adhesives.* Top line samples using water-based adhesives were assembled and sent to Allsteel by six adhesive manufacturers. These samples were subjected to Allsteel's shear pull testing procedures. Of the 83 samples tested, 70 samples passed and 13 failed. Five of the water-based adhesives tested better than the adhesives used by Allsteel at the time of the testing. Of these five, Allsteel requested samples of three to begin the actual testing program. These three adhesives were chosen ". . . because of their shear test performance, their probable heat resistance, and their rollability."

The vendors of these three adhesives were requested to send 35-gallon drums of their water-based adhesives to Allsteel (May 1, 1986, memorandum). Allsteel then manufactured tops from four different adhesive samples on May 29, 1986. (May 30, 1986 memorandum; no information was provided that identified the fourth adhesive). These tops were roll-coated under the same process conditions encountered during actual production assembly operations using solvent-based contact adhesives. In a July 1, 1986, memorandum, the results of the first of several tests on the tops manufactured using the water-based adhesives were reported. According to this memorandum, the results from the first test (ST–18, Item 3.0, Shear Test) were "disappointing" in comparison to the "excellent" results

obtained during previous tests on the same adhesives.

According to this memorandum, the samples performed poorly with an average shear value for the laminate-to-steel bond of 53 lbs/square inch. Allsteel's minimum acceptable shear value is 100 lbs/square inch. Allsteel concludes that the first set of samples, which were prepared by their respective vendors, were not assembled under the same conditions encountered during actual assembly operations. Since all of these adhesive samples were incapable of passing this first test, Allsteel concluded that no further testing was required.

In a July 10, 1986, memorandum, Allsteel stated that the water-based adhesive project should still be pursued in spite of the poor results from the shear strength testing. Later memoranda (through May 26, 1987) indicate that Allsteel was still exploring possible reformulations of water-based adhesives, although no water-based adhesive had yet met Allsteel's requirements.

d. *Exempt-Compound Solvent Adhesive.* As reported in a May 26, 1987, memorandum, Allsteel tested a chlorinated solvent adhesive on the panel line and found that "values met or exceeded the standard." More extended testing was indicated as being planned for the future.

In addition, Allsteel also has investigated the possibility of utilizing a Bostik P.U.R. adhesive with a Meltex Spray Adhesive Machine.

4. *Performance Specifications*

The effect that a company's specifications for a product has on the determination of RACT must be considered on a case-by-case basis. Each case must attempt to differentiate between product and materials specifications that are simply desired by an applicant (which would generally not be considered necessary) and specifications that are required (e.g., an industry standard). It is not sufficient for a company to merely set performance specifications and say available coatings cannot meet them. Specifications that are required (e.g., an industry standard) or are necessary by the nature of the product may, however, be considered.

In addition, the lack of a complying coating that satisfies industry standard specifications does not imply that the RACT limit is not achievable. The source must still consider other compliance options (typically add-on control).

Allsteel rejected hot melt and water-based adhesives because of failure to meet internal specifications set by Allsteel. There are two issues associated with these "failures":

(1) The level of the standards that Allsteel uses to identify failures.
(2) The test procedures used to evaluate water-based adhesives.

The first issue concerns whether Allsteel's performance criteria are necessary for the production of a product that meets an industry standard. In the absence of an industry standard, a source needs to demonstrate that its specifications are necessary for successful use of the product under actual conditions for which the product is intended. Such a demonstration could include, for example, a reasonable showing by a company that its final product must meet certain durability and strength requirements. Allsteel has not provided any information that demonstrates that its specifications are either equivalent or near any industry standard or that its specifications are necessary for the successful use of the product under actual end use conditions.

The second issue involves the test methods used to determine whether water-based adhesives are successful. Allsteel currently uses solvent adhesives and not water-based adhesives. The production process is set-up to use solvent-based adhesives. Therefore, Allsteel's testing procedures may have been developed for solvent adhesives, and not water-based adhesives, under current production procedures. The "failure" of water-based adhesives may not be due to their inability to perform, but to the conditions under which they were applied. For example, if better metal surface preparation and increased drying time (two important criteria for the application of water-based adhesives) had been used, water-based adhesives may have passed Allsteel's stringent specifications. Allsteel has not justified retaining current solvent-based adhesive testing procedures, which may have been developed for solvent-based adhesives, when testing water-based adhesives. Nor has Allsteel modified its solvent-based adhesive testing procedures to accommodate testing water-based adhesives.

Two examples of Allsteel's solvent-based adhesive testing requirements include the deflection and destructive testing of cured complete desk tops. In deflection testing, the desk top is supported at the ends as a concentrated load on the center of the unsupported area of the desk top is increased to 600 pounds. At that point, the deflection at the center of the desk top is measured and, if found to be greater than 0.25 inches, the adhesive is deemed to have failed the test. Destructive testing requires the application of a minimum vertical load of 1,200 pounds to the unsupported center of a completed desk top. In order for the desk top to pass, it must be able to support the 1,200 pound load without suffering permanent deformation.

Edge crushing testing of finished tops is used to test the strength of the adhesive bond joining the steel pan construction and the top laminate. If there is permanent distortion of the edge after a 1-minute application of the 800 pound load and a 5-minute no load recovery time, the top is considered to have failed.

The standard for laminate bonding to steel involves driving a sharp ⅜ inch wide chisel between the laminate and the steel. The test is passed if the chisel cuts a ⅜ inch wide groove through the laminate covering without lifting the material on either side of the cut or in advance of the cut.

The ST–1B Shear Strength Test applies a shear load of 100 psi to test the adhesive shear strength between the laminate and the steel desk top. A 4-inch square sample of laminate bonded to steel is cut into an hourglass shape. The steel is cut completely at one end of the narrow section. The laminate is similarly cut, but on the opposite side of the sample and on the opposite end of the narrow section. A 200-pound load is applied, resulting in a 100 psi shear force applied to the adhesive.

USEPA believes that it is the solvent adhesive's strength that allows the above testing criteria as part of Allsteel's quality assurance program, not the actual performance requirements of the furniture. The solvent-base adhesive is being tested near its point of failure but where all properly assembled solvent adhesive samples will pass. Allsteel must demonstrate that the testing procedures are reasonable for the performance requirements for their furniture or else reestablish the testing standards based on market requirements or industry standards.

5. Discussion of Potentially Feasible Low VOM Adhesives

As noted earlier in the discussion on appendix A of the 11/9/88 FR notice dealing with Easco Aluminum, USEPA may wish to contact additional suppliers of coatings to investigate further the availability of complying coatings. In pursuing this avenue, several adhesives manufacturers and Steelcase, a major competitor of Allsteel, were contacted. A summary of the information obtained from the

adhesive manufacturers and Steelcase is provided below. It should be noted in the following discussion that no solvent (in an adhesive) means that the adhesive contains no VOM.

Several manufacturers including Pierce & Stevens Chemical Company (P&S), Wilsonart, Swift Adhesives, Locktite, Inc., 3M, H.B. Fuller, Imperial Adhesives, Platt and Lambert, and Adhesive Packaging Equipment, Inc. produce complying adhesives that are potentially feasible for Allsteel's operations. Most are water-based, contain no solvents or a low level of solvent and several have passed stringent testing by other manufacturers. These findings are discussed in more detail in the Allsteel Corporation RACT analysis.

Steelcase, Inc., a manufacturer of office furniture, is a major competitor of Allsteel. Allsteel and Steelcase compete in several lines of office desks, chairs, and office partitions. Steelcase opened a new office furniture manufacturing facility during the summer of 1991 in Grand Rapids, Michigan. It is using hot melt and water-based adhesives to bond medium density fiberboard to laminate, a process similar to Allsteel's panel slab operations. Hot melt adhesives are thermoplastic adhesives with no VOM emissions upon application. They can be used to join metals, laminated plastics, and textiles.

Allsteel's chair packaging line assembles the chair components using solvent adhesives with VOC contents of 5.1 to 5.56 lbs/gallon. Steelcase operates a similar operation in its plant near Anaheim, California. It uses hot melt spray, which contains no solvents, to hold chair components temporarily together before permanently assembling the office chairs with staples, which provide the final holding strength.

Steelcase also manufactures desks and office panels in the same plant using chlorinated (non-VOM) solvents. Steelcase anticipates that the California plant will have eliminated 97 percent of its VOM solvent usage by the end of 1991.

6. South Coast Air Quality Management District Rule 1168

In the area covered by the South Coast Air Quality Management District (SCAQMD), there are several thousand companies that use a wide variety of adhesives. In 1989, the SCAQMD adopted VOC limits for adhesives that required the use by January 1, 1991, (with final compliance for selected operations or substrates by January 1, 1993) of adhesives with a VOC content of 2.1 lbs/gal or less. These limits, which are contained in Rule 1168, Control of Volatile Organic Compound Emissions from Adhesive Applications, affect a large number of adhesive applications, including those applications with substrates similar to Allsteel's substrates (e.g., metal and metal-to-metal). Steelcase is subject to this rule. Thus, in the SCAQMD, sources like Allsteel have been required to meet a 2.1 lbs VOC/gallon limit since January 1, 1991.

On February 1, 1991, the SCAQMD in California held a public hearing on Rule 1168. The purpose was to discuss final solvent adhesive VOM reductions to 2.1 lbs VOC/gal for adhesive used to join metal to nonmetal and 0.3 lbs VOC/gal for adhesive used to join metal to metal. A representative of SCAQMD indicated that there was very little public comment on Rule 1168 at that meeting.

7. Allsteel's Program To Obtain Other Compliant Coatings Is Deficient

Criteria that USEPA may use to evaluate the acceptability of an investigation of complying coatings were discussed earlier under "Criteria for Evaluating Availability of Complying Coatings" (appendix A). These criteria and Allsteel's efforts are discussed below.

(a) Examine availability of complying (or lower VOC) coatings used by comparable companies.

Allsteel did not document any effort to determine the availability of complying coatings used by comparable companies.

(b) Contact suppliers available to the source to determine if they have complying coatings or other controls.

Allsteel conducted a number of tests on potential complying coatings from a number of suppliers, both current and potential.

(c) Contact trade associations to determine if they know of complying coatings or other controls.

Allsteel did not document any effort to contact trade associations to determine if they knew of complying coatings or other controls.

(d) Review trade publications containing information concerning complying coatings or other controls.

Allsteel did not document any effort to review trade publications containing information concerning complying coatings or other controls.

(e) Place two consecutive advertisements in each of three leading coating trade journals (e.g., Industrial Finishings, Products Finishing, Modern Paint and Coatings, JCT-Journal of Coatings Technology, American Paint and Coatings Journal) and describe the application and product specifications for low solvent adhesives which they are seeking. This advertisement should solicit adhesive companies to provide low VOC products meeting those specifications.

No evidence was provided by Allsteel to show that it had placed any such advertisements.

As discussed previously, it is not necessary that all of the above actions be taken for a source to demonstrate the unavailability of complying low solvent coatings. The above analysis merely addresses which actions Allsteel undertook. However, the extent to which these actions were performed, especially in total, bears upon the adequacy of Allsteel's search for complying coatings.

With the exception of contacting some available suppliers of complying coatings, Allsteel has failed to take the above-mentioned steps for determining the full potential of available complying coatings.

Several other items are of concern to USEPA regarding Allsteel's search for complying adhesives. First, a number of samples that provided good results were not investigated further It is possible that these would have ultimately provided satisfactory results.

In addition, the lack of comment on the SCAQMD's Rule 1168 suggests that sources in southern California do not have any serious objections to the stringent limits being imposed by the rule. The staff report to Rule 1168 identifies complying adhesives that could be evaluated by Allsteel.

Further, adhesives technology continues to evolve. The test data provided by Allsteel indicate that its testing occurred between 1985 and 1987. Based on USEPA review of adhesives manufacturers, there appear to be several recently developed adhesives that may allow Allsteel to comply with the 3.5 lbs VOC/gal limit through the use of compliant adhesives alone. For example, a number of manufacturers indicate they have no-solvent or low solvent adhesives that may be used by Allsteel in its production processes. These adhesives have become available since Allsteel did its testing. The USEPA believes that Allsteel needs to submit further evidence that it has investigated adhesives that have become available since that time frame.

Finally, two items of concern to USEPA regarding Allsteel's search for complying coatings are Allsteel's performance specifications used to evaluate a coating and the manufacturing conditions used by Allsteel to evaluate the low VOC (e.g., water-based) coatings. As stated earlier, Allsteel has not provided any

information that demonstrates that its specifications are either equivalent or near any industry standard or that its specifications are necessary for the successful use of the product under actual end use conditions. Thus, the performance specifications may be overly strict, to the point that the rejection of the tested water-based coatings is inappropriate.

Also, as stated earlier, it is reasonable to expect that Allsteel's testing procedures were developed for solvent adhesives, and not water-based adhesives, under current production procedures. The "failure" of water-based adhesives may not be due to their inability to perform, but to the production procedures under which they were applied. Allsteel has not justified retaining current solvent-based adhesive testing procedures when testing water-based adhesives. Nor has Allsteel modified its solvent-based adhesive testing procedures to accommodate testing water-based adhesives.

B. Add-On Control

Allsteel contends that the costs of add-on controls for controlling emissions from the application of adhesives in its chair packaging and top line operations are beyond what RACT requires (i.e., the cost-effectiveness of controls exceeds those generally associated with RACT). In addition, Allsteel identifies a number of technical issues associated with the feasibility of installing add-on controls within and on its buildings.

This section first presents the costs and technical feasibility issues as identified by Allsteel for each of the two adhesive operations. Following this discussion, the results of the analyses conducted by USEPA are presented.

Incinerators and carbon adsorbers are the most commonly used add-on control devices for VOC. As will be discussed further below, USEPA agrees with Allsteel that the use of carbon adsorbers does not constitute RACT for either of these two adhesive operations at Allsteel. USEPA also agrees with Allsteel that add-on controls do not constitute RACT for the chair packaging operation. Therefore, the analysis conducted by USEPA and the discussion of Allsteel's comments address the costs and feasibility of incinerators for controlling emissions from Allsteel's top line operation.

1. Allsteel's Analysis

Allsteel presented cost data on controlling emissions from its adhesive operations for the top line operation at its facility. Allsteel's cost information is primarily internally generated by its engineering group with some cost information provided by Enders Process Equipment (control costs and energy requirements). In addition, Allsteel made several assertions concerning the technical feasibility of installing add-on controls for the top line operation. For the top line operation, a brief description of the operation is presented followed by the technical feasibility issues and cost data associated with add-on control installation. Allsteel's comments on the chair packaging operation are also presented and discussed below.

a. *Top Line Operation.* Allsteel investigated the technical feasibility of controlling top line VOC emission sources under two scenarios: (1) Each VOC source with its own thermal incinerator, and (2) combining multiple top line VOC sources and ducting the VOCs to a single incinerator. It also evaluated the installation of thermal incinerators next to the process (interior), and on the roof above the VOC emission source and in the parking lot (exterior). The following summarizes Allsteel's position concerning the feasibility of interior and exterior installation of thermal incinerators for control of VOC emissions from the top line operation.

For interior installation, Allsteel claims that for the least congested oven, the structure height (including controls, exhaust fan, etc.) is such that the available clearance is only about 4 feet between the oven and the mezzanine located directly above the oven. Allsteel claims that the smallest available incinerator is 5 feet in diameter. In addition, Allsteel cites retrofit problems concerning lighting required for the assembly line and relocation problems involving existing ventilation ducts.

Allsteel further asserts that experience with the Office of Safety and Health Administration (OSHA) indicates the need to install the incinerator in an enclosure in order to contain fumes in case of an accident. According to Allsteel, there is inadequate room in the area for such an enclosure. Further, Allsteel claims that ducting to tie the three ovens together into an incinerator would create additional space and access problems. In addition, they believe access to the incinerator itself or to the ovens, for maintenance purposes, would be extremely difficult.

For exterior (on the roof) installation, Allsteel claims the need for extensive changes in the building structure, including new columns from the main floor to the roof (a distance of 35 feet, passing through a mezzanine) and special preparations necessary to support an incinerator with a weight of 25,000 to 30,000 pounds. Therefore, Allsteel claims that an incinerator mounted on the facility's roof would require excessive installation costs.

Setting aside the claimed problems of lack of physical space and retrofit, Allsteel supplied costs for the interior installation of an incinerator controlling emissions from the entire top line, both with and without heat recovery. These costs were based on a total flow of 78,000 standard cubic feet per minute (scfm) from all 13 (adhesive application and drying) VOM sources. Allsteel calculated the total flow from the rated exhaust taken from information plates located on the fans at all 13 top line emission points. Allsteel arrived at a cost-effectiveness value of $5,971/ton without heat recovery. This cost estimate does not include the cost of installation.

Allsteel claimed thermal heat recovery was not cost-effective as it could only use one percent of the total amount of recovered energy in other areas of the facility; although Allsteel later submitted a revised estimate in its comments on August 31, 1987, assuming 67 percent thermal energy recovery. Allsteel did not provide a basis for the revised (heat recovery) fuel cost. Allsteel recalculated the cost effectiveness with heat recovery and estimated it to be $2,378/ton. These cost-effectiveness figures are based upon total top line emissions of 123.4 TPY. The cost-effectiveness increases to $2,564/ton when the most recent emission estimate of 114.5 TPY (or a controlled rate of 92.7 TPY) is used.

Allsteel then costed an incinerator (interior installation) for collective control of just the 3 top line curing ovens (Nos. 2, 12, and 13). The calculated cost effectiveness is $4,111/ton. Allsteel did not provide a detailed explanation of its cost estimates for controlling the three curing ovens.

Allsteel also provided two cost estimates for the exterior (on the roof) installation of an incinerator. This incinerator was sized to control the No. 2 oven alone. Allsteel's calculations of an exterior installation are based on both a 300 percent installation cost, and a 200 percent installation cost. Allsteel's calculated cost effectiveness resulting from these installation costs are $6,996/ton and $5,628/ton, respectively.

At the request of IEPA, Allsteel recalculated the cost effectiveness for the installation of an incinerator controlling the 3 top line curing ovens, this time using the maximum emission rates measured during the stack tests. The maximum emission rate for the three top line curing ovens (emission

points 2, 12, and 13) was calculated by Allsteel to be 38.86 TPY as compared to Allsteel's original emission rate of 22.77 TPY. Allsteel reported new cost effectiveness values of $4,101/ton and $3,299/ton at 300 and 200 percent installation costs, respectively.

IEPA then requested Allsteel to calculate the cost effectiveness of controlling No.2 Oven and a smaller adjacent oven (which would not have been subject to Illinois Subpart PP) to provide control on a total of 15.7 TPY. The incinerator was to be installed at ground level at the building exterior. The cost-effectiveness for this 1,200 scfm incinerator, 400 feet from No. 2 oven, was calculated at $5,585/ton.

b. *Chair Packaging Operation.* The chair packaging operation involves joining chair seat components using solvent adhesive (VOM content 5.10 lbs/gal) from a one-gallon can with a hand brush at each work station. Materials bonded together are foam, polypropylene, plastic, wood, and fabric. The individual work stations are located at least twenty feet apart. The distance between work stations appears to be Allsteel's solution to minimizing VOM concentration levels. Only general ventilation is available in this area. There are no booths, hoods, or other devices designed to remove the estimated 19.9 TPY from this work area.

Allsteel claims that the cost, in dollars/ton, for controlling the emissions from the chair packaging operation would be higher than for the panel slab operation (calculated by Allsteel to be about $7,200/ton) because the chair packaging total VOC emissions were less than the panel slab operation, while the exhaust flow was greater. Therefore, Allsteel did not calculate the $/ton for thermal incineration of VOC emissions from the chair packaging operation.

2. USEPA Analysis

In this section, analysis of add-on controls applicable to Allsteel's top line operation is presented. As noted earlier, the individual work stations in the chair packaging operation are located about twenty feet apart. Only general ventilation is available in this area. For the specific situation at Allsteel's facility, the USEPA agrees that the level of emissions and its associated air flow are such that add-on controls are not feasible and, therefore, do not represent RACT for chair packaging.

In analyzing Allsteel's claims that add-on controls do not represent RACT for the top line operation, USEPA focused on examining the applicability of incinerators as a control device for the emission streams from this operation. The USEPA then conducted its own cost estimates of using incinerators to control the emissions. These costs were then compared to cost estimates in CTG documents that identify RACT for other source categories and with cost guidelines established by the IPCB. This analysis by EPA supported the feasibility of add-on controls (i.e., incinerators for the top line operation. The feasibility of incineration at Allsteel is further supported by a discussion of incineration systems, in various CTGs and used at several facilities, for control of gas streams with similar characteristics to those at Allsteel.

The technical issues raised by Allsteel with regard to the feasibility of interior and exterior installation of add-on controls are addressed following the cost analyses section.

a. *Cost-Effectiveness Analysis.* As noted earlier, Allsteel contends that add-on controls for any of its operations (top line and chair packaging) are not RACT due, in part, to economic infeasibility (i.e., high dollars/ton of control). Allsteel concludes that the dollars/ton of control exceeds the range normally considered reasonably available in past IPCB and USEPA actions. To evaluate the cost-effectiveness of add-on controls, USEPA conducted a cost analysis for the installation of incinerators to control emissions from the top line operation, subsequent to a plant visit to Allsteel's facility. This cost analysis relied heavily on the USEPA's Office of Air Quality Planning and Standard's (OAQPS) Control Cost Manual.

Using the OAQPS cost manual, a schedule of 40 hours of production per week at Allsteel, and a control efficiency of 81 percent, control cost data were calculated for controlling six emission points, three from adhesive curing ovens (emission points 2, 12, and 13) and three from adhesive application areas (emission points 1, 10, and 11). Costs were calculated both for controlling each emission point separately with its own incinerator and also for controlling all six emission points with one incinerator. These six emission points emit above ninety percent of the VOC from the top line operation. The option with the lowest cost per ton of VOC controlled was the use of a single thermal incinerator for all six emissions points. Connecting the six top line emission sources to an outside incinerator in the parking lot has a total capital cost of $806,367 (includes $236,220 for ductwork) with an annual cost of $250,652 to control 84 tons of VOM. The cost effectiveness is $2,984 per ton for the top line. These costs, which are conservative, include 500 feet of ductwork necessary to vent the emissions to one incinerator located outside in the parking lot.

These costs represent typical estimated costs applicable to custom installation of incinerators. This is in contrast to skid-mounted modular units, where total capital investment can be calculated at 125 percent of the total purchase price. Due to the uncertainty regarding the feasibility of interior control device installation, USEPA costed exterior installation in the parking lot. Exterior installation is probably the most costly and conservative installation alternative.

The calculated costs from the USEPA manual were then compared to vendor quotes obtained to verify the accuracy of the numbers. The costs calculated from the USEPA manual were consistently higher (and therefore more conservative) than the costs obtained from vendors.

b. *Bases for Establishing that Incineration Constitutes RACT.* As discussed earlier, CTGs developed by USEPA contain the presumptive norm for RACT for various source categories. In each CTG, USEPA evaluates various control technologies, including add-on control. These analyses include a determination of the cost effectiveness of using add-on controls to achieve RACT. The adhesive operations at Allsteel are subject to one of the "generic" Federal VOC rules, and thus are not specifically covered by a USEPA CTG. However, Allsteel claims that the cost-effectiveness of add-on controls is beyond what RACT requires. Therefore, the USEPA compared the cost effectiveness values reported in the two CTGs that are the most appropriate for comparison with Allsteel's adhesive operations with those determined for Allsteel.

The miscellaneous metal parts and products coating CTG is probably the most generic CTG in that it covers a wide range of metal coating operations. This CTG covers over 96,000 facilities, by far the largest of the groups covered by the nine coating CTGs. This CTG is applicable to hundreds of small to medium-sized industries for which written individual guideline documents would be impractical. One of the control techniques considered in this CTG is incineration. The range of cost effectiveness values specific to incineration of spray coating operations is $9,500 to $13,200 (1990 dollars) per ton of VOM. The cost effectiveness value calculated by the USEPA for the top line operation (i.e., $2,984/ton) is well below the range reported in this CTG for the application of incinerators

to the applications most similar to those found at Allsteel.

There is also a CTG for metal furniture coating that addresses some of the processes at Allsteel, although not specifically the adhesive operations at issue in this analysis. This 1978 document reports cost-effectiveness values for incineration that range from $1,510/ton to $4,910/ton (1990 dollars). The cost-effectiveness for Allsteel falls into this range, which is considered to be economically reasonable for the metal furniture industry.

In addition, the Illinois DENR compiled a document in February, 1988, on the economic impact of the potential generic rule (which was subsequently adopted by the IPCB) which states that the cost per ton of emission reduction that would be achieved under the proposed rule varies from a net savings to cost estimates of over $55,000 per ton. Seventy-four percent of the potential reduction is estimated to cost from $4,700 to $6,100 per ton. The IPCB adopted this rule on April 7, 1988, indicating that it considered these costs in relation to the associated emission reductions to be reasonable. The cost-effectiveness values calculated by USEPA for the topline operation ($2,984/ton) is below this range.

The IPCB is empowered by the State of Illinois to adopt rules, including rules intended to satisfy USEPA's VOC RACT requirements.

There are also various considerations related to technology transfer. In a memorandum to all regional administrators on December 9, 1976, Roger Strelow, formerly USEPA's Assistant Administrator for Air and Waste Management, issued guidance for determining the acceptability of SIP regulations in non-attainment areas. This policy established that RACT encompasses stringent, or even "technology forcing," requirements that go beyond simple "off-the-shelf" technology. RACT is the minimum USEPA can accept in non-attainment state plans. In every case, RACT should represent the toughest controls considering technological and economical feasibility that can be applied to a specific situation. Anything less than this is by definition less than RACT and is not acceptable for areas where it is not possible to demonstrate attainment.

The "technology forcing" nature of RACT leads USEPA to the investigation of potentially transferable control technologies. John Calcagni, Director of USEPA's Air Quality Management Division, in an August 29, 1988, memorandum to David Kee, Director of Air and Radiation Division, Region V, discussed the transfer of technology between source categories in determining lowest achievable emission rate (LAER).[7] The principles discussed are applicable in this case. There are two types of transfers: (1) gas stream controls, and (2) process controls and modifications. The first kind of transfer considers the class or category of sources to include any sources that produce similar gas streams that could be controlled by the same or similar technology. That is, for the purpose of evaluating the feasibility of control, a source making a different product or belonging to a different CTG category may be considered as belonging to the same source category as another source which has similar gas stream characteristics. The process that generates a VOC-laden gas stream is immaterial. What matters is whether the gas stream characteristics, such as composition and VOC concentration, are sufficiently similar to a stream from which incineration technology, for example, may be transferred.

To determine further the technical and economic feasibility of thermal incinerators, USEPA examined readily available information to verify the application of incinerators to similar emission streams, focusing on emission stream composition and total flow. Emissions from Allsteel's operations contain various compounds, including ketone, acetone, and methyl ethyl ketone (MEK). Flow rates for the six largest emission sources are between 430 and 20,000 standard cubic feet per minute (scfm) on an individual stream basis, and total approximately 28,500 scfm.

Use of pollution control devices to capture and remove VOCs found in Allsteel's emissions is well-documented and is based upon a wide variety of industrial experience. Controlling ketone, acetone, and MEK emissions is routinely handled in surface coating applications as described in the CTG documents for surface coating of cans, coils, paper, fabrics, and automobiles and light-duty trucks; metal furniture; large appliances; flatwood paneling; and graphic arts.

Pioneer Plastics Corporation in Auburn, Maine, manufactures a decorative laminate used for counter tops and furniture. Acetone, a VOC, is vaporized in dryers that are vented to an incinerator.

Eastern Fine Paper operates two coating lines that exhaust heptane, toluene, xylene, ethyl acetate, and MEK. The thermal incinerator with primary heat recovery is designed with an overall capture efficiency estimated to be in excess of 99 percent. The State of Maine has determined that this VOC control represents "best practical technology."

Connecticut Hard Rubber (CHR) Industries in New Haven, Connecticut, produces silicone rubber sheets, silicone coated fabrics, teflon coated glass cloth, and pressure sensitive coatings. All five of its coating lines are connected to an incinerator that handles 8,000 cubic feet per minute (cfm) of oven exhaust, although two of the five coating lines are operated off-line from the incinerator when they are coating with non-organic, water-based adhesives. Heat recovery is used to elevate the 200 °F dryer exhaust as high as 900 °F using a preheater, which recovers thermal energy from the hot incinerator flue gases.

Thermal incinerators are designed and built according to the waste stream flow rate. James River-Rochester, Inc., currently operates a 15,000 scfm thermal incinerator to control methanol, phenol, formaldehyde, and vinyl acetate. For more than 12 years, Supra Cote Inc., of Rancho Cucamongo, California, has operated a 30,000 scfm thermal incinerator with regenerative heat recovery. Reeco Regenerative Environmental Equipment Co., Inc., designs regenerative thermal incinerators such as Model "VF–C" ReTherm, which handles 9,125 scfm, and Model "E" ReTherm, which handles 36,500 scfm.

The Air Pollution Engineering Manual (AP–40) discusses successful partial and complete enclosure of roll coaters for desirable local ventilation. Also incorporated in the text is a full explanation of spray booth designs, relevant to Allsteel's equipment configurations.

USEPA considers 81 percent overall control to be a reasonable level of add-on control for coating sources. This is the level of control required when compliance with § 52.741(u), which covers miscellaneous fabricated product manufacturing processes, is to be achieved by an add-on control device (such as an incinerator). The feasibility of 81 percent control is discussed in more detail in the Allsteel RACT Analysis.

As noted earlier, Allsteel claims that the installation of incinerators is not technically feasible due to space limitations (for interior installation) and weight (for roof installation). The following paragraphs address these two claims.

Allsteel has vigorously maintained that there is insufficient space to install

[7] LAER is the level of control applicable to new sources in nonattainment areas.

an interior incinerator, claiming that the available clearance is only about four feet. However, the IEPA has determined there is sufficient room to install a 6-foot high, 2,800 scfm incinerator and still have 8 feet of clearance, based upon Allsteel's diagram showing a 14-foot ceiling height.

Allsteel asserts that incinerators weigh too much to rest on the roof, citing weights of 25,000 to 30,000 pounds to control the No. 2 oven only. Allsteel identified Enders Process Equipment as the source of this information. USEPA contacted Enders Process Equipment and was informed that a 1,000 cfm incinerator would weigh about 1,500 pounds and could easily be installed on the roof. Enders has recently quoted a 3,000 scfm incinerator without heat recovery that would fit on a roof and weigh between 3,500 and 4,000 pounds.

Allsteel also notes other difficulties (need for an enclosure on the incinerator, maintenance access problems, lighting problems, rerouting of ducts, more frequent replacement of the incinerator's interior insulation) associated with the interior installation of incinerators. While these other difficulties raised by Allsteel would need to be considered when designing and installing add-on controls, there is no evidence that indicates that they make the application of such controls technically or economically infeasible. Allsteel indicates that these difficulties would involve huge additional costs, but has not quantified the extent of these costs. USEPA, in costing the most conservative installation (an exterior incinerator 500 feet from the ovens) has concluded that thermal incineration for the six largest VOC sources found in the top line operation is technically and economically feasible.

III. Summary and Conclusions

The USEPA considers 3.5 lbs VOC/gallon and 81 percent overall control to be reasonable control requirements (RACT would only require compliance with 3.5 lbs VOC/gallon or 81 percent control) for major non-CTG coating sources. Allsteel contends that neither of these requirements are appropriate for its processes. Instead, Allsteel claims that RACT for its processes are emission limits of 5.2 lbs VOC/gallon for spray applications and 5.55 lbs VOC/gallon for rollcoating applications.

To support its contentions, Allsteel presented information on:

(1) Its efforts to find alternative adhesives (VOM-based adhesives with lower VOM content, water-based adhesives, and exempt compound-based adhesives) that comply with the 3.5 lbs VOC/gallon requirement, and

(2) The costs of using add-on controls. Allsteel claims that, to date, none of its efforts to find a complying adhesive have been successful and that the costs of add-on controls for controlling emissions from the application of adhesives in its chair packaging and top line operations are beyond those required under RACT (i.e., the cost-effectiveness of controls exceeds those generally associated with RACT). In addition, Allsteel identified a number of technical issues associated with the feasibility of installing add-on controls within and on its buildings.

The USEPA has evaluated these claims. For complying adhesives, USEPA examined closely the information submitted by Allsteel, and contacted adhesive manufacturers and the SCAQMD. For add-on controls, USEPA conducted its own cost estimates of using incinerators to control the emissions. These costs were compared to cost estimates in CTG documents that identify RACT for other appropriate source categories and with cost guidelines established by the IPCB. The feasibility of incineration at Allsteel was investigated further by examining the use of incineration systems for control of gas streams with similar characteristics to those at Allsteel.

Based on these analyses, the USEPA has determined that compliance with an emission limit of either 3.5 lbs VOC/gallon or 81 percent control represents RACT for Allsteel's adhesive operations. This finding is based on the following:

A. Availability of Complying Adhesives

(1) 3.5 lbs/gallon is a reasonable general coating limit.

(2) Rule 1168 of the SCAQMD requires 2.1 lbs VOC/gallon for sources similar to Allsteel's. This limit has been in effect since January 1, 1991.

(3) Other potentially feasible adhesives that have VOC contents of less than 3.5 lbs VOC/gallon are available.

(4) By all indications, a major competitor, Steelcase, is making similar products without exceeding 3.5 lbs VOC/gallon.

Further, Allsteel has failed to document that 3.5 lbs VOC/gallon is not RACT for its adhesive operations.

Specifically, Allsteel failed to:

(1) Examine the availability of complying (or lower VOC) coatings used by comparable companies.

(2) Contact trade associations to determine if they know of complying coatings or other controls.

(3) Review trade publications containing information concerning complying coatings or other controls.

(4) Place advertisements in leading paint and coating trade journals and describe the application and product specifications for low solvent adhesives which they are seeking.

Although it is not necessary for all of the actions in Appendix A of the Easco notice to be taken for a source to demonstrate the unavailability of complying low solvent coatings, the failure of Allsteel to have performed the above actions adversely bears upon the adequacy of its search for complying coatings.

In addition, Allsteel did not provide justification for the performance specifications to which it judged the performance of the water-based coatings. When complying coatings fail performance specifications it is the company's burden to show that these performance specifications are reasonable and necessary due to the nature of the product. However, Allsteel has not made such a showing. There is no evidence presented that indicates the performance specifications are equivalent or even near industry norms. Nor did Allsteel revise its test procedures to accommodate water-based adhesives. Using production procedures designed for the application of solvent-based adhesives to test water-based adhesives has not been shown to be appropriate. Finally, Allsteel's failure to document that it has conducted a comprehensive adhesive identification and evaluation program is further revealed by Allsteel's apparent failure to evaluate a number of complying adhesives identified in the Allsteel RACT analysis.

B. Add-On Controls

USEPA has determined that 81 percent reduction via add-on control technology is both technically and economically feasible for the top line operation (for emission points 1, 2, 10, 11, 12, and 13) at Allsteel's facility. Incineration of the top line operation emissions constitutes RACT because:

(1) The dollars/ton of control using incineration is within the range of values represented in the CTGs that are most appropriate for comparison with Allsteel's adhesive operations.

(2) The dollars/ton of control is within the range of values cited in the economic impact study for IPCB's generic rule.

(3) Incineration of gas streams with emission characteristics similar to those at Allsteel has been documented in CTGs and in actual use.

USEPA rejects Allsteel's claims that incinerator installation is technically infeasible for its top line operation. USEPA has determined that exterior installation is feasible for the top line operation when controlling emissions (from emission points 1, 2, 10, 11, 12, and 13) in a single incinerator.

Finally, USEPA agrees with Allsteel that add-on controls do not represent RACT for its chair packaging operation.

Therefore, USEPA is proposing that Allsteel's adhesive operations be subject to the 3.5 lbs/gal or 81 percent control requirement in 40 CFR 52.741(u), which covers miscellaneous fabricated product manufacturing processes.

Compliance with 40 CFR 52.741(u) is required one year from the date this action becomes final.

IV. SIP Revision Proposed by Illinois for Allsteel

On April 11, 1989, Illinois submitted a proposed revision to the Illinois SIP. This revision consists of an adjusted RACT Standard for Allsteel, docketed as AS–88–3 by the IPCB.

On February 23, 1989, the IPCB adopted a Final Opinion and Order for this proceeding. This IPCB Order prohibits Allsteel from using adhesives which exceed 5.20 pounds per gallon (lb/gal) of VOM for adhesives which are applied as a spray and 5.55 lb/gal of VOM for adhesives which are applied by rollcoating.

USEPA is proposing to disapprove this SIP revision request because it does not constitute RACT. The reasons are contained in the prior sections of this notice dealing with the reconsideration of Federal Rule 40 CFR 52.741(u), titled "Miscellaneous fabricated product manufacturing processes," as it applies to Allsteel's adhesive application lines.

Public comment is solicited on USEPA's proposed rulemaking actions discussed above. Public comments received by the date shown above will be considered in the development of USEPA's final rule.

Under 5 U.S.C. 605(b), I certify that this action will not have a significant impact on a substantial number of small entities (See 46 FR 8709). No new requirements are imposed and only a single entity is involved, Allsteel, Inc.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 26, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, part 52, of the Code of Federal Regulations is proposed to be amended as follows.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.741 is amended by revising paragraphs (u)(3), (u)(4), (z) introductory text and (z)(1) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.

* * * * *

(u) * * *

(3) *Control Requirements.* Every owner or operator of an emission source subject to paragraph (u) of this section shall comply with the requirements of paragraph (u)(3)(i), (ii), (iii), or (iv) of this section:

(i) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent; or

(ii) For coating lines, the daily-weighted average VOM content shall not exceed 0.42 kg VOM/l (3.5 lbs VOM/gal) of coating as applied (minus water and any compounds which are specifically exempted from the definition of VOM) during any day. Owners and operators complying with this paragraph are not required to comply with § 215.301 of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742); or

(iii) An alternative control plan which has been approved by the Administrator as a SIP or FIP revision; or

(iv) The control measure specified in the second sentence of this paragraph (that is, (u)(3)(iv)) is only applicable to Allsteel, Incorporated's adhesive top lines at its metal furniture manufacturing operations in Kane County, Illinois. Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent from top line emission points 1, 2, 10, 11, 12, and 13.

(4) *Compliance Schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (u) of this section shall comply with the requirements of paragraph (u) of this section on and after July 1, 1991, unless an alternative compliance schedule is specified. Compliance with 40 CFR 52.741(u)(3) is required one year from the date of final action on reconsideration for Allsteel, Incorporated's adhesive lines at its metal furniture manufacturing operations in Kane County, Illinois.

* * * * *

(z) *Rules Stayed.* Not withstanding any other provision of this subpart, the effectiveness of the following rules is stayed as indicated below.

(1) The following rules are stayed from July 1, 1991, until USEPA completes its reconsideration as indicated: (i) 40 CFR 52.741(e)(1)(i)(M) (2), and (3), and 40 CFR 52.741(e)(5); (ii) 40 CFR 52.741 (u) and (v), including 40 CFR 52.741 (u)(4) and (v)(4) only as applied to Viskase Corporation's cellulose food casing manufacturing facility in Bedford Park, Illinois; and (iii) 40 CFR 52.741(u), including 40 CFR 52.741(u)(4), only as applied to Allsteel, Incorporated's adhesive lines at its metal furniture manufacturing operations in Kane County, Illinois. When USEPA concludes its reconsideration, it will publish its decision and any actions required to effectuate that decision in the Federal Register.

* * * * *

[FR Doc. 93–13940 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 55

[FRL–4667–7]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed rulemaking ("NPR"); consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulation that is being updated pertains to the requirements for OCS sources for which the San Luis Obispo County Air Pollution Control District (San Luis Obispo County APCD), the Santa Barbara County Air

Pollution Control District (Santa Barbara County APCD), and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The OCS requirements for the above Districts contained in the Technical Support Document are proposed to be incorporated by reference into the Code of Federal Regulations and listed in an appendix to the OCS air regulation. Proposed changes to the existing requirements are discussed below.

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

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A–5), Attn: Docket No. A–93–16, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105. Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (A–5), Attn: Docket No. A–93–16, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, room M–1500.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur: (1) At least annually; (2) upon receipt of a Notice of Intent (NOI) under § 55.4; and (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This NPR is being promulgated in response to the submittal of rules by three local air pollution control agencies. Public comments received in writing within 30 days of publication of this notice will be considered by EPA before promulgation of the final updated rule. EPA may choose in the future, however, to promulgate updates using direct-final rulemaking, to speed up the incorporation of state and local agency regulations into 40 CFR part 55.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the state and local rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules.[2]

After review of the rules submitted by San Luis Obispo County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which San Luis Obispo County APCD is designated as the COA. None of the existing OCS requirements were deleted. Included is a revision to a rule that already applies to OCS sources and a rule submitted by the District to be added:

Rule 302• Schedule of Fees (Adopted 09/15/92)

Rule 417 Control of Fugitive Emissions of Volatile Organic Compounds (Adopted 02/09/93)

After review of the rules submitted by Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule applicable to OCS sources for which Santa Barbara County APCD is designated as the COA. None of the existing OCS requirements were deleted. The following rule was submitted by the District to be added:

Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 11/13/90)

After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which Ventura County APCD is designated as the COA. None of the existing OCS requirements were deleted. Included are revisions to rules that already apply to OCS sources and rules submitted by the District to be added:

Rule 2 Definitions (Adopted 12/15/92)

Rule 24 Source Recordkeeping, Reporting and Emission Statements (Adopted 9/15/92) (completely revised and renamed)

Rule 42 Permit Fees (Adopted 12/22/92)

Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/17/92)

Rule 74.2 Architectural Coatings (Adopted 8/11/92)

The following rules were submitted by Ventura County APCD, but are not proposed for inclusion in the above

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations

[2] Upon delegation the onshore area will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

document because they are administrative and procedural:

Rule 26.5 New Source Review—Community Bank (Adopted 12/22/92)
Rule 26.7 New Source Review—Notification (Adopted 12/22/92
Rule 72.1 OCS Air Regulations (Adopted 12/22/92)

Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and in the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final OCS rulemaking dated September 4, 1992 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0249. This consistency update does not add any further requirements.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 10, 1993.

David P. Howekamp,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 et seq.) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(E), (e)(3)(ii)(F), and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(E) *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources.*

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

4. Appendix A to part 55 is proposed to be amended by revising paragraphs (b)(5), (b)(6), and (b)(8) under the heading, "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

(5) The following requirements are contained in *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 104 Action in Areas of High Concentration (Adopted 7/5/77)
Rule 105 Definitions (Adopted 11/5/91)
Rule 106 Standard Conditions (Adopted 8/6/76)
Rule 108 Severability (Adopted 11/13/84)
Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 Equipment not Requiring a Permit, except A.1.b. (Adopted 11/5/91)
Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 Applications, except B. (Adopted 11/5/91)
Rule 204 Requirements, except B.2. and C. (Adopted 11/5/91)
Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 Periodic Inspection, Testing and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 Calculations, except E.4. and F. (Adopted 11/5/91)
Rule 302 Schedule of Fees (Adopted 9/15/92)
Rule 305 Fees for Acid Deposition Research (Adopted 7/18/89)
Rule 401 Visible Emissions (Adopted 8/6/76)
Rule 403 Particulate Matter Emissions (Adopted 8/6/76)
Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Adopted 12/6/76)
Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/13/84)
Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)
Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 1/10/89)
Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/10/89)
Rule 416 Degreasing Operations (Adopted 6/18/79)
Rule 417 Control of Fugitive Emissions of Volatile Organic Compounds (Adopted 2/9/93)
Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
Rule 501 General Burning Provisions (Adopted 1/10/89)
Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 New Source Performance Standards (Adopted 9/4/90)

(6) The following requirements are contained in Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes–Northern Zone (Adopted 10/23/78)

Rule 307 Particulate Matter Emission Weight Rate–Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems–Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Storage of Petroleum and Petroleum Products (Adopted 12/10/91)
Rule 326 Effluent Oil Water Separators (Adopted 10/23/78)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 11/13/90)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems. Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (12/10/91)
Rule 342 Control of Oxides of Nitrogen (NO_x from Boilers, Steam Generators and Process Heaters) (03/10/92)
Rule 505 Breakdown Conditions Sections A.,B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)

* * * * *

(8) The following requirements are contained in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:

Rule 2 Definitions (Adopted 12/15/92)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15 Permit Issuances (Adopted 7/5/83)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permits (Adopted 1/8/91)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Appendix II—A Information Required for Applications to the Air Pollution Control District
Appendix II—B Best Available Control Technology (BACT) Tables
Rule 42 Permit Fees (Adopted 12/22/92)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 7/5/83)
Rule 56 Open Fires (Adopted 5/24/88)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 7/5/83)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/16/92)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/19/90)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/17/92)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 9/5/89)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 5/16/89)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 3/28/89)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV—A Soap Bubble Tests
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

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[FR Doc. 93–14314 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 207

[FRA Docket No. RPO–1; Notice No. 1]

RIN 2130–AA69

Railroad Police Officers

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to implement section 1704 of the Crime Control Act of 1990. Section 1704 authorizes a railroad employee who is commissioned as a railroad police officer by any state to enforce, in accordance with DOT regulations, the laws of any state in which the railroad police officer's employer owns property for the purpose of protecting railroad property, personnel, passengers, and cargo.

DATES: Written comments must be received no later than July 30, 1993. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Persons who want to be notified that FRA has received their written comments should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will write or type the date the comment was received on the postcard and return the card to the addressee. Written comments will be available for examination during regular business hours in room 8201 of the Nassif Building.

FOR FURTHER INFORMATION CONTACT: Gareth W. Rosenau, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–9416).

SUPPLEMENTARY INFORMATION:

I. Background

Since 1855, railroads have employed railroad police officers to protect railroad property, personnel, passengers, and cargo. Today, there are approximately 3,000 railroad police officers throughout the United States, the majority of whom are commissioned by a state to perform the duties of a peace officer. Each state has its own set of rules governing railroad police officer conduct. Currently, railroad police officers may not enforce the laws of any state where they are not commissioned.

Railroad police officers provide protection against vandalism, trespassing, railroad property and cargo theft, sabotage, terrorism, and burglaries of company property. They also respond to emergencies involving fires, derailments, and railroad accidents and incidents. They are armed and authorized to make apprehensions and arrests. Their power to enforce laws is generally limited to the perimeters of the employing railroad's property. However, some states allow railroad police officers to pursue suspects off railroad property after witnessing a crime on railroad property.

Railroad police officers sometimes travel with cargo from the place of origin to final destination, even if this involves accompanying a train into states where the officers are not commissioned. A railroad generally has commissioned railroad police officers in each state where it conducts business and owns property; however, these commissioned railroad police officers may at times be unavailable when an accident or incident occurs. Under these circumstances, railroad police officers who are not commissioned in that state must resort to a citizen's arrest or wait until a commissioned railroad police officer or a state police officer arrives. Property damage or personal injuries may occur during the interim.

On October 27, 1990, Congress addressed these concerns by enacting section 1704 of the Crime Control Act of 1990, Public Law 101–647 (45 U.S.C. 446) which provides:

A railroad police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of any State shall, in accordance with regulations issued by the Secretary of Transportation, be authorized to enforce the laws of any jurisdiction in which the rail carrier owns property, for the purpose of protecting——

(1) the employees, passengers, or patrons of the rail carrier;

(2) the property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier;

(3) property moving in interstate or foreign commerce in the possession of the rail carrier; and

(4) personnel, equipment, and materials moving via railroad that are vital to the national defense, to the extent of the authority of a police officer properly certified or commissioned under the laws of that jurisdiction.

In response, the Secretary has delegated authority to the Federal Railroad Administrator to promulgate appropriate regulations.

Because the powers of police officers may vary somewhat from state to state, there may exist a need for a railroad police officer to receive training in the laws of each state where he is authorized to operate. FRA invites comments on officer training, particularly on whether this rule should address means for assuring appropriate officer knowledge through state-to-state agreements or other means of setting training standards acceptable to the coordinating states. FRA notes that training requirements tantamount to a state's full commissioning process would appear to frustrate Congress' intent, *i.e.*, that railroad police officers not have to be commissioned in each state in which they work.

The extent of authority granted to railroad police officers also varies from state to state. Some states limit their jurisdiction to railroad property; other states have no such restrictions. Because FRA seeks to ensure some uniformity of authority among the states, this proposed rule limits the jurisdiction of a railroad police officer to property owned by the officer's employing railroad, except in those states where officers are allowed to operate off railroad property in cases of hot pursuit. FRA invites comment on whether these proposed regulations should pre-empt any other state limitations on authority or whether they should include other conditions on railroad police officers' authority.

II. Regulatory Impact

These proposed regulations have been evaluated in accordance with existing regulatory policies and are considered to be non-major under Executive Order 12291. The proposed rules are considered significant under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures")(44 FR 11034; February 26, 1979) because they implement a substantial regulatory program or change in policy.

In accordance with section 10(a) of the Procedures, FRA has determined that a draft Regulatory Analysis is not required because the proposed regulations do not meet any of the criteria mandating the preparation of such an analysis. In accordance with section 10(e), FRA has prepared a draft Regulatory Evaluation which includes a brief analysis of the economic consequences of the proposed regulation and analysis of its anticipated benefits and impacts. Copies of the evaluation are contained in the docket for this proceeding.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations. FRA specifically requests comments on the impact of this rule on small entities.

Paperwork Reduction Act

This notice of proposed rulemaking contains information collection requirements. These requirements are being submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

FRA has endeavored to keep the burden associated with this rule as simple and minimal as possible. The only section that contains information collection requirements is section 207.4, which requires notice to state officials of each railroad police officer commission. The estimated time to fulfill the requirement is 15 minutes for each officer. This estimate includes time for reviewing instructions, searching existing data sources, gathering or maintaining data needed, and completing and reviewing the collection of information.

Environmental Impact

As required by the National Environmental Policy Act and related directives, FRA has evaluated this proposed regulation in accordance with FRA procedures for ensuring full consideration of the potential environmental impacts of FRA's actions. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

FRA certifies that this action has been analyzed in accordance with the principles, criteria and requirements contained in Executive Order 12612 and accords with the policies set forth therein. This rulemaking implements a general statutory mandate from Congress that provides the Secretary, acting through FRA, some discretion in formulating the statute's implementing regulations. Therefore, in accordance with Executive Order 12612, FRA has prepared a Federalism Assessment, which includes a brief analysis of the consequences of the proposed regulation upon the states' perogatives in commissioning railroad police officers. Copies of the evaluation are contained in the docket for this proceeding.

List of Subjects in 49 CFR Part 207

Investigations, Penalties, Railroad safety, Railroads.

III. The Proposed Rule

In consideration of the foregoing, FRA proposes to amend title 49 of the Code of Federal Regulations by adding new part 207 to read as follows:

PART 207—RAILROAD POLICE OFFICERS

Sec.

207.1 Application
207.2 Definitions
207.3 Designation and Commissioning
207.4 Notice to State Officials
207.5 Authority in States Where Officer Not Commissioned

Authority: 49 U.S.C. § 322; Section 1704 of Pub. L. 101–647; 49 CFR § 1.49(ff).

§ 207.1 Application.

This part applies to all railroads.

§ 207.2 Definitions.

As used in this part:

(a) *Railroad police officer* means a peace officer who is employed by a railroad and commissioned in his or her state of legal residence or state of primary employment to enforce state laws for the protection of railroad property, personnel, passengers, and/or cargo.

(b) *Commissioned* means that a state official has certified, commissioned, or otherwise designated a railroad employee as qualified under the licensing requirements of that state to act as a railroad police officer in that state.

(c) *Property* means rights-of-way, easements, appurtenant property, equipment, cargo, facilities, and buildings and other structures owned, leased, operated, maintained, or transported by a railroad.

§ 207.3 Designation and commissioning.

(a) A railroad may designate employees to be commissioned by a state authority as railroad police officers to serve in the states in which the railroad owns property.

(b) The designated railroad police officer shall be commissioned by the railroad police officer's state of legal residence or the railroad police officer's state of primary employment.

§ 207.4 Notice to state officials.

(a) After the designated railroad police officer is commissioned by a state or states, the railroad shall send written notice to appropriate officials of every other state in which the railroad police officer shall protect the railroad's property, personnel, passengers, and cargo. The notice of commission shall contain the following information:

(1) The name of the railroad police officer;

(2) The badge number, identification number, rank, code, or other identifying information assigned to the railroad police officer;

(3) The date of commission;

(4) The state or states where the railroad police officer is commissioned;

(5) The date the railroad police officer received training or retraining regarding the laws of such state or states;

(6) The name of the railroad official who designated the employee as a railroad police officer; and

(7) Color photographs of the types of badges, identification cards, and other identifying materials the railroad uses to identify its railroad police officers.

(b) The railroad shall keep copies of all such notices at a central location.

§ 207.5 Authority in states where officer not commissioned.

(a) A railroad police officer who is designated by a railroad and commissioned under the laws of any state is authorized to enforce the laws (as specified in paragraph (b) of this section) of any state in which the railroad owns property and to which the railroad has provided notice in accordance with § 207.4 of this part.

(b) Under the authority of paragraph (a) of this section, a railroad police officer may enforce only relevant laws for the protection of—

(1) The railroad's employees, passengers, or patrons;

(2) The railroad's property or property entrusted to the railroad for transportation purposes;

(3) The intrastate, interstate, or foreign movement of cargo in the railroad's possession or in possession of another railroad or non-rail carrier while on the railroad property; and

(4) The railroad movement of personnel, equipment, and materials vital to the national defense.

(c) The authority exercised under this section in any state by a commissioned railroad police officer shall be the same as that of a police officer or peace officer commissioned under the laws of that state.

(d) The commissioned railroad police officer's law enforcement powers shall apply only on railroad property, except that an officer may pursue off railroad property a person suspected of violating the law on railroad property, if permissible under state law.

Issued in Washington, DC, on June 10, 1993.

S. Mark Lindsey,

Acting Federal Railroad Administrator.

[FR Doc. 93–14254 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–06–P

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49 CFR Part 209

[Docket No. RSEP–7, Notice No. 1]

RIN 2130–AA85

Remedial Actions Reporting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Pursuant to section 3 of the Rail Safety Enforcement and Review Act, FRA proposes a rule to require that any responsible company that is notified by this agency both that assessment of a civil penalty will be recommended against that company for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, shall report to FRA, within 30 days after the end of the month in which such notification is received, actions taken to remedy that failure. The proposed rule also provides, pursuant to section 3, that if appropriate required remedial actions cannot be taken by a responsible company within such 30-day period, such company shall submit to FRA a written explanation of the reasons for any delay and a final report upon completion of the remedial actions. Interested parties are invited to submit comments for inclusion in the docket of this rulemaking.

DATES: (1) *Written comments:* Written comments must be received on or before October 29, 1993. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public hearing:* A public hearing will be held at 10 a.m. on October 19, 1993. Anyone who desires to make an oral statement at the hearing must notify the Docket Clerk by telephone or mail on or before October 15, 1993, and must submit three copies of the oral statement that he or she intends to make at the hearing by October 15, 1993.

ADDRESSES: (1) *Written comments:* Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., room 8201, Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours in room 8201 of the Nassif Building at the above address.

(2) *Public hearing:* The public hearing noted above will be held in Room 2230 of the Nassif Building at the same street address. Persons desiring to make oral statements at the hearing should notify the Docket Clerk by telephone (202–366–0635) or by writing to: Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., room 8201, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Edward R. English, Director, Office of Safety Enforcement, FRA, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone number: 202–366–9252), or David H. Kasminoff, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telephone number: 202–366–0635).

SUPPLEMENTARY INFORMATION:

Background

FRA's primary function is to promote safety within the railroad industry. In order to protect railroad employees, travelers, and the public at large, FRA must have a complete and accurate picture of the safety situation within the industry. FRA's safety mission can only be effective if its regulatory activities and limited resources are focused on real problems; thus, comprehensive and correct safety data is the cornerstone of an effective and efficient rail safety program. To build that data base, various FRA rail safety regulations already require that reports be filed with the agency, some on a periodic basis, and others upon the occurrence of a specified event.

In a study released on July 31, 1990 (GAO/RCED–90–194), the General Accounting Office (GAO) concluded that FRA had no assurance that railroads are correcting problems identified in FRA's routine inspections because there were no requirements that railroads respond in writing to indicate that an identified defect had been repaired. The GAO report acknowledged that, even in the absence of requirements to report corrective actions, railroads voluntarily respond in writing to FRA concerning most track and signal defects indicating that corrective actions have been taken. For example, in 1986 through 1988 FRA identified about 361,000 track defects, for which approximately 320,000, or 89 percent, had recorded a railroad response in the "Action" and "Date" columns of the railroad's copy of the Track Inspection Report. In the same period, FRA identified about 35,000 signal defects for which approximately 30,000, or 86 percent, had recorded a railroad response in the "Action" and "Date" columns of the railroad's copy of the Signal and Train Control Inspection Report. The GAO report further noted that, although some railroads also report corrective actions for equipment and operating practices defects, FRA maintains no record of these written responses and that FRA does not perform reinspections in every case to verify the correction of a safety defect. GAO recommended that FRA establish an effective follow-up program that would include (i) requiring railroads to report actions taken on FRA inspection findings, (ii) determining what reinspection levels are needed to ensure that railroads are responding to inspection findings, and (iii) assessing civil penalties for failure to report corrective actions.

On September 3, 1992, the President signed into law the Rail Safety Enforcement and Review Act (the Act), Public Law 102–365, 106 Stat. 972, which mandates certain rulemaking activities. In particular, section 3 of the Act provides as follows:

(a) Regulations.—The Secretary of Transportation (hereafter in this Act referred to as the "Secretary") shall issue regulations to require that any railroad notified by the Secretary that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws, as such term is defined in section 212(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441(e)), or any rule, regulation, order, or standard issued under such provision, shall report to the Secretary, within 30 days after the end of the month in which such notification is received, actions taken to remedy that failure.

(b) Explanation of Delay.—Regulations issued under subsection (a) shall provide that, if appropriate remedial actions cannot be taken by a railroad within such 30-day period, such railroad shall submit to the Secretary an explanation of the reasons for any delay.

(c) Schedule for Regulations.—The Secretary shall—(1) within 9 months after the date of enactment of this Act, issue a notice of proposed rulemaking for regulations to implement this section; and (2) within 2 years after the date of enactment of this Act,

issue final regulations to implement this section.

45 U.S.C. 437 note, Public Law No. 102–365, section 3, 106 Stat. 972. The Secretary has delegated these rulemaking responsibilities to the Federal Railroad Administrator. 49 CFR 1.49 (m).

As defined in section 212(e) of the Federal Railroad Safety Act of 1970 (the Safety Act), the term "Federal railroad safety laws" means the Safety Act (45 U.S.C. 421, 431 *et seq.*), "[t]he Hazardous Materials Transportation Act (49 App. U.S.C. 1801 *et seq.*), and those laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2), and (6)(A) of section 6 of the Department of Transportation Act (49 App. U.S.C. 1655(e)(1), (2), and (6)(A))." 45 U.S.C. 441(e). Those laws which were transferred include, but are not limited to, the Safety Appliance Acts (45 U.S.C. 1–16), the Locomotive Inspection Act (45 U.S.C. 22–34), the Accident Reports Act (45 U.S.C. 38–43a), the Hours of Service Act (45 U.S.C. 61–64b), and the Signal Inspection Act (49 App. U.S.C. 26).

Although section 3 of the Act mandates issuance of rules requiring remedial actions reports only from railroads, the proposed rule expands the applicability of these regulations to include any "responsible company" (*i.e.*, a person other than an individual) that is notified both that assessment of a civil penalty will be recommended against that company and that a remedial actions report must be submitted. FRA's authority to expand the applicability of the proposed rule to include this larger group of entities derives from our rulemaking authority under section 202 of the Safety Act, in furtherance of our enforcement authority under the Hazardous Materials Transportation Act. See 49 CFR 1.49(m) and (s). As defined in the proposed § 209.3, "person" encompasses the definition of that word in both the Safety Act and the Hazardous Materials Transportation Act. The types of entities listed are illustrations, and the term is to be given its broadest meaning.

For purposes of the proposed Subpart E on remedial actions reporting, a "responsible company" informed both that assessment of a civil penalty will be recommended against that company and that preparation of a remedial actions report is required must submit such a report. Of course, FRA performs its safety inspections in order to monitor and enforce compliance with the Federal railroad safety laws by all entities subject to its jurisdiction. The entities themselves still retain ultimate responsibility for detecting, repairing, and avoiding violations of those laws. Nevertheless, the reporting requirement will assist FRA in monitoring followup actions by responsible companies with respect to conditions sufficiently serious to warrant possible future civil penalty actions. Moreover, the proposed rule permits FRA to develop more comprehensive safety data, better utilize its limited resources, and consistently treat all similarly situated violators of the Federal railroad safety laws, since it allows FRA to receive required reports of remedial actions taken to remedy failures to comply with Federal railroad safety laws from all entities informed that assessment of a civil penalty will be recommended, not just from railroads.

By expanding the applicability of the proposed rule, while at the same time limiting the applicability of these regulations to persons other than individuals, FRA's primary focus is to ensure that remedial actions reports are submitted by all entities with both the legal responsibility to submit the required reports, and with the ability to implement procedures by which employees properly prepare the reports on behalf of the entities. However, as the penalty provision in § 209.409 makes clear, any individual who willfully thwarts the reporting provisions of the proposed rule would be held individually liable for the violation. For example, a railroad receives written notification from FRA that a recommendation for the assessment of a civil penalty is being made pursuant to 49 CFR 213.109 for the failure of a 39-foot segment of track to have a sufficient number of crossties which in combination will hold gage within the limits prescribed in § 213.53(b), and instructs one of its employees to make all necessary repairs and prepare the remedial actions report. If the employee fails to make the repairs but willfully submits a report to FRA indicating that the repairs were made, thereby causing the railroad employer to submit a false report, the individual employee could be subject to individual liability for causing a violation of a requirement of the proposed subpart E.

Accordingly, if an FRA inspector, state inspector participating in investigative and surveillance activities under 49 CFR part 212, or other duly authorized official performing a safety inspection (hereinafter referred to collectively as "safety inspector") determines that a violation has occurred and decides to recommend the assessment of a civil penalty against any responsible company for a failure to comply with a provision of the Federal railroad safety laws, the inspector will first prepare an inspection report. Although the title of the inspection report will vary by safety discipline (*e.g.*, Track Inspection Report), all of the inspection reports provide essentially the same basic information to the subject responsible company. The inspection report identifies the name of the safety inspector, his or her identification number, the report number, the region where the inspector is based, the name and title of the representative of the responsible company served with the report, the responsible company's name and computer code (if any), the railroad division and subdivision (if applicable), and the inspection report date. Further, the inspection report also indicates if a "violation report" is being filed by the inspector. A violation report includes a recommendation for the assessment of a civil penalty.

Even if the inspector recommends the assessment of a civil penalty, which requires the submission to FRA's Office of Chief Counsel of a factual summary called a violation report, the current system does not require any person, including a shipper or railroad, to notify FRA of any actions taken to remedy the failure noted on the violation report. This information is often not provided until settlement negotiations are held with the Office of Chief Counsel.

The central requirement of the proposed rule is that any responsible company receiving notification on the current version of the inspection report (*e.g.*, the word "yes" is circled in the box stating "violation report filed") (i) that the safety inspector is recommending the assessment of a civil penalty for a failure by that company to comply with a provision of the Federal railroad safety laws and (ii) that a report of remedial actions must be filed, shall fill out the form specified by this rule and then return the form to the safety inspector designated on the form within 30 days after the end of the month in which such notification is received. The remedial actions report must include the name and job title of the individual completing the form on behalf of the responsible company and indicate the date(s) on which the remedial actions occurred. A copy of the proposed standard form on which to report to FRA remedial actions taken is appended to this NPRM.

Under the terms of the proposed rule, the duty to submit a remedial actions report does not arise merely upon notification that a recommendation for the assessment of a civil penalty will be made, but only if notification is also provided to the responsible company

that a remedial actions report for that specific failure must be submitted. Broadly construed, under one permissible interpretation of the reporting requirement of section 3 of the Act, the requirement could apply to all violations for which the assessment of a civil penalty is recommended. This would, of course, include all violations involving physical defects (*e.g.*, in track, equipment, and signals), where absent remedial actions, the physical defect continues to pose a safety hazard, *e.g.*, a defective wheel on a freight car. However, this would also include violations involving a defect in human performance, such as permitting a locomotive engineer to work in excess of 12 hours in violation of the Hours of Service Act. In that instance, the excess service creates a risk during the period of the excess service itself but does not carry a continuing threat to safety.

FRA believes that the intent of Congress in enacting section 3 of the Act was to require the reporting of remedial actions only for a failure to comply that could literally and specifically be corrected. Accordingly, under the terms of the proposed rule, FRA is interested in determining if responsible companies notified of specific violations that could still pose an ongoing risk to rail safety if not corrected (*e.g.*, operation of a freight car received in interchange in revenue service with a defective wheel) and/or can in fact be corrected, are in fact initiating prompt actions to minimize and correct these safety problems. For violations involving completed or past transactions that can no longer be remedied (*e.g.*, the particular defect in performance discussed above, or offering a freight car in interchange with a defective wheel that FRA identified to the receiving railroad as requiring repair), FRA would already expect the responsible company against whom a civil penalty is recommended to reassess its own overall policy and attitude toward future compliance, such as by reallocating its resources or providing additional employee training. In all these situations, of course, a civil penalty has already been recommended as an incentive toward such generally responsive actions. In this regard, to require a responsible company to inform FRA of remedial actions taken in response to a particular violation that can no longer be remedied by that company would be superfluous.

In light of FRA's interpretation of section 3 of the Act and in an effort to develop meaningful compliance data, the proposed rule applies the remedial actions regulations to only three general categories of failures to comply with a provision of the Federal railroad safety laws for which the assessment of a civil penalty is recommended. The three general categories consist of physical defects, recordkeeping and reporting violations, and filing violations.

Since a responsible company's duty to submit a remedial actions report does not arise unless specific notification to this effect is provided by FRA on the inspection report, the determination of whether or not a particular failure recommended for the assessment of a civil penalty falls under one of the above three general categories, and thus triggers the reporting requirement, clearly rests with FRA. The proposed rule neither compels nor permits any affected responsible company to decide for itself whether a particular recommendation to FRA for the assessment of a civil penalty results in the need to submit a remedial actions report. Consider, for example, a situation in which a railroad is informed that because of its operation of a locomotive with a plain bearing box having no visible free oil, in violation of 49 CFR 229.64, a recommendation will be made for the assessment of a civil penalty. However, the safety inspector neglects to include the requisite notification on the inspection report that submission of a remedial actions report is required. Although the inspector's omission would not affect the railroad's underlying obligation to pay any civil penalty assessed for the substantive locomotive violation, FRA's failure to provide the required notification would, under this proposed rule, mean that the railroad had no duty to file a remedial actions report regarding the substantive violation.

One permissible reading of the statute is that remedial actions reports are required for all categories of violations. Although FRA's reading of the statute is not so expansive, FRA encourages interested parties to submit their views on FRA's interpretation of section 3 of the Act, and specifically on whether the final rule should require responsible companies to submit remedial actions reports for all categories of failures to comply with a provision of the Federal railroad safety laws for which the assessment of a civil penalty is recommended, rather than for just the three general categories discussed above. Although a responsible company might only be able to indicate either that no action was possible or that general measures were taken to prevent violations similar to those involved in completed or past transactions, the information might assist FRA in allocating its scarce resources with respect to future inspection and enforcement activity. Any commenter that believes that such expansive reporting is required by the statute or inherently useful should recommend specific ways that such generally responsive actions could usefully be reported. FRA specifically leaves open the option of taking this more expansive approach in its final rule.

As set forth on the proposed standard form, each responsible company required to prepare a remedial actions report will first select the appropriate category code corresponding to the actions taken to remedy its failure to comply with the Federal Railroad safety laws and then write a brief description of these actions in column (c). The form is intended to include all of the typical types of remedial responses possible under each of the three general categories of failures for which a remedial actions report must be submitted. However, in the rare instance where no category code on the form properly corresponds to the specific remedial actions taken by the person required to submit a remedial actions report, the person must then check the box for the category code on the form marked "other" and instead just write the short narrative response.

For example, in the case of a violation of the Freight Car Safety Standards involving a broken plain bearing box lid, remedial actions might include (i) moving the car to a repair shop for either replacement or repair of the lid or (ii) scrapping the car. See 49 CFR 215.107. For a violation of the Track Safety Standards involving an insufficient number of nondefective crossties, remedial actions might include placing a slow order on the track segment, repairing the track segment, or taking the track segment out of service. See 49 CFR 213.5 and 213.109(c)(1). Further, for a violation of the Hazardous Materials Regulations involving a shipper of hazardous materials by rail who offers a tank car for transportation without placards, examples of remedial actions taken could include placarding the tank car itself or verifying that the railroad properly corrected the placarding problem. See 49 CFR 172.508(a). For all three examples of physical defects, the responsible company informed that a remedial actions report must be submitted would select the category code on the report form best describing the remedial actions taken, include a short narrative response, and return the report form to FRA.

To take an example from the accident/incident reporting regulations, if a railroad fails to submit to FRA a monthly report of railroad accidents/

incidents within 30 days after the expiration of the month during which the accidents/incidents occurred, an example of remedial action would be to file a late report with FRA for the relevant month. See 49 CFR 225.11 and 225.13. Or if, under the Railroad Operating Rules, a newly operating railroad fails to file with the Federal Railroad Administrator one copy of its code of operating rules, timetables, and timetable instructions, an example of remedial action would be to file the copy of the relevant documents as soon as possible after receiving the notification. See 49 CFR 217.7. For these examples of reporting and filing defects, respectively, each responsible company informed that a remedial actions report must be submitted would select the category code on the report form best describing the remedial actions taken, include a short narrative response, and return the report form to FRA.

Upon receipt of the remedial actions report, the safety inspector will first determine if the remedial actions taken were proper and adequate under the circumstances of the violation, and will contact the representative of the responsible company who filled out the report form for additional information if necessary. If the remedial actions report is sufficient, the inspector will submit a copy of this report to FRA's Office of Chief Counsel, which may make use of it during the penalty assessment and negotiation process. FRA's Office of Safety will then correlate the series of data entry codes representing the generic categories of remedial actions that responsible companies affected by the reporting requirement have undertaken. This computerized data will assist FRA in systematically targeting inspections by integrating available accident and injury data with inspection and compliance data, so as to better determine if affected responsible companies are minimizing and correcting safety problems. After reviewing the proposed standard form included in the appendix on which to report to FRA remedial actions taken, commenters are invited to submit additional examples of remedial actions category codes appropriate for each type of violation, such as motive power and equipment, track, signal, and operating practices, for inclusion in the final rule for each of the three general categories of failures. Commenters are also invited to submit examples of remedial actions category codes appropriate for violations involving completed or past transactions for which either no actions are now possible or for which only preventive measures may be taken.

Under certain unusual circumstances, a responsible company may be notified that assessment of a civil penalty will be recommended for a failure of that company to comply with a provision of the Federal railroad safety laws unless the company undertakes a specific programmatic response to the compliance problem. In such cases, although penalty action may be contingent, since it has been recommended submission of a remedial actions report would be required. Further, there are instances where a recommendation for the assessment of a civil penalty may be made, but later rejected by FRA's Office of Chief Counsel for procedural or evidentiary reasons. FRA considers the phrase "* * * that has received written notification from FRA that both assessment of a civil penalty will be recommended * * * and that a remedial actions report must be submitted * * * "as the triggering language that requires a responsible company to report its remedial actions to FRA within 30 days after the end of the month in which such notification is received. See 49 CFR 209.405. Accordingly, even if no civil penalty is ultimately assessed or collected by FRA, the proposed rule would still subject the responsible company to a civil penalty if it failed to properly report its remedial actions.

At this time, the proposed rule continues to utilize a different type of inspection report form specific to each discipline, but only one generic remedial actions report form is included, regardless of the rule, regulation, order, or standard involved, for use by all responsible companies required to report their remedial actions. However, during the rulemaking process FRA may also develop a number of specific remedial actions report forms unique to each discipline, either as part of, or as attachments to, the inspection reports themselves. Interested parties are welcome to submit their views on what characteristics the final report forms should ultimately contain. Since it is anticipated that the number of category codes, such as the codes on the proposed standard form appended to this NPRM (including the code for "other remedial actions"), will be sufficient to report remedial actions taken in response to each violation recommended for the assessment of a civil penalty, a responsible company will not be permitted the option of submitting its own version of a reporting form to FRA.

Section-by-Section Analysis

Section 209.3 would be reorganized, the definition of "person" would be revised, and definitions of three important terms employed in the remedial action regulations would be added. The first of the new defined terms is "responsible company." It is defined to mean all categories of entities covered under the revised definition of "person," with the exception of individuals. The remaining two of the new defined terms are "Federal railroad safety laws" and "railroad." The terms are defined as they are in the Federal Railroad Safety Act of 1970, except that for simplicity, "Federal railroad safety laws" is expanded to include rules, regulations, orders, and standards as well as the statutes themselves.

Section 209.401 describes the purpose and scope of the remedial action reporting regulations. The purpose is the adoption of rules to implement section 3 of the Act, to require a responsible company notified by FRA both that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, to report to FRA within 30 days after the end of the month in which such notification is received, actions taken to remedy that failure.

Section 209.403 defines the applicability of these regulations. The regulations expand the number of entities affected by the reporting requirement beyond the single category required by the Act by applying not only to railroads but rather to all responsible companies (*i.e.*, all persons other than individuals) receiving written notification from FRA both that a recommendation for the assessment of a civil penalty is being made and that a remedial actions report must be submitted. The primary impact of this provision is to require hazardous materials shippers over which FRA exercises enforcement authority to report their remedial actions in the same manner as a railroad would have to do. For purposes of applying these regulations to a responsible company that offers a hazardous material for transportation or otherwise causes it to be transported, the term "responsible company" is intended to have the full breadth encompassed in the statutory definition of "person" found in section 103(11) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1802(11)). While the regulations do not directly apply to individuals, as the penalty provision in § 209.409 makes clear, any individual who willfully

thwarts the reporting provisions of the proposed rule would be held individually liable for the violation.

Section 209.405 requires in subsection (a) that upon receipt of written notification from FRA both that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, each responsible company shall have 30 days after the calendar month in which the notification is received to report to FRA in writing all actions taken to remedy that failure. The duty to report to FRA in writing remedial actions taken is not triggered merely by receiving written notification from FRA that assessment of a civil penalty will be recommended, but only in conjunction with receiving written notification from FRA that a remedial actions report must be submitted.

Since a recommendation for the assessment of a civil penalty must be made before submission of a remedial actions report is required, the duty would never arise merely upon notification that a defect has been discovered. Alternatively, if a recommendation for the assessment of a civil penalty is made and a responsible company receives written notification that a remedial actions report must be submitted, but no civil penalty is later assessed either for policy or evidentiary reasons, the duty to report remedial actions taken pursuant to this section still exists. Accordingly, a railroad ultimately not required to pay a civil penalty as a result of a recommendation for the assessment of a civil penalty for a defect under the Railroad Locomotive Safety Standards, for example, could still be assessed a civil penalty under this section for failing to file a required remedial actions report.

Written notification that the submission of a remedial actions report is required will occur only when a failure to comply with a provision of a Federal railroad safety law for which the assessment of a civil penalty is recommended falls into one of three general categories. The three general categories consist of physical defects, recordkeeping and reporting violations, and filing violations, and represent types of violations that could still pose ongoing risks to rail safety if left uncorrected and/or can actually be specifically corrected. The obligation to determine whether a particular failure recommended for the assessment of a civil penalty triggers the requirement to submit a remedial actions report rests totally with FRA. Moreover, since a responsible company's duty to submit a remedial actions report arises only upon specific notification to this effect, no violation can occur under this section unless such notification is properly provided by FRA.

The 30-day time period is merely provided for the administrative convenience of the responsible company, so as to allow sufficient time to report its remedial actions by filling out the form provided to it. The pre-existing duty to correct the defect or take other appropriate remedial action would remain the same as it was before the effective date of these regulations. Accordingly, a railroad would be subject to a new recommendation for the assessment of a civil penalty for a willful violation if, for example, it operated a freight car subject to the Freight Car Safety Standards, except under the provisions of 49 CFR 215.9, knowing it to be defective, but with the intent to delay making repairs until the end of the 30-day reporting deadline. Indeed, under section 209(c) of the Safety Act, each day the violation continued would constitute a separate offense.

In an instance where the safety inspector hand delivers the written notification directly to an appropriate official, such as a foreman, trainmaster, or hazardous materials supervisor on duty at the location where the failure to comply with the provision of a Federal railroad safety law is either found or discovered, the date of actual delivery will be the operative date for reporting purposes. This provision is intended to affect the same categories of responsible companies that currently receive notification from FRA either that a defect exists and/or that a recommendation for the assessment of a civil penalty is being made. A responsible company receiving written notification by first class mail that a recommendation for the assessment of a civil penalty is being made would be deemed to have received such notification five business days after the date of mailing, as determined by the date accompanying the signature of the safety inspector.

This subsection also requires that the responsible company reporting remedial actions shall not simply indicate that corrective actions were taken, but shall report to FRA with the necessary level of specificity by selecting the appropriate reporting code along with a brief narrative description, to indicate what actions were taken, including the date of corrective actions. This subsection, together with the reporting code categories on the proposed standard form appended to this NPRM, makes it clear that although FRA does not expect a lengthy and technical step-by-step explanation of what remedial actions were taken, the regulations are intended to force a responsible company to be somewhat precise in its report. Consider an example from the Track Safety Standards: A railroad is informed that a recommendation for the assessment of a civil penalty is being made pursuant to 49 CFR 213.109 for the failure of a 39-foot segment of its track to have a sufficient number of crossties which in combination will hold gage within the limits prescribed in § 213.53(b). Although, under the wording of this subsection, a remedial actions report to FRA merely stating that "the defect was corrected" would be insufficient, a report with, for example, the category code for "replaced" selected, along with the brief description "four crossties were replaced at milepost 23.1 on 3/6/95" would fulfill the regulatory requirement.

Section 209.405(b) provides that each responsible company shall report in the manner prescribed on the form provided by FRA and shall return the form only to the person whose name and address are so designated. Although the proposed rule continues to employ a different type of inspection report specific to each discipline, the reporting form to be provided by FRA is the current version of a generic reporting form intended for use by all responsible companies required to report their remedial actions. The company is then expected to select the proper reporting code category on the reporting form, as required by § 209.405(a), and describe the remedial actions taken to remedy the failure to comply with a provision of the Federal railroad safety laws. The FRA inspector will submit a copy of the completed remedial actions report form to FRA's Office of Chief Counsel for use during the penalty assessment and negotiation process. Since it is anticipated that the number of category codes, such as the codes on the proposed standard form appended to this NPRM (including the code for "other remedial actions"), will be sufficient to report remedial actions taken in response to each violation recommended for the assessment of a civil penalty, a responsible company will not be permitted the option of submitting its own version of a reporting form to FRA, even if it contained the same information as the FRA form.

Section 209.405(c) requires a responsible company to submit its remedial actions report to FRA within the time limit specified in § 209.405(a), even if the company believes that a question exists as to the existence of

factual elements constituting a violation of the statute or regulation cited on the inspection report. The only exception to this requirement concerns a responsible company that is both unable to either initiate and/or complete remedial actions and complies with the "Delayed Reports" requirement of § 209.407. If a responsible company does contest the allegation, it may explain its reasons on the remedial action report form discussed in § 209.405(b). While FRA does not expect, for example, a railroad to make repairs to a component part that the railroad does not believe is broken or defective, this subsection does require the railroad to explain what actions it took to reach the conclusion that the allegation was incorrect. For example, consider a situation in which a railroad disagrees with an inspector's conclusion that the height of a wheel flange on a car, from the tread to the top of the flange, was 1½ inches or more, in violation of 49 CFR 215.103(b). Rather than select the category code corresponding to an actual repair job, the railroad would be expected to discuss what actions (e.g., repair shop inspection or measurement) it took to disprove the inspector's conclusion.

Section 209.407 sets forth in subsection (a) the procedure that must be followed by a responsible company if, upon receipt of written notification from FRA both that assessment of a civil penalty will be recommended for a failure by that company to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, it is unable to either initiate and/or complete remedial actions within the time limit set forth in § 209.405. Each responsible company shall have 30 days after the calendar month in which the notification is received to report to FRA in writing the reasons for such delay and a good faith estimate of the date by which the remedial actions will be completed. For purposes of determining the calendar month in which written notification is received, the same analysis of § 209.405(a) applies to this subsection as well. Further, as explained in the analysis of § 209.405(a), the 30-day time period is provided for the administrative convenience of the responsible company, and the pre-existing duty to correct the defect or take other appropriate remedial actions would remain the same as it was before the effective date of these regulations.

This subsection also requires that the responsible company reporting a delay in either initiating and/or completing remedial actions in a timely manner pursuant to § 209.405, shall not simply indicate that corrective actions could not be taken, but shall report to FRA with the necessary level of specificity to indicate why these actions could not be taken. This subsection makes it clear that although FRA does not expect a lengthy and technical step-by-step explanation of why remedial actions could not be taken, the regulations are intended to force a responsible company to be somewhat precise in its report. Consider an example from the Track Safety Standards: A railroad is informed that a recommendation for the assessment of a civil penalty is being made pursuant to 49 CFR 213.109 for the failure of a 39-foot segment of its track to have a sufficient number of crossties which in combination will hold gage within the limits prescribed in § 213.53(b). Although, under the wording of this subsection, a written explanation to FRA merely stating that "the defect could not be corrected" would be insufficient, an explanation briefly stating either that "no crossties are currently in stock but will arrive within 45 days and be installed within three days after arrival" or "no funds are currently available to initiate repairs and track has been taken out of service; repairs will be completed in 60 days when funds are expected to become available" would fulfill the regulatory requirement. However, if immediately upon receiving written notification from FRA that a remedial actions report must be submitted, a railroad in the above example makes a business decision to permanently cease operations over a segment of track, the appropriate section under which to report this remedial action would be § 209.405.

Section 209.407(b) provides that each responsible company shall submit its explanation of the reasons for its delay in a manner that provides the same identifying heading information contained in the remedial actions report form referenced in § 209.405(b) and shall return the explanation to the person whose name and address are so designated. The responsible company must retain the remedial actions report form and, as soon as it finally takes all actions necessary to remedy its failure to comply with a provision of the Federal railroad safety laws, submit it to FRA in accordance with § 209.407(c).

Section 209.407 requires in subsection (c) that upon completing all actions necessary to remedy a failure to comply with a provision of the Federal railroad safety laws, each responsible company shall have 30 days after the calendar month in which the actions are completed to report to FRA in writing, in accordance with the reporting code procedures referenced in § 209.405(a) and (b). Unless good cause is shown, the responsible company is expected to complete its remedial actions within 90 days of receiving written notification of a failure to comply with a provision of the Federal railroad safety laws in accordance with § 209.405. Examples of why a responsible company may not be able to complete its remedial actions within a 90-day time period can include manufacturing problems related to the unavailability of a replacement part or a temporary unavailability of funds with which to undertake remedial actions (and the unavailability will exceed 90 days).

Section 209.407(d) requires a responsible company to submit its remedial actions report to FRA within the time limit specified in § 209.407(c), even if the company believes that a question exists as to the existence of factual elements constituting a violation of the statute or regulation cited on the inspection report. As set forth in the analysis of § 209.405(c), if a responsible company does contest the allegation, it may explain its reasons on the remedial action report form.

Section 209.409 identifies the penalties FRA may impose upon any person, including a responsible company, that violates any requirement of this subpart. These penalties are authorized by section 209 of the Safety Act. The penalty provision parallels penalty provisions included in numerous other regulations issued by FRA under authority of the Safety Act. Essentially, any person who violates any requirement of this subpart or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $20,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in ensuring that compliance is achieved not only in terms of submitting the relevant reports of remedial actions taken, but also in development of more accurate inspection and compliance data so as to better determine if railroads are minimizing and correcting safety problems.

Environmental Impact

FRA has evaluated this proposed rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Regulatory Impact

Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-major under Executive Order 12291 but significant under the DOT policies and procedures (44 FR 11034; February 26, 1979). Consequently, FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of the proposed rule. It may be inspected and photocopied at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., room 8201, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

FRA believes that, in general, the railroad industry performs repairs or takes other remedial actions in response to notification by FRA of defects and violations in a timely and complete manner. Especially where violations have been filed, failure to take corrective action could lead to vastly increased penalties and even individual liability. This rule may provide some additional incentive to take such corrective action where it otherwise might not be taken, but that potential benefit cannot be quantified. However, it is doubtful that this proposed rule alone will reduce the number of defective conditions in the industry, or that it will materially impact on the already declining rate of train accidents. Further, this proposed rule will not change the manner in which FRA enforces the Federal railroad safety laws; the types of violations for which safety inspectors currently recommend the assessment of a civil penalty will remain the same.

At this time, FRA is unable to quantify any direct or indirect safety benefit from this proposed rule. The potential benefit of this rule comes about by increasing the ability of the railroad industry to manage quality control, as well as by improving FRA's ability to efficiently and effectively manage its inspection resources. It is hoped that responsible companies, after being required by this proposed rule to report remedial actions taken in response to receiving written notification from FRA that a recommendation for the assessment of a civil penalty is being made (for which the submission of a remedial actions report is required) will create their own internal databases of these reports. Although not required by this proposed rule, an internal analysis of this information, in conjunction with other resource management data, might lead the management of responsible companies to take actions designed to reduce and/or effectively respond to defective conditions.

The proposed rule will assist FRA in monitoring follow-up actions by responsible companies with respect to conditions sufficiently serious to warrant possible future civil penalty actions. Moreover, the proposed rule holds particular potential for reducing the amount of time safety inspectors spend returning to an inspection location to check on the status of a violation for which a violation report had previously been submitted. Further, it permits FRA to develop more comprehensive safety data, better utilize its limited resources, and consistently treat all similarly situated violators of the Federal railroad safety laws.

The extent to which these potential benefits will be realized will become clearer over time as both the railroad industry and FRA learn how to best utilize the data required by this proposed rule. What appears clear at this time, however, is that it will not take the realization of many benefits to offset the relatively insignificant cost to society of approximately $75,000 per year ($66,500 to the railroad industry each year to fill out the required remedial actions reports and approximately $8,100 to FRA to review the reports).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. In reviewing the economic impact of the rule, FRA concluded that it will have a minimal economic impact on a minor number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations; therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act. State rail safety agencies remain free to participate in the administration of FRA's rules, but are not required to do so.

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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This proposed rule has information collection requirements in §§ 209.405 and 209.407, stating that when a responsible company is notified in writing by FRA that a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws, and that a remedial actions report must be submitted, that company will report to FRA all actions taken to remedy that failure. Section 209.407 has an additional information collection requirement, stating that any responsible company unable to either initiate and/or complete remedial actions within the time limit set forth in § 209.405 shall submit an explanation of the reasons for the delay and a good faith estimate of the date by which the remedial actions will be completed. FRA is submitting this information collection requirement to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. The public reporting burden for this collection of information is estimated to average approximately 23 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. Persons desiring to comment regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should submit their views in writing to: Ms. Gloria Swanson, Office of Safety, RRS–21, Federal Railroad Administration, 400 Seventh Street, SW., room 8314, Washington, DC 20590; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, attn: Desk Officer for FRA (OMB No. 2130–New), New Executive Office Building, 726 Jackson Place, NW., room 3201, Washington, DC 20503. Copies of any such comments should also be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., room 8201, Washington, DC 20590.

List of Subjects in 49 CFR Part 209

Railroad safety, Remedial actions reporting rules, Reporting and recordkeeping requirements.

Request for Public Comment

FRA proposes to add a new subpart E to part 209 of title 49, Code of Federal Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rule and the analysis advanced in the explanation of the proposed rule, whether through written submissions or participation at the public hearing, or both. FRA may make changes in the final rule based on comments received in response to this notice.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend chapter II, subtitle B, of title 49, Code of Federal Regulations as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 is revised to read as follows:

Authority: 45 U.S.C. 6, 10, and 13, as amended; 45 U.S.C. 34, as amended, 45 U.S.C. 43, 43a, as amended; 45 U.S.C. 64a, as amended; 45 U.S.C. 431, 437, 438 and 439, as amended; 49 U.S.C. 103(c); 49 App. U.S.C. 26(h), as amended; 49 App. U.S.C. 1655(e), as amended; 49 App. U.S.C. 1804, 1809, as amended; Pub. L. 100–342; Pub. L. 102–365; and 49 CFR 1.49(c), (d), (f), (g), (m) and (s).

2. By revising 209.3 to read as follows:

§ 209.3. Definitions.

As used in this part—

Administrator means the Federal Railroad Administrator, the Deputy Administrator of the FRA or the delegate of either.

Chief Counsel means the Chief Counsel, FRA, or his or her delegate.

Day means calendar day.

Federal railroad safety laws means the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*), the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 *et seq.*), and those laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2), and (6)(A) of section 6 of the Department of Transportation Act (49 App. U.S.C. 1655(e)(1), (2), and (6)(A)), and any rules, regulations, orders, or standards issued under a provision of those statutes by FRA. Those laws which were transferred include, but are not limited to, the Safety Appliance Acts (45 U.S.C. 1–16), the Locomotive Inspection Act (45 U.S.C. 22–34), the Accident Reports Act (45 U.S.C. 38–43a), the Hours of Service Act (45 U.S.C. 61–64b), and the Signal Inspection Act (49 App. U.S.C. 26).

FRA means Federal Railroad Administration, Department of Transportation.

Motion means a request to a presiding officer to take a particular action.

Person includes all categories of entities covered under 1 U.S.C. 1, including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor; and, with respect to a violation of the Hazardous Materials Regulations, person has the same meaning as in 49 App. U.S.C. 1802(11).

Pleading means any written submission setting forth claims, allegations, arguments, or evidence.

Presiding officer means any person authorized to preside over any hearing or to make a decision on the record, including an administrative law judge.

Railroad means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Respondent means a person upon whom the FRA has served a notice of probable violation, notice of investigation, or notice of proposed disqualification.

Responsible company means the person (other than an individual) who receives a notice that a remedial actions report must be filed under Subpart E of this part.

3. By adding a new Subpart E—Reporting of Remedial Actions, to read as follows:

Subpart E—Remedial Actions

§ 209.401. Purpose and scope.

(a) The purpose of this subpart is to require any responsible company notified by FRA both that assessment of a civil penalty will be recommended for a failure of that company to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted to report to FRA, within 30 days after the end of the month in which such notification is received, actions taken to remedy that failure.

(b) This subpart does not relieve the responsible company of the underlying responsibility to comply with a provision of the Federal railroad safety laws or this subchapter. The 30-day period after the end of the month in which notification is received is intended merely to provide the responsible company with an opportunity to prepare its report to FRA, and does not excuse continued noncompliance.

§ 209.403. Application.

This subpart applies to any responsible company that receives written notification from FRA both:

(a) That assessment of a civil penalty will be recommended for a failure by that company to comply with a provision of the Federal railroad safety laws; and

(b) That a remedial actions report must be submitted.

§ 209.405. Reporting of remedial actions.

(a) Each responsible company that has received written notification from FRA both that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted shall report to FRA in writing, within 30 days after the calendar month in which the notification is received, all actions taken to remedy that failure. If written notification to the responsible company is provided by FRA by first class mail, then for purposes of determining the calendar month in which notification is received, the company shall be presumed to have received the notification five business days following the date of mailing. In selecting the reporting code on the form that best describes the actions taken to remedy the failure, the responsible company shall not merely indicate that corrective action was taken, but shall select the reporting code that most accurately reflects what action was taken, such as repair or replacement of a defective component; movement of a car for repair (where permitted); completion of a required inspection; removal of a noncomplying item from service (where permitted); reduction of operating speed (where sufficient to achieve compliance); or any combination of

actions appropriate to remedy the noncompliance cited.

(b) Each responsible company shall submit such report in the manner prescribed on the report form provided to it by the FRA safety inspector, state inspector participating in investigative and surveillance activities under part 212 of this chapter, or other duly authorized official recommending the assessment of a civil penalty. The company shall return this report form only to the person whose name and address are designated on the form.

(c) Except as provided in § 209.407 of this subpart, a responsible company must submit its report to FRA within the time limit specified in paragraph (a) of this section. If the company believes that a question exists as to the existence of factual elements constituting a violation of the statute or regulation cited on the inspection report, the remedial actions report shall be submitted with an appropriate written explanation.

§ 209.407. Delayed reports.

(a) Upon receiving written notification from FRA both that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, each responsible company that is unable to either initiate and/or complete remedial actions within the time limit set forth in § 209.405(a), shall submit to FRA in writing, within 30 days after the calendar month in which the notification is received, an explanation of the reasons for such delay and a good faith estimate of the date by which the remedial actions will be completed. If written notification to the responsible company is provided by FRA by first class mail, then for purposes of determining the calendar month in which notification is received, the company shall be presumed to have received the notification five business days following the date of mailing.

(b) Each responsible company required to submit an explanation of the reasons for its delay in taking all actions necessary to remedy its failure to comply with a provision of the Federal railroad safety laws shall do so in a manner that provides the same identifying heading information contained on the remedial actions report form referenced in § 209.405(b). The responsible company shall return the explanation only to the person whose name and address are designated on the form.

(c) As soon as the responsible company finally takes all actions necessary to remedy its failure to comply with a provision of the Federal railroad safety laws, it shall report to FRA in writing, within 30 days after the end of the calendar month in which the actions to remedy the failure are completed, in accordance with the reporting code procedures referenced in § 209.405(a) and (b). Except for good cause shown, the responsible company is expected to complete the remedial actions within 90 days after the end of the calendar month in which the notification of its failure to comply with a provision of the Federal railroad safety laws was originally received.

(d) If the responsible company believes that a question exists as to the existence of factual elements constituting a violation of the statute or regulation cited on the inspection report, the remedial actions report shall be submitted with an appropriate written explanation.

§ 209.409. Penalties.

Any person who violates any requirement of this subpart or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 45 U.S.C. 438(e) for knowingly and willfully falsifying reports required by this subpart.

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

S. Mark Lindsey,

Acting Administrator.

BILLING CODE 4910-06-P

FEDERAL RAILROAD ADMINISTRATION
Remedial Actions Report
Required by Pub. Law 102–365

Page 1 of _____
OMB Approval

1. Safety inspector	2. I.D. No.	3. RPT. No.	4. Region	5. Name and local address of Responsible Company

6. Representative of Responsible Company served	7. Acknowledgement of receipt by individual receiving this report (Please print name and date)
8. ___ Date of hand delivery to Responsible Company; or, ___ Date of mailing to Responsible Company: / /	9. Date of inspection

Instructions:

1. Cease violating the Federal railroad safety laws immediately.
2. Report remedial actions within 30 days after the end of the month in which the notification of violation was received.
   Note: If remedial action cannot be taken within the 30 day period, an explanation of the reasons for the delay must be submitted to the address indicated on this report.
3. In column (a), list the item number from the attached inspection report.
4. In column (b), enter the type of remedial actions taken, using the codes below if one is applicable.
5. In column (c), briefly describe the remedial actions.
6. In column (d), report the completion date of the remedial actions.
7. The individual completing the remedial actions report for the responsible company must sign the form below attesting to the completion of the remedial actions.
8. Fold, staple or tape, affix proper postage, and mail to the address indicated on the opposite side of this form.

(a) Item	(b) Code	(c) Brief Description of Actions Taken	(d) Date of Remedial Actions

Remedial Actions Codes:

1. Repaired.
2. Replaced.
3. Removed from service.
4. Secured.
5. Locomotive or car moved for repair (where permitted).
6. Speed restriction, if applicable.
7. Training/Remedial actions training.
8. Disciplinary actions/Decertification.
9. Document filed.
10. Report filed.
11. Other remedial actions.

_____
Name of individual completing the form for the responsible company (please print)

_____
Signature of individual person Date

WARNING: Title 49 CFR 209.409 sets forth possible civil and criminal penalties that may be imposed upon any person who violates or causes a violation of any remedial actions reporting regulation.

[FR Doc. 93–14256 Filed 6–17–93; 8:45 am]
BILLING CODE 4910–06–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

Endangered and Threatened Species

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

ACTION: Notice of receipt of petition and request for information.

SUMMARY: NMFS has received a petition to list the central California coho salmon (*Oncorhynchus kisutch*) populations occurring in Scott and Waddell Creeks (Santa Cruz County, CA) as endangered under the Endangered Species Act (ESA). Based on the requirements of section 4 of the ESA, NMFS has determined that the petition presents substantial scientific information indicating that the action may be warranted. Therefore, NMFS is initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting additional information and data regarding this action.

DATES: Comments and information should be received by August 2, 1993.

ADDRESSES: Copies of the petition are available from, and comments should be submitted to, Dr. Gary Matlock, Acting Regional Director, NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Jim Lecky, NMFS, Southwest Region, (310) 980–4015 or Margaret Lorenz, NMFS, Office of Protected Resources, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add or remove a species from the List of Endangered and Threatened Wildlife and designate critical habitat. Section 4(b)(3)(A) of the ESA requires that, to the extent practicable, within 90 days after receiving a petition, the Secretary (Interior or Commerce) must determine whether it presents substantial scientific or commercial information indicating that the action may be warranted.

Petition Received

On March 11, 1993, NMFS received a petition from the Santa Cruz County Planning Department to list the central California coho salmon populations occurring in Scott and Waddell Creeks (Santa Cruz County, CA) as endangered and to designate critical habitat. The Santa Cruz County Planning Department prepared the petition at the request of the Santa Cruz County Fish and Game Advisory Commission after a year of investigations and three local public hearings. The petition includes reports prepared by the California Department of Fish and Game and Dr. Jerry Smith of San Jose State University that provided recent information on the status of these coho populations. In addition, it presents information and discusses whether the populations qualify as a "species" under the ESA in accordance with NMFS "Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon" (November 20, 1991, 56 FR 58612).

Listing Factors and Basis for Determination

Under Section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available after taking into account any efforts made by any state or foreign nation to protect the species.

Biological Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments concerning the present and historic status of the coho salmon populations occurring in Scott and Waddell Creeks. NMFS is also soliciting information on whether these Pacific salmon populations qualify as a "species" under the ESA. Copies of the petition are available (see ADDRESSES).

It is important to note that unlike critical habitat designation, the determination to list a species is based solely on the basis of the best available scientific and commercial information regarding a species' status without reference to possible economic or other impacts of such a determination (50 CFR 424.11(b)).

Critical Habitat

NMFS is also requesting information on areas that may qualify as critical habitat for the coho salmon populations occurring in Scott and Waddell Creeks. Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present distribution should also be identified if such areas are essential to the recovery of the species. Essential features should also be identified. Essential features include but are not limited to (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring; and generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing (1) the activities that affect the area or could be affected by the designation and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designations under the ESA is the probable economic impact "of the (critical habitat) designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental net costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

Data, information, and comments should include (1) supporting documentation such as maps, bibliographic reference, or reprints of pertinent publications and (2) the commentor's name, address and association, institutions, or business.

Dated: June 14, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 93–14384 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on Petition To Revise Critical Habitat for Perdido Key Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month determination of how it intends to proceed on a petition to revise critical habitat for the Perdido Key beach mouse, pursuant to the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service has determined that the petitioned action is warranted but will be delayed until other higher priority actions to amend the lists of Endangered and Threatened Wildlife and Plants have been taken.

DATES: The finding announced in this notice was made on May 23, 1993. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien, Assistant Field Supervisor at the above address or telephone 904/232–2580.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(D)(ii) of the Act and the Service's listing regulations (50 CFR 424.14(c)(3)) require the Service, after receiving a petition to revise critical habitat presenting substantial information indicating that the requested revision may be warranted, to determine how it intends to proceed with the requested revision within 12 months, and to promptly publish notice of such intention in the Federal Register.

The Perdido Key Beach mouse (*Peromyscus polionotus trissyllepsis*) is a small, grayish-brown mouse restricted to coastal dunes on Perdido Key in Baldwin County, Alabama and Escambia County, Florida. It was listed as an endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act), on June 6, 1985 (50 FR 23872), due to loss of coastal habitat from human development. One area in Alabama (the Perdido Key unit of Gulf State Park) and two areas in Florida were concurrently designated as critical habitat for the species.

On November 5, 1991, The Alabama Conservancy petitioned the Service to revise critical habitat for the Perdido Key beach mouse, through an emergency rule, to include lands north of Highway 182 at the northwestern end of Perdido Key, Baldwin County, Alabama. The petitioner maintained that this was necessary to prevent the permanent loss of crucial habitat for the species. The area in question includes both privately owned and State (Gulf State Park) lands. The petitioner asserted that private development would cause the loss of important habitat for the Perdido Key beach mouse, and cited a Biological Opinion, prepared by the Service pursuant to Section 7 of the Endangered Species Act, as evidence for this assertion.

Section 4(b)(3)(D)(i) of the Act, and the Service's listing regulations (50 CFR 424.14(c)(1)) require that with respect to petitions to revise critical habitat, the Service, to the maximum extent practicable, make a finding within 90 days as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Service's listing regulations (50 CFR 424.14(c)(2)(i)) further require that, in making a finding on a petition to add critical habitat, the Service shall consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved.

After considering the petition and other available information, the Service found that the requested action to add lands north of Highway 182 and west of the Ono Island Bridge to critical habitat for the Perdido Key beach mouse may be warranted (57 FR 55219, November 24, 1992).

12-Month Determination of Intent

The information presented in the 90-day finding continues to be valid for the Service's 12-month finding. Despite the recent clearing of portions of the private lands in this area, there remains habitat north of Highway 182 that is occupied by beach mice and is also essential as a refugium from storms overwashing the designated critical habitat south of Highway 182. The Alabama Cooperative Fish and Wildlife Research Unit (Dr. Nicholas Holler, pers. comm., December 15, 1992) found tracks throughout the area north of Highway 182 in 1988, and trapped two beach mice. On March 8, 1992, staff of the Service's Daphne, Alabama Field Office trapped beach mice on State lands north of Highway 182 and west of the Ono Island Bridge. Personnel of the Alabama Cooperative Fish and Wildlife Research Unit (Dr. Holler, pers. comm., December 15, 1992) also trapped Perdido Key beach mice on the State lands during the summer and fall of 1992, capturing 12 mice and 23 mice, respectively. Mice were captured up to the boundary of adjacent private land, and there was as good or better habitat on some of the private land as on State land, indicating that beach mice do occur on uncleared private land in the area. All available evidence indicates that the area north of Highway 182 supports a viable beach mouse population.

In a memorandum dated March 30, 1992, the supervisor of the Daphne Field Office reemphasized the importance of areas north of the highway as habitat for the Perdido Key beach mouse, indicating that both State lands and uncleared private lands north of Highway 182 supported sea oats (*Uniola paniculata*) a primary food source for beach mice, and that the habitat was similar in appearance to habitat already designated for the Perdido Key Beach mouse south of Highway 182. There remain approximately 151.5 acres of uncleared land north of Highway 182, 132.5 of which either support or are likely to support beach mice. The area petitioned to be added to already designated critical habitat contains physical and biological features essential to the conservation of the Perdido Key beach mouse, and that may require special management.

Based on the above information, the Service finds that the petition to add lands north of Highway 182 and west of the Ono Island Bridge is warranted but precluded by work on numerous candidate species with high listing priority. On September 21, 1983, the Service published its priority system for listing species under the Act (48 FR 43098–43105). The system considers three factors (magnitude of threat, immediacy of threat, and taxonomic distinctiveness) in assigning species numerical priorities on a scale of 1 to 12. Although the priority system does not address critical habitat, the Service believes that the priority of revising critical habitat for the Perdido Key beach mouse is lower than actions to list category 1 species (species for which the

Service has adequate information to proceed with listing) that are under a high magnitude of imminent threat.

The Service already reviews Federal actions that may affect the Perdido Key beach mouse through the jeopardy standard of Section 7 of the Endangered Species Act (see discussion of Section 7 below). Revising critical habitat would not appreciably increase this protection.

Section 4(b)(7) of the Act and the Service's listing regulations (50 CFR 424.20) provide for the issuance of emergency regulations, for no longer than 240 days, effective immediately upon publication in the **Federal Register**, to respond to any emergency posing a significant threat to the well-being of any species of fish and wildlife or plants. Although emergency action is not petitionable under Section 4(b)(3) of the Endangered Species Act, such action is subject to consideration under the Administrative Procedure Act. The Service finds that an emergency response to this petition is unjustified, for the following reasons. Section 7 of the Act applies only to Federal agency actions; only Federal agencies are required to insure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat of such species. Therefore, inclusion of the State and private lands north of Highway 182 in designated critical habitat would not potentially affect use or development of these lands unless Federal permitting or funding were involved. If such agency involvement occurs, the Section 7 jeopardy standard still applies whether or not critical habitat is designated.

In the case of the Biological Opinion referenced in the petition, the Service made not only a jeopardy finding in an area outside of designated critical habitat, but found that the subject project would adversely modify nearby designated critical habitat. It is likely that similar projects in the area north of Highway 182 would also result in jeopardy/adverse modification Biological Opinions. Section 7 protection for habitat north of the designated critical habitat already exists, and there is no apparent regulatory benefit from revising critical habitat of the Perdido Key beach mouse on an emergency basis. Section 9 of the Act currently also prohibits take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) of Perdido Key beach mice, both within and outside designated critical habitat.

Author

The primary author of this notice is Dr. Michael M. Bentzien (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: May 27, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–14446 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 116
Friday, June 18, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region; Telluride Ski Area Expansion, Grand Mesa, Uncompahgre and Gunnison National Forests, San Miguel County, Colorado; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

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

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to develop six new ski lifts with associated ski runs, and as many as six restaurants on 950 acres at the Telluride Ski Area on the Grand Mesa, Uncompahgre, and Gunnison National Forests within San Miguel County, Colorado. All but 20 acres are within the existing ski area boundary. The 20 acres outside the existing ski area boundary are needed to accommodate one of the lifts. The ski area is presently operating under special use permit granted to the Telluride Ski Area, Inc. The proposal would roughly double the capacity of the Telluride ski area.

The expansion proposal is designed to help maintain Telluride's standing as a world class resort by enhancing skier capacity and the quality of the Telluride skiing experience.

DATES: Comments concerning the scope of the analysis should be received in writing by July 15, 1993. The draft EIS is scheduled for publication in September 1993 and the final EIS in January 1994.

ADDRESSES: Send written comments to Jeff Burch, Forest Planner, Grand Mesa, Uncompahgre, and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416.

FOR FURTHER INFORMATION CONTACT: Jeff Burch, Forest Planner, (303) 874–7691 or Jim Hackett, Ski Area Administrator, (303) 327–4854.

SUPPLEMENTARY INFORMATION: The proposal for expansion at Telluride includes construction of six new lifts, associated ski runs, as many as six new restaurants, and access to expert skier terrain available until now only by walking. Skier capacity may as much as double on the mountain by the final completion of the project. Construction would occur in summers when snow is off.

It is important to remain clear about the decisions to be made on the Telluride expansion proposal. Much of what is proposed are 1980 and 1983 proposals, which have been previously analyzed in an environmental assessment and approved. We have an obligation to be sure, before we allow major construction to begin, that we have considered all environmental factors, analyzed to the latest standards. This EIS will accomplish this.

The San Joaquin, Novice, and part of the Gold Hill lifts, and the restaurants are portions of the proposal which are new. All of these except a portion of the San Joaquin lift and bowl are within the Ski area boundary. This area is allocated to ski area use and development in both the Forest Plan and the Regional Guide. Decisions to manage the area within the ski area boundary for ski area use and development will not be revisited, unless an effect that can not be mitigated, on some very significant resource is discovered through this analysis. At this point we do not anticipate any effects such as this.

The decisions to be made within the existing ski area boundary are exactly where and how lifts, runs and facilities will be placed to minimize negative environmental effects. Consideration of the San Joaquin lift and bowl will also include the decision as to whether or not to permit it.

A U.S. Army Corps of Engineers "404 Permit" for dredging and filling waters and/or wetlands may be required, depending upon which alternative is selected for implementation. The U.S. Fish & Wildlife Service will be consulted on possible effects to Threatened or Endangered plant and animal species. The Forest Service will request the U.S. Army Corps and U.S. Fish & Wildlife Service or cooperate in the environmental analysis, and may request cooperation from other Local, State, or Federal agencies.

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). A substantial amount of scoping has been completed for the Telluride expansion proposal. Information gained from that scoping effort was used to determine an EIS was needed. Major issues identified include: (1) Dispersed recreation displacement and development of the Bear Creek area in conjunction with construction of the San Jaoquin Bowl lift. (2) Increased demand for community services, transportation, & utilities. (3) Changes in visual quality. (4) Loss of wetlands. (5) Increasing air and noise pollution. (6) Loss of existing recreation opportunities. (7) Maintaining the integrity of Telluride's National Historic District (8) Changes in lifestyle or sense of community (9) Changes in ecosystem health or function and the effect on fish, wildlife, and vegetation.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day draft environmental impact statement comment period so that substantive

comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Please note that comments on the draft environmental impact statement will be regarded as public information.

The Deciding Official will be Robert L. Storch, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forest, 2250 Highway 50, Delta, Colorado 81416.

Dated: June 11, 1993.

Robert L. Storch,

Forest Supervisor.

[FR Doc. 93–14386 Filed 6–17–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32b1)-2–93]

Foreign-Trade Subzone 133A—Maytag Refrigerator Plant Galesburg, IL; Request for Removal of Restriction (Compressors)

A request has been submitted to the Foreign-Trade Zones (FTZ) Board pursuant to § 400.32(b)(1) of the Board's regulations for removal of a restriction relating to the use of compressors in manufacturing activity within Subzone 133A located at the Maytag Corporation plant in Galesburg, Illinois. It was formally filed on June 4, 1993.

The FTZ Board approved subzone status for the Maytag refrigerator/freezer manufacturing plant in Galesburg, Illinois, in 1989 (Subzone 133A; Board Order 448; 54 FR 47246; 11/13/89), subject to a restriction that required Maytag to elect privileged foreign status on refrigeration compressors admitted to the subzone. After reviewing a request from Maytag made in 1990 for a temporary suspension of the restriction based on changed circumstances, the Board authorized a suspension until December 31, 1993 (Board Order 485; 55 FR 37341; 9/11/90). There was no opposition to the request and the Board concluded that there was no indication of adverse effects, but the time limit was adopted because this was the first such activity involving compressors. Since 1990, there have been other operations of this nature authorized without time restrictions.

Maytag is now requesting that the restriction be permanently removed. This would allow Maytag to continue to choose the duty rate that applies to finished refrigerators/freezers (2.9%). The duty rate for compressors (HTSUS 8414.30) is 3.4 percent. The request indicates that the full use of zone procedures would continue to help the plant maintain its international competitiveness.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 2, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: June 11, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–14451 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket No. 24–93]

Foreign-Trade Zone 161—Sedgwick County, KS (Wichita Area) Application for Subzone; Sanofi Winthrop Pharmaceutical Plant, McPherson, KS

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of County Commissioners of Sedgwick County, Kansas, grantee of FTZ 161, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Sanofi Winthrop L.P. (joint venture between Elf Sanofi (France) and Sterling Winthrop Inc./Eastman Kodak Company, hereinafter referred to as Sanofi Winthrop) in McPherson, Kansas, adjacent to the Wichita Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 8, 1993.

Sterling Winthrop is a global pharmaceutical firm whose primary product liens include: diagnostic imaging agents, hormonal products, cardiovasculars, analgesics, antihistamines and muscle relaxants. In 1991, Sterling Winthrop and Elf Sanofi, a French pharmaceutical and health care products company, formed the Sanofi Winthrop alliance to jointly develop, manufacture and market products worldwide. This proposal is part of an overall company cost reduction effort. (Applications are pending for plants in Barceloneta, Puerto Rico (FTZ Doc. 18–93, 58 FR 29192, 5–19–93) and Rensselaer, New York (FTZ Doc. 22–93). Another application is being submitted for its facility in Des Plaines, Illinois).

Sanofi Winthrop's Kansas plant (160 acres, 2 bldgs., 265,000 sq. ft.) is located at 1776 North Centennial Drive, McPherson (Mcpherson County), some 40 miles north of Wichita. The facilities (430 employees) are primarily engaged in the production of dental anesthetics such as "Carbocaine" and "Demerol" and radio diagnositc imaging agents, such as "Hypaque" and "Hypaque Meglumine". Company plans call for possible expansion of the plant's product lines to include cardiovascular, oncological and certain other diagnostic products. The company performs contract manufacturing at the plant, primarily "lyophilization" (freeze drying) for biotechnology firms. Foreign-sourced materials used at the plant account for, on average, 13 percent of the finished products' value and include primarily diatrizoate acid and diatrizoate meglumine at this time. The company may also purchase from abroad products in the following general categories: Empty pharmaceutical capsules, yttrium or scadium metal compounds, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, hydrazine or hydroxylamine, heterocyclic compounds, sulfonamides, vitamins, hormones, vegetable alkaloids, blood/vaccines/toxins/cultures, sugars, antibiotics, gelatins, enzymes, packaging, medical instruments/appliances and parts thereof, medicaments, and other pharmaceutical products.

Zone procedures would exempt Sanofi Winthrop from Customs duty payments on foreign materials used in

production at the McPherson plant for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 16.2%, with most falling in the 6.3%–6.9% range). The duty rates on foreign-sourced items range from duty-free to 23.5 percent, with most falling within the 3.7%–7.9% range. The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 17, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 1, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 151 N. Volutsia, Wichita, Kansas 67214–6160.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 11, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–14450 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–428–061]

Barium Carbonate From Germany; 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 barium carbonate from Germany. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 1981, the Department of Commerce (the Department) published an antidumping duty order on barium carbonate from Germany (46 FR 52884). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than June 30, 1993, domestic interested parties, as defined in section 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, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14458 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–601]

Brass Sheet and Strip From Canada; Final Affirmative Determination of Circumvention of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration.

ACTION: Notice of final affirmative determination of circumvention of antidumping duty order.

SUMMARY: On February 1, 1993, the Department of Commerce published a preliminary affirmative determination of circumvention of the antidumping duty order on brass sheet and strip from Canada. The circumvention inquiry covers the period September 1, 1990 through September 30, 1991.

We provided interested parties an opportunity to comment on the preliminary affirmative determination. After our analysis of the case and rebuttal briefs, we have determined that imports of brass plate from Canada used in the production of brass sheet and strip in the United States constitute circumvention of the antidumping duty order on brass sheet and strip from Canada within the meaning of section 781(a) of the Tariff Act of 1930, as amended. As a result, we determine that brass plate used in the production of brass sheet and strip falls within the scope of the antidumping duty order on brass sheet and strip from Canada.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 6615) a preliminary affirmative determination of circumvention of the antidumping duty order on brass sheet and strip from Canada (52 FR 1217, January 12, 1987). Pursuant to this determination, the Department instructed the U.S. Customs Service (Customs) to suspend liquidation of, and require cash deposits on, all entries of the imported product, brass plate, as defined in the "Scope of the Anti-circumvention Inquiry" section of this notice. In accordance with section 781(e) of the Tariff Act of 1930, as amended (the Tariff Act), the Department also notified the International Trade Commission (ITC) of

its preliminary affirmative determination. In response, the ITC notified the Department that consultations between the Department and the ITC on this matter were unnecessary because the Department's circumvention determination did not present a significant injury issue. (See Letter from ITC Chairman Don E. Newquist to Deputy Assistant Secretary Joseph A. Spetrini, dated March 29, 1993.)

The Department has now completed this review in accordance with section 781(a) of the Tariff Act, 19 U.S.C. 1677(j) and 19 CFR 353.29(e).

Scope of the Antidumping Duty Order

Imports covered by the antidumping duty order are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Canada. The chemical composition of the products covered is currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this order.

The physical dimensions of the products covered by this order are brass sheet and strip of solid rectangular cross-section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thicknesses or gauge, regardless of width. Coiled, wound on reels (traverse wound), and cut-to-length products are included.

During the relevant period of this inquiry, such merchandise was classifiable under subheadings 7409.21.00 and 7409.29.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and for Customs purposes, our written description of the scope of this order remains dispositive.

Scope of the Anti-circumvention Inquiry

Products subject to the circumvention inquiry are entries of brass plate, also known as copper-zinc alloy plate, over 0.188 inches in gauge used in the production of brass sheet and strip covered by the antidumping duty order. The chemical composition of the products covered is currently defined in the C.D.A. 200 series or the U.N.S. C20000 series. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this inquiry. Such merchandise is classifiable under HTS subheadings 7409.21.00 and 7409.29.00.

Nature of the Anti-circumvention Inquiry

As set forth in our preliminary determination, we examined whether (1) brass sheet and strip sold in the United States is of the same class or kind of merchandise as that covered by the antidumping duty order on brass sheet and strip from Canada, (2) brass sheet and strip sold in the United States was completed or assembled from material imported from Canada, and (3) the difference between the value of brass sheet and strip and the value of brass plate manufactured in, and imported from, Canada was small, as required by section 781(a)(1) of the Tariff Act.

In reaching a conclusion as to whether the difference in value was small, we analyzed the nature of the brass sheet and strip industry and the value of the input components. Further, in determining whether to include the imported parts or components within the scope of the order, we analyzed the pattern of trade, the relationship between the respondents, and the volume of imports of brass plate, pursuant to section 781(a)(2). (See Brass Sheet and Strip from Canada; Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order, 58 FR 6615.)

Analysis of Comments Received

We invited interested parties to comment on the preliminary affirmative determination of circumvention on brass sheet and strip from Canada. We received case and rebuttal briefs from an exporter, Wolverine Tube Canada Inc. (Wolverine), an importer, Great Lakes Metals Corporation (Great Lakes), and petitioners (Hussey Copper Ltd., The Miller Company, Olin Corporation (Brass Group), Outokumpu American Brass, Revere Copper Products, the International Association of Machinists & Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL-CIO), the Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL-CIO/CLC). We did not hold a public hearing in this matter as one was not requested by the parties. All comments and rebuttal arguments properly raised by the parties to the proceeding are discussed below.

Comment 1: Great Lakes asserts that the Department's "difference in value" calculation is distorted by the inclusion of the value of the copper, which severely diminishes the total value of the extensive operations Great Lakes performed in rerolling the brass plate at its U.S. facility.

Citing the ITC's Final Determination in Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea, ITC Final Determination (ITC Final), December 1986, at A–58, Great Lakes argues that there are two major components to the total selling price of brass sheet and strip: The value of the fabrication and the metal value of the product. Great Lakes cites the ITC final determination to support its point that the metal value generally accounts for at least half of the total selling price of brass sheet and strip. Great Lakes contends that just as the ITC found that the metal price is not indicative of price trends, the metal content of brass plate and strip is not relevant to what brass mills and Great Lakes do, which is to fabricate a product using metal that is purchased generally at world prices. Thus, Great Lakes argues, the Department should not consider the price of metal in analyzing the value of its U.S. operation. Great Lakes concludes that, were the Department to calculate the difference in value on the basis of fabrication costs alone, it would not find the difference in value to be "small" within the meaning of the statute.

Wolverine similarly argues that because the price of the metal is such a large component of the value of the product, the Department's calculation of the difference in value is distorted. Wolverine argues that, in traditional brass mill operations, the metal is a pass-through cost item. Second, Wolverine's price is based on the price of the metal in the commodity exchange market. Third, neither Wolverine nor Great Lakes has any influence over the metal value. Like Great Lakes, Wolverine contends that the Department should consider only the fabrication prices to calculate the difference in value.

Petitioners disagree with Great Lakes' and Wolverine's argument that only fabrication prices should be used to calculate the value added at Great Lakes' U.S. facility. Petitioners contend that the Department calculated the difference in value in accordance with the requirements of the statute. They further argue that it is irrelevant that metal value and fabrication value are quoted separately in the industry, that what is important is that the brass sheet and strip sold by Great Lakes and the brass plate sold by Wolverine were sold at prices that combined both the metal and fabrication values, and that the statute mandates use of the value of the merchandise *in toto*.

Petitioners further contend that metal is not necessarily a pass-through cost and that the respondents have not

demonstrated that they did not profit on the metal. They argue that the metal, just like the fabrication, can be dumped in the United States. Petitioners argue that the test established by Congress is whether the difference between the value of the brass sheet and strip sold by Great Lakes in the United States and the value of the brass plate sold by Wolverine to Great Lakes is "small." Thus, petitioners conclude that any special treatment of the metal value is prohibited by law.

Department's Position: We agree with petitioners. Great Lakes' and Wolverine's suggested approach of treating metal value separately from the value of other items necessary to make plate is contrary to the mandate of the statute. To determine whether circumvention of an antidumping order is occurring, section 781(a)(1)(C) of the Tariff Act directs the Department to measure the difference in value between the completed brass sheet and strip and the value of the components imported from Canada. The statute does not mandate a distinction of individual inputs from the order country, with the value of fabrication in the United States absent the imported inputs, as respondents have suggested. In this case, the value of the base metal is as much a part of the value of the imported plate as any other component of value, and must, therefore, be included in the value of the imported parts and components as directed by section 781(a)(1)(C) of the Tariff Act. The imported brass plate is one integral component, not several individual ones.

Moreover, the Department's treatment of the metal value in this circumvention inquiry is consistent with its treatment of metal value in every antidumping duty investigation and subsequent administrative review pertaining to brass sheet and strip not only from Canada, but from all other countries subject to an antidumping duty order on this product. (See Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from Canada, December 9, 1986, 51 FR 44319, 44320; see also Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip From the Republic of Korea, November 10, 1986, 51 FR 40833, 40834.) In each segment of these antidumping proceedings, the Department consistently calculated dumping margins on a single product—*i.e.*, brass sheet and strip imported from the order country, which included both fabrication and metal value combined, except in cases of tolled sales. Only in tolled sale situations, where the U.S. customer supplied the metal to the Canadian producer, did the Department calculate margins based solely on fabrication value. In such cases, the metal is not considered an imported product from the order country since the metal was provided by the U.S. customer. Thus, in the case of tolling, only the fabrication would be subject to the order on brass sheet and strip. By contrast, for all non-tolled sales the Department did not treat metal value as a separate item, nor perform margin calculations on fabrication value alone. Rather, the Department treated both metal value and fabrication as comprising one product, brass sheet and strip.

Finally, contrary to Great Lakes' contention, the ITC also treated the metal value and fabrication value as comprising one product for non-tolled transactions. Although the ITC recognized, in its final determination, that the selling price of brass sheet and strip is comprised of two major components, a metal value and a fabrication price, which "may be quoted separately," it made price comparisons for non-tolled sales on the basis of the total selling price of brass sheet and strip because "the total selling price is the price that matters to a purchaser of brass sheet and strip." (See Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea, ITC Final, December 1986, at A–58.) Accordingly, the Department's current treatment of the metal value in this circumvention inquiry is consistent with the Department's and the ITC's past practice in antidumping duty investigations and administrative reviews, and the injury determination for brass sheet and strip.

Comment 2: Great Lakes contends that, in determining whether its operations constitute circumvention activities, the Department mistakenly compared Great Lakes' operations to those of both producers and fabricators. Great Lakes argues that the mining, smelting and refining of copper is performed by copper producers, which are not a part of the brass fabrication industry. Citing the Department's final negative circumvention determination in Portable Electric Typewriters from Japan (PETS) (56 FR 58031, 58036), Great Lakes points out that the Department has previously rejected comparisons of petitioners' production activities with those of respondents. Great Lakes asserts that, in the present inquiry, the Department went even further than comparing Great Lakes' activities to those of petitioners, and compared brass fabrication to copper production.

Wolverine similarly argues that the Department erred in its analysis of the industry. Wolverine argues that some rerolling is performed by fabricators, and rerolling is not only a secondary operation. Wolverine contends that it supplied only primary materials to Great Lakes. Wolverine argues that the cost to produce brass sheet and strip increases with the amount of gauge and width reduction, and that rerollers add only the last fraction of value, but that the processing at Great Lakes constituted a substantial fabrication operation. Thus, according to Wolverine, Great Lakes' operations were not indicative of rerollers in general. Wolverine asserts that, because of the lack of definition in the statute as to what is "small," the Department should evaluate the manner in which the industry operates.

Petitioners assert that the Department, in keeping with statutory guidance, accurately placed in context the value of the finished product and the role played by Great Lakes relative to the finished product. Petitioners argue that the brass plate purchased by Great Lakes from Wolverine was dedicated for sale in the United States as brass sheet and strip, and there was no valid commercial reason why Great Lakes needed to import brass plate over 0.188 inches in gauge.

Petitioners also argue that in the circumvention inquiry on PETs, the Department was presented with a situation that differed from this case. The petitioners point out that the difference in value between the portable electric typewriters completed and sold in the United States and the imported Japanese parts and components used in the production of PETs ranged from 69 percent to 80 percent, far above the 15 percent figure in this case. In an effort to have this value added deemed "small," the petitioner, in PETs, emphasized that the respondent performed only 100 production steps in the United States of some 6,000 necessary to produce a PET. The Department rejected this as inappropriate because it failed to account for a variety of factors affecting investment, and determined that this sort of comparative analysis of the companies involved in the manufacture of the product at issue was not contemplated by section 781(a) of the Tariff Act.

Department's Position: Upon further examination of the brass sheet and strip industry, we have concluded that a determination of whether the value added by Great Lakes' operations is small, in the context of this industry, requires a comparison of the processes performed at Great Lakes' facility in the United States during the period of

inquiry with those operations normally performed in the brass sheet and strip industry, as defined by the ITC in its final determination of injury.

According to the ITC, the manufacturing process for the brass sheet and strip industry involves casting, rolling, and finishing of brass sheet and strip. (See ITC Final at A–4.) Brass mills perform all of these functions and are thus known as vertically integrated producers. (See ITC Final at A–4, footnote 5.) Secondary mills, on the other hand, merely reroll brass strip to thinner gauges. (See The Metals Handbook, American Metals Society, Metals Park, Ohio, 1985 at 7–19.) According to the ITC, brass mills begin the process with the acquisition of raw materials. Subsequently, the raw materials are:

> Measured and placed in a melting furnace; samples of the melted material are then analyzed to ensure that correct compositions have been achieved. Then the melted material is poured into a holding furnace. When the holding furnace is sufficiently filled, the molten brass is directed from the holding furnace into single or multiple molds. These molds or dies are approximately 1 foot thick and are open at the bottom. The molds rest on a piston device that is enclosed in a water-filled cylinder. As a mold fills with molten brass, the piston is gradually lowered, and the brass cools and hardens as it is exposed to the water; hence the term "direct chill technique" is applied to this casting process. The casting operations produce brass ingots that are roughly 5 to 7 inches thick, 26 to 30 inches wide, 25 feet long, and weigh over 10,000 pounds. Once the ingots are cast, they are removed from the casting equipment. Before further processing, the ingots are trimmed and tested for structural integrity. (Id at A–5.)

At this point, brass mills begin what are termed "rolling" or reducing operations.

> The ingots are heated, rolled (reducing them in thickness from approximately 5 to 7 inches to less than 0.5 inch), cooled, and coiled. The material is then milled to eliminate surface irregularities and then is further reduced in thickness to 0.188 inch or less through cold-breakdown rolling. The extent of further processing is entirely dependent on customer requirements. In general, the material typically undergoes a variety of additional operations, such as annealing, cleaning, rolling to thickness on "four high" or "Sendzimir cluster" mills, tension leveling, slitting (to achieve a desired width), and cutting to length to meet customer specifications. Once all operations are completed, the material is packed and shipped. (*Id* at A–5)

The functions performed by brass mills, as set forth above, represent far more comprehensive operations in relation to the finished product than that of the rerolling processes, referred to above as "additional operations." Fundamentally, rerollers begin the process with brass strip, a product that, if imported from Canada, would already be within the scope of the order; whereas brass mill operations encompass all the manufacturing processes necessary to take the product from a raw material to brass sheet and strip, as defined by the order. Brass mills perform several operations requiring melting and casting functions. These operations are the primary operations for production of brass sheet and strip; whereas rerolling operations "add only the last fraction of value," as Wolverine has stated. (See Wolverine's case brief in the present inquiry, February 26, 1993, at 5.)

Unlike brass mills, Great Lakes performed no casting operations, and only minor fabrication operations, during the period of inquiry. Great Lakes did, however, perform rerolling operations which included all of the processes that rerollers perform, with one additional step, namely that of cold-breakdown rolling, a process referred to by Wolverine as fabrication. Great Lakes scrapped its old casters before new ones became operational, and thus was not performing any casting operations during the period of inquiry. As a result, Great Lakes imported brass plate, a product which was one rolling step short of constituting sheet and strip, prior to importation. As described by the ITC in its preliminary injury determination, the primary fabrication process is hot-breakdown rolling, whereby ingots are heated, rolled (from approximately 5 to 7 inches in thickness to less than 0.5 inch), and coiled. This material is then further reduced in thickness to 0.188-inch or less through cold-breakdown rolling. (See Certain Brass Sheets and Strips from Brazil, Canada, France, Italy, Korea, Sweden, and W. Germany, Inv. No. 701–TA–269, USITC Publication 1837, May, 1986, at A–2.) Great Lakes clearly did not perform hot-breakdown rolling. Rather, during the period of inquiry, Great Lakes' operations were strictly limited to performance of rerolling and finishing processes. The relatively small amount of Great Lakes' cold-breakdown rolling is insufficient for us to consider Great Lakes a fabricator. We therefore have considered Great Lakes to be a reroller during the period of inquiry.

We agree with Wolverine's claim that during the period of inquiry Great Lakes performed more rerolling functions than that of normal rerollers because Great Lakes rerolled thicker gauge brass, known as brass plate, while rerollers normally reroll thinner gauge brass, known as sheet and strip. We also believe that a comparison of Great Lakes' operations with only that of normal rerollers, as suggested by Great Lakes, is clearly inappropriate in this determination for two reasons. First, reroller activities represent only one segment of the brass sheet and strip industry as defined by the ITC. Thus, any comparison of operations using reroller activities as the appropriate standard would fail to provide both an accurate representation of the industry as a whole and a meaningful evaluation of Great Lakes' operations in particular. Rather, we must compare Great Lakes' activities to that of vertically integrated producers, such as brass mills, which cast, roll, and finish the product. Second, the operations of the rerollers cannot, by themselves, represent the brass sheet and strip industry when such rerollers purchase and use brass sheet and strip, a product already within the scope of the order, as the primary input in the production process. To define the industry based solely upon the operations of rerollers would not only misconstrue the definition of the brass sheet and strip industry as set forth by the ITC, but would also fail to take account of the activities of that segment of the industry actually responsible for producing the product as defined by the scope of the order.

Applying the ITC's definition of the brass sheet and strip industry as a standard by which to evaluate the operations of Great Lakes, we determine that during the period of this inquiry, the nature of these operations, in comparison to the entire set of operations in the brass sheet and strip industry, was small.

Comment 3: Great Lakes argues that of the three qualitative factors that the statute mandates the Department to consider (*i.e.*, pattern of trade, relationship of parties and increase in imports of components), only an increase in imports was found to indicate that circumvention activities may have occurred during the period of inquiry. Great Lakes argues that in the only other section 781(a) case in which circumvention was found, all three qualitative factors under section 781(a)(2) were found to indicate circumvention. (See Granular Polytetrafluorethylene Resin from Italy, Preliminary Affirmative Circumvention Determination, (PTFE), September 18, 1992, 57 FR 43218, 43221.)

Department's Position: While all three factors under section 781(a)(2) examined in the PTFE circumvention inquiry affirmatively indicated circumvention, the PTFE case should not be read to stand for the principle

that all qualitative factors must indicate circumvention in order for the Department to make an affirmative circumvention determination. To do so would run counter to the statute, which does not require that all three factors be present to find circumvention. Section 781(a)(2) of the statute states that in determining whether to include parts or components in the outstanding order, the administering authority "shall take into account" these factors. There is no indication that each factor need be present before making an affirmative circumvention determination. Indeed, if all three had to be affirmatively met, they would be mandatory criteria, such as those in section 781(a)(1), not "factors to consider," and there would be no need to separately list them in 781(a)(2). Furthermore, consistent with the determination in this case, the Department previously concluded, in two circumvention inquiries, that the three qualitative factors are not essential conditions for finding circumvention. (See Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore; Negative Preliminary Determination of Circumvention of Antidumping Duty Orders, December 19, 1990, 55 FR 52066, 52069; and Negative Final Determination of Circumvention of Antidumping Duty Order: Portable Electric Typewriters from Japan; November 15, 1991, 56 FR 58031, 58034.)

Comment 4: Great Lakes and Wolverine note that the Department found the pattern of trade to be inconclusive in indicating circumvention. Wolverine adds that the Department would have been completely justified in concluding that the pattern of trade does not indicate circumvention.

Petitioners assert that the Department found the pattern of trade to be inconclusive due to the absence of a basis upon which to compare Wolverine's activities prior to the imposition of the antidumping order, as Wolverine did not participate in the brass sheet and strip industry until November, 1988. Still, Petitioners assert that there is a pattern of trade which suggests circumvention. Citing the Department's preliminary determination, petitioners point out that Wolverine admitted that it did not export any brass sheet and strip to the United States from June 1989 through September 1991, and made no sales of brass plate to Great Lakes prior to September 1990. Petitioners further state that, according to Great Lakes' own admission, after the circumvention inquiry began it ceased importing brass plate from Wolverine, and resumed importing brass sheet and strip from Wolverine.

Department's Position: We maintain, as we found in the preliminary determination, that the pattern of trade is inconclusive. However, pattern of trade is not a threshold condition, but rather one of several factors which the Department considers when evaluating whether circumvention is occurring.

Comment 5: Great Lakes asserts that the Department did not explain the unusual circumstances that are present in this case that make it appropriate to find circumvention where no relationship between the exporter and the importer existed.

Great Lakes states that the importance of relationship between exporter and the importer was emphasized in Color Picture Tubes from Canada, Japan, Republic of Korea and Singapore, Final Negative Circumvention Determination, where the Department stated this factor was "key" and sometimes "critical." Great Lakes also states that the Department noted that circumvention is "more likely" when there is a relationship between the manufacturer and the exporter.

Petitioners assert that the relationship of parties is not a threshold condition for an affirmative finding, but also suggest that a relationship exists between Great Lakes and Wolverine. They note that Great Lakes is owned by a Korean firm and that both Korean and Canadian brass sheet and strip are subject to the dumping orders. Petitioners argue that Korean manufacturers have attempted to minimize the impact of the order against Korean brass sheet, and as Great Lakes and Wolverine share a common interest in avoiding the antidumping duties, that this relationship should not be disregarded.

Wolverine asserts that the Department's conclusion, in the preliminary determination that Wolverine and Great Lakes were not related is wholly supported by the record.

Department's Position: We disagree with petitioners' assessment of the relationship between Great Lakes and Wolverine. While both Great Lakes and Wolverine may share a common interest in avoiding the antidumping duty order, it does not necessarily follow that they have any relationship other than that of customer to supplier.

While we have noted that it is "more likely" for related parties to engage in circumvention activity, a relationship between the exporter and importer is not a necessary condition for finding circumvention. While circumvention may be more likely to occur between related parties, it is also possible for circumvention to occur between unrelated companies. In addition, the factor of relationship was not a "key" or "critical" factor in the circumvention inquiries on color picture tubes (CPTs). On the contrary, in the CPT circumvention inquiries the Department specifically investigated unrelated companies, and made negative determinations on other grounds. (See Color Picture Tubes from Canada, Japan, Republic of Korea, and Singapore; Negative Preliminary Determinations of Circumvention of Antidumping Duty Orders; December 19, 1990, 55 FR 52066, 52068.)

Comment 6: While petitioners agree with the Department that an increase in imports does show circumvention, petitioners argue that the Department should look beyond the ten-fold jump in imports of brass plate from Canada to the United States from 1990 to 1991, as reported in the preliminary determination. The Department characterized this increase as indicative that circumvention may have occurred during the period of inquiry. Petitioners suggest that the Department look at import volumes in 1985 and 1986, the two years preceding the order, in relation to import volume in 1991, rather than focusing on the two post-order years of 1990 and 1991. Petitioners point out that such an examination would show Canadian brass plate imports ballooning from a *de minimis* level in 1985 and 1986 to a post-order peak of 2.3 million pounds in 1991.

Wolverine argues that petitioners' methodology is flawed and, if used, would lead to confusion since a new tariff schedule went into effect on January 1, 1989. Wolverine argues that although there was a substantial increase of imports during the period of inquiry, and the data shows a large portion of that increase was attributable to Wolverine, if Wolverine's portion of the increase is subtracted, a large increase in imports, attributable to other exporters, still exists.

Great Lakes asserts that the Department's finding of circumvention is insupportable. As evidence of this, Great Lakes cites the Department's use of the word "may" in its statement that the increase in imports "indicates that circumvention activities may have occurred during the period of inquiry" (58 FR 6618).

Department's Position: We agree with Wolverine. Because of the change in the tariff systems from the Tariff Schedules of the United States to the HTS in 1989, we were unable to gather import information which would allow

appropriate comparisons between the period before the issuance of the antidumping duty order (pre-1989 period) and the post-1989 period. Thus, to obtain an accurate picture of the change in imports of brass plate, we compared imports of brass plate before and after the opening of Great Lakes' U.S. facility. The ten-fold increase in imports clearly indicates that circumvention may have occurred.

Finally, we disagree with Great Lakes concerning our characterization of this qualitative factor. In our preliminary determination, we stated that "a 10-fold increase in imports of parts and components may indicate that circumvention was occurring" (emphasis added) precisely because an increase in imported components alone cannot demonstrate conclusively that circumvention has occurred. (See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Negative Final Determination of Circumvention of Antidumping Duty Order; February 21, 1990, 55 FR 6028, 6031, Comment 10.) Rather, the criteria set forth in section 781(a)(1) must indicate circumvention before the Department can make an affirmative circumvention determination.

Comment 7: Great Lakes argues that in its preliminary determination the Department failed to take into account the reasons for Great Lakes' purchase of material from Wolverine. Specifically, Great Lakes contends that before it could install its own casters and purchase cast material from PMX, a company which, at the time, was building a brass mill in the United States, petitioners and domestic producers refused to sell brass plate to Great Lakes. This compelled the company to purchase material from Wolverine. Great Lakes contends that petitioners attempted to impede Great Lakes' entry into the brass fabrication market by refusing to sell to it, and when this did not work, petitioners filed a petition for a circumvention inquiry. Great Lakes further argues that it did not intend to evade the antidumping order, as it purchased a plant that was in existence before the imposition of the antidumping order and modernized it into an integrated facility. Such modernization was completed after the period of inquiry in the anti-circumvention proceeding.

Wolverine similarly argues that the components for Great Lakes' operations were not available in the United States and, whether or not the value added is small, it cannot be said that circumvention occurred. Wolverine further contends that it only sold plate, a product not covered by the antidumping duty order, to a U.S. fabricator only when asked to do so, and that it had no intention of circumventing the antidumping order.

Petitioners argue that the sequence of activity by Great Lakes reveals a different set of circumstances than what Great Lakes contends. Petitioners contend that Great Lakes requested quotations from U.S. sources only after the circumvention inquiry was filed. Petitioners further argue that in the last quarter of 1991, Great Lakes decided to import brass sheet and strip in lieu of brass plate, which they contend indicates that Great Lakes had no commercial need for brass plate.

Department's Position: Such factors as intent to evade an order, unavailability of an input, and conspiracy to exclude a firm's entry into the U.S. market, are not bases for a circumvention determination, as enumerated by Congress. The motivations and purposes behind Great Lakes' importation and rerolling of brass plate are thus irrelevant to this proceeding. Indeed, companies may be circumventing an order without knowledge that such an order exists. The lack of knowledge or intent on the part of a respondent, however, does not constrain the Department from addressing such instances of circumvention. Congress clearly did not place upon petitioners or the Department the significant burden of showing that respondents intended to circumvent the order before an affirmative circumvention determination could be made. On the contrary, Congress set forth specific criteria for determining whether circumvention has occurred: whether the merchandise is of the same class or kind as that under the order, whether the parts or components are from the order country, and whether the difference in value is "small." Although other factors are considered by the Department in making its determination, it is clearly unnecessary for the Department to evaluate respondents' motivations or intent before an affirmative determination of circumvention is made. To make intent a factor in the Department's determination would require a massively intrusive inquiry far beyond anything done elsewhere in antidumping proceedings. While one might surmise that the criteria given by Congress are perhaps indirect indicia of intent, each is capable of independent analysis and are best seen as not only making a determination of intent unnecessary, but deliberately to be avoided. As directed by the statute, we have based our determination upon the criteria set forth in section 781(a) of the statute. (See PTFE from Italy, Final Affirmative Circumvention Determination, April 30, 1993, 58 FR 26100, 26112.)

Affirmative Final Determination of Circumvention

After consideration of the factors discussed above, we determine that circumvention, within the meaning of section 781(a) of the Tariff Act, of the antidumping duty order on brass sheet and strip from Canada has occurred. We base this determination on the following. First, the items produced at Great Lakes' facility and sold in the United States were of the class or kind of merchandise covered by the order, and were made of parts and components from Canada. Second, the difference in value between the brass sheet and strip sold in the United States and the brass plate imported into the United States from Canada was small. Finally, imports of Canadian brass plate increased ten-fold during the period of inquiry. As in the preliminary determination, we found that there was no relationship between the exporter and the importer, and that the pattern of trade was inconclusive with respect to circumvention. We note that our analysis of the difference in value and resulting determination of "small" in this case are not necessarily synonymous with such determinations that the Department will formulate in future anti-circumvention inquiries since Congress has directed us to make determinations regarding the difference in value on a case-by-case basis.

Suspension of Liquidation

In accordance with section 773(d) of the Tariff Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of Canadian brass plate, with the exception of brass plate manufactured by Ratcliffs/Severn Limited because the antidumping duty order on brass sheet and strip from Canada was revoked, in part, with respect to Ratcliffs/Severn (see 56 FR 57317). The merchandise subject to suspension of liquidation is brass plate, also known as copper-zinc base alloy plate, over 0.188 inches in thickness, as defined in the "Scope of the Circumvention Inquiry" section of this notice, used in the production of brass sheet and strip, as defined in the "Scope of the Antidumping Duty Order" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 1, 1993. The U.S. Customs Service shall require a cash deposit at the applicable rate. This suspension of liquidation will remain in effect until further notice.

Requirement of End-Use Certification

Considered within the scope of the antidumping duty order on brass sheet and strip are all imports of brass plate, as defined in the "Scope of the Inquiry" section of this notice, unless (1) manufactured by Ratcliffs/Severn Limited, or (2) accompanied by an end-use certificate stating that such brass plate will not be used in the production of brass sheet and strip, as defined in the "Scope of the Antidumping Duty Order" section of this notice.

Interested parties may request disclosure within five days of the date of publication of this notice.

This final affirmative determination of circumvention is in accordance with section 781(a) of the Tariff Act (19 U.S.C. 1677j(a)) and 19 CFR 353.29(e).

Dated: June 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–14449 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–505]

Oil Country Tubular Goods From Taiwan; 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 oil country tubular goods from Taiwan. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: David Genovese or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1986, the Department of Commerce (the Department) published an antidumping duty order on oil country tubular goods from Taiwan (51 FR 22098). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than June 30, 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, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistnat Secretary for Compliance.

[FR Doc. 93–14460 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–604]

Certain Fresh Cut Flowers From Canada; Revocation of Antidumping Duty Order

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

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce is revoking the antidumping duty order on certain fresh cut flowers from Canada because it is no longer of any interest to interested parties.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joanna Schlesinger 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 February 26, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 11587) its intent to revoke the antidumping duty order on certain fresh cut flowers from Canada (52 FR 8491, March 18, 1987).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this duty order on each interested party on the service list. Interested parties who might object to the revocation were provided the opportunity to submit their comments not later than thirty days from the date of publication.

Scope of the Order

Imports covered by the review are shipments of certain cut flowers from Canada. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 7020.00.00. The HTS number is provided for convenience and Customs purposes. The written description remains dispositive.

The Department may revoke an antidumping order if the Secretary concludes that the duty order is no longer of any interest to interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for four consecutive review periods (19 CFR 353.25(d)(4)(i)) and when no interested party objects to revocation.

In this case we have received no request for review for five consecutive review periods. Furthermore, no interested party has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order covering certain fresh cut flowers from Canada is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of certain fresh cut flowers from Canada entered, or withdrawn from warehouse, for consumption on or after March 1, 1993. Entries made during the period March 1, 1992 through February 28, 1993, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 1, 1993, without regard to

antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.25(d).

Dated: June 8, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14452 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–031]

Large Power Transformers From Italy; 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 large power transformers from Italy. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1972, the Treasury Department published an antidumping finding on large power transformers from Italy (37 FR 11772). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by §353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 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, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14491 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

(A–570–823)

Initiation of Antidumping Duty Investigation: Nitromethane From the People's Republic of China

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

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, (202) 482–4929, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

INITIATION OF INVESTIGATION:

The Petition

On May 24, 1993, we received a petition filed in proper form by Angus Chemical Company, filing on behalf of the domestic nitromethane industry (petitioner). We received a supplement to the petition on June 7, 1993.

In accordance with 19 CFR 353.12, the petitioner alleges that nitromethane from the People's Republic of China (PRC) is, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it is the only remaining producer of nitromethane in the United States. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The product covered by this investigation is nitromethane, a chemical compound with the formula CH_3NO_2. Nitromethane is a nitroparaffin in which the nitro group is attached to the single carbon atom of that member of the alkane family known as methane. Nitroparaffins are any of a homologous series of compounds whose generic formula is $C_nH_{2n+1}NO_2$, the nitro groups being attached to a carbon atom through the nitrogen.

Nitromethane has numerous industrial uses, including as a solvent in polymers for coatings, as a component of special fuels for internal combustion engines, as a stabilizer for chlorinated hydrocarbons, and as an extraction solvent. Nitromethane is a raw material used in the synthesis of other useful chemicals including chloropicrin, a primary soil nematocide; tris (hydroxymethyl)-aminomethane, a pharmaceutical and diagnostic buffer; and bronopol, a preservative for nonwoven moist toilettes.

Nitromethane is classifiable under the subheading 2904.20.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading, a basket provision, is defined to include sulfonated, nitrated, or nitrosated derivatives of hydrocarbons, whether or not halogenated. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

Petitioner based United States Price for nitromethane on weight-averaged duty-paid and delivered prices paid by U.S. customers, as reported to ANGUS sales representatives. Petitioner made deductions to the U.S. prices, where appropriate, for ocean freight, U.S. customs duties, foreign inland freight, and U.S. inland freight.

Petitioner, alleging that the PRC is a non-market economy country within the meaning of section 773(c) of the Act, based foreign market value on the factors of production generally used in producing the subject merchandise in the PRC. To estimate the factors of production, petitioner used information it obtained from a March 23, 1993, report by Bechtel Corporation, a major

industrial construction firm that has experience in planning and building petrochemical facilities in India. To value the factors of production, petitioner selected India as the most comparable surrogate for the PRC. For purposes of this initiation, we have accepted India as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act. Petitioner, therefore, first attempted to value the factors of production using Indian information. Where this was not possible, petitioner valued the factors of production based on its own experience. Petitioner obtained and valued the factors of production of the subject merchandise in the PRC as follows:

- For sodium nitrite, dimethyl sulfate, sulfuric acid, and 50 percent sodium hydroxide, petitioner used rates per metric ton, reported in U.S. dollars based on Indian prices as contained in the Bechtel Report.
- For steam, electricity, and water, petitioner estimated the quantities required to operate a nitromethane plant on a commercial scale. Petitioner valued these utilities in India based on the Bechtel Report.
- For labor, petitioner estimated the number of workers involved in producing nitromethane based on its own experience. Petitioner valued these labor figures in India based on the Bechtel Report.
- For depreciation, petitioner estimated the capital costs based on its own experience. Depreciation was based on a ten year period.
- For insurance and general plant overhead, petitioners used Indian percentage rates based on the Bechtel Report.
- For waste disposal, petitioners relied on the Richardson Index to obtain a percentage of raw material costs.
- For selling, general and administrative expenses (SG&A), petitioner used the statutory minimum of ten percent of the cost of manufacture.
- For profit, petitioner used the statutory minimum of eight percent of the cost of manufacture plus SG&A expenses.

Based on petitioner's calculations, the dumping margin is 233 percent. For purposes of this initiation, no adjustments were made to petitioner's calculations.

Initiation of Investigation

We have examined the petition on nitromethane from the PRC and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of nitromethane from the PRC are being, or are likely to be, sold in the United States at less than fair value.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by July 8, 1993, whether there is a reasonable indication that imports of nitromethane from the PRC are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in a termination of the investigation; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 14, 1993.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration

[FR Doc. 93–14448 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–706]

Nitrile Rubber from Japan; 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 nitrile rubber from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker, of Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5256.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1988, the Department of Commerce (the Department) published an antidumping duty order on nitrile rubber from Japan (53 FR 22553). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than June 30, 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, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14457 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–080]

Carbon Steel Plate From Taiwan 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 carbon steel plate from Taiwan. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department

of Commerce, Washington, DC 20230, telephone: (202) 482–5256.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Treasury Department published an antidumping finding on carbon steel plate from Taiwan (44 FR 33877). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

Not later than June 30, 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 obligation should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14459 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–503]

64K Dynamic Random Access Memory Components From Japan; 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 64K DRAMs from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1986, the Department of Commerce (the Department) published an antidumping duty order on 64K DRAMs from Japan (51 FR 21781). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than June 30, 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, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14453 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–401–040]

Stainless Steel Plate From Sweden; 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 stainless steel plate from Sweden. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5256.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1973, the Treasury Department published an antidumping finding on stainless steel plate from Sweden (38 FR 15079). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 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 of Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the

finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14462 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–423–077]

Sugar From Belgium; 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 sugar from Belgium. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. 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 June 13, 1979, the Treasury Department published an antidumping finding on sugar from Belgium (44 FR 33878). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 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, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14456 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–078]

Sugar From France; 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 sugar from France. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. 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 June 13, 1979, the Treasury Department published an antidumping finding on sugar from France (44 FR 33878). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 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, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14454 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–428–062]

Sugar From Germany; 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 sugar from Germany. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. 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 June 13, 1979, the Treasury Department published an antidumping

finding on sugar from Germany (44 FR 33878). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 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 regulations, may object to the Department's intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 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, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14455 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals

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

ACTION: Issuance of Scientific Research Permit (P211F).

SUMMARY: On April 9, 1993, notice was published in the **Federal Register** (58 FR 18376) that the Oregon Department of Fish and Wildlife, Marine Science Drive, Bldg. 3, Newport, Oregon 97365, had applied for a Permit to capture, handle, tag, hot brand, blood/tissue sample up to 200 Steller sea lion (*Eumetopias jubatus*) pups annually; capture, radio-tag, blood/tissue sample up to 5 adult female Steller sea lions; accidentally kill up to 2 pups and 2 adult female Steller sea lions during research activities; and incidentally harass up to 4,000 Steller sea lions incidental to the activities.

Notice is hereby given that on June 11, 1993, as authorized by the provisions of the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361–1407), the NMFS issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, was based on the finding that such Permit: (1) Was applied for in good faith; (2) Will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) Is consistent with the purposes and policies set forth in Section 2 of the ESA. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit and accompanying documentation are available for review by writing to or appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115 (206/526–6150);

Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4015); and

Director, Alaska Fisheries Science Center, NMML, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115 (206/526–4047).

Dated: June 11, 1993.

William W. Fox, Jr., Ph.D,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14383 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–22

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 19, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 11, 1992, April 23, 30 and May 7, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (57 FR 58796, 58 FR 21706, 26125 and 27272) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the

commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodity and services proposed for addition to the Procurement List. Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Paper, Toilet Tissue
8540–00–530–3770
(Requirements for Palmetto, Georgia)

Services

Demilitarization of Military Hardware, Robins Air Force Base, Georgia
Food Service Attendant, Naval Weapons Station, Building 306, Charleston, South Carolina
Grounds Maintenance, Bureau of Reclamation, New Melones Lake Visitors Center, 6850 Studhorse Flat Road, Sonora, California
Janitorial/Custodial, Fort Ritchie, Maryland

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E. R. ALLEY, JR.,

Deputy Executive Director.

[FR Doc. 93–14440 Filed 6–17–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 19, 1993.

ADDRESSES: Committee for Purchase Ffom People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agencies listed:

Commodities

Line, Multi-Loop
1670–01–062–6302
Nonprofit Agency: Industrial Opportunties, Inc., Marble, North Carolina
Folder, File
7530–00–707–8406
Nonprofit Agency: Lions Club Industries, Inc., Durham, North Carolina
Squeegee, Floor Cleaning
7920–00–530–5740
7920–00–965–4873
Nonprofit Agency: Lawrence Rehabilitation Services, Inc., Lawrence, Massachusetts

Services

Forms/Publication Storage and Distribution, Federal Aviation Administration Building, 1601 Lind Avenue SW., Renton, Washington
Nonprofit Agency: Northwest Center for the Retarded, Seattle, Washington
Janitorial/Custodial, Marine Corps Air Station, Kaneohe Bay, Hawaii,
Nonprofit Agency: Lanakila Rehabilitation Center, Honolulu, Hawaii

Deletion

It is proposed to delete the following commodity from the Procurement List:
Lead Seal With Cord Attachment
P.S. Item 0815

E. R. Alley, Jr.

Deputy Executive Director.

[FR Doc. 93–14441 Filed 6–17–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of Navy

Marine Corps; Public Hearing for the Proposed Wastewater Treatment System Upgrade Marine Corps Base, Camp Lejeune, North Carolina

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Marine Corps has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for a proposed wastewater treatment system upgrade at Marine Corps Base Camp Lejeune, North Carolina.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on July 13, 1993, beginning at 7 p.m., in the Jacksonville High School Auditorium, located at 1021 Henderson Drive, Jacksonville, North Carolina. Graphics showing alternatives considered and key issues of the proposed action will be available for review one hour prior to the hearing (6 p.m.).

The public hearing will be conducted by the Marine Corps. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral

comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by August 2, 1993, to become part of the official record.

The proposed action will remove three existing discharges to the most nutrient sensitive waters of the upper New River system, remove two existing discharges in proximity to high quality shellfishing waters of the lower New River, and remove an existing discharge to the Intracoastal Waterway. The project will be constructed in three phases. Phase I will construct transmission pipeline to consolidate flows from the existing plants to a single discharge point near an existing treatment plant in the Hadnot Point area. Phases II and III will be concurrent projects which will construct a new 15 million gallon per day (MGD) advanced treatment plant with a high level of nutrient removal. A river outfall diffuser pipe will be constructed to allow discharge of the treated effluent into the New River. Upon completion of the project, all existing wastewater treatment plants will be shut down.

In addition to the advanced treatment plant with river discharge, construction of an ocean outfall, a combination of advanced treatment with river discharge and limited land application, and no action were considered as alternatives.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. In addition, the DEIS is available for review at the following locations:

Onslow County Manager's Office, 521 Mill Avenue, Jacksonville, NC
Surf City Town Hall, 214 North New River Drive, Surf City, NC
Onslow County Public Library, 58 Doris Ave East, Jacksonville, NC
Sneads Ferry Public Library, 242 Sneads Ferry Road, Sneads Ferry, NC
Camp Lejeune Base Library, Holcomb Blvd, Bldg. 1220, Camp Lejeune, NC
North Topsail Beach Town, Hall, Highway 210, North Topsail Beach, NC
topsail Beach Town Hall, 820 South Anderson Blvd, Topsail Beach, NC
Richlands Public Library, Wilmington Street, Richlands, NC
Swansboro Public Library, Church Street, Swansboro, NC

A limited number of single copies are available at the address listed at the end of this notice.

Additional information concerning this notice may be obtained by contacting Pamela Anderson (Code 203), Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511–2699.

Dated: June 8, 1993.

R. W. Watkins,

Colonel, U.S. Marine Corps Head, Land Use and Military Construction Branch Facilities and Services Division Installations and Logistics Department By Direction of the Commandant of the Marine Corps

Michael P. Rummel,

LCDR, JAGC, USN Federal Register Liaison Officer

[FR Doc. 93–14199 Filed 6–17–93; 8:45 am]

BILLING CODE 3810–AE–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 19, 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: June 14, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Human Resources and Administration

Type of Review: New.
Title: Applicant Background Survey Form.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 36,250.
Burden Hours: 3,021.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The U.S. Department of Education will request background information from applicants that are applying for employment with the Department. The information will be used to assess applicant flow data in evaluating the effectiveness of ED's recruitment efforts. The Department will use the information for statistical analysis and reporting to Equal Employment Opportunity Commission.

Office of Policy and Planning

Type of Review: New.
Title: Evaluation of the Tech-Prep Education Program.
Frequency: Annually.
Affected Public: Individuals or households; state or local governments; non-profit institutions.
Reporting Burden:
Responses: 1,651.
Burden Hours: 6,451.
Recordkeeping Burden:
Recordkeepers: 0.

Burden Hours: 0.
Abstracts: This study is designed to describe state and local tech-prep programs and activities funded under the National Tech-Prep Education Program, and to idenify best practices and effective approaches of local programs.

Office of Postsecondary Education

Type of Review: Revision.
Title: New and Noncompeting Continuation Application for Grants to Institutions and Consortia to Encourage Women and Minority Participation in Graduate Education.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 165.
Burden Hours: 2,760.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational agencies to apply for funding under the Instructions and Consortia to Encourage Women and Minority Participation in Graduate Education Program. The Department will use the information to make grant awards.

[FR Doc. 93–14361 Filed 6–17–93; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Issuance of Proposed Decision and Order During the Week of May 31 Through June 4, 1993

During the week of May 31 through June 4, 1993, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order 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.

Dated: June 11, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Duncan Thompson Petroleum, Inc., Atlanta, TX, LEE–0048

Duncan Thompson Petroleum, Inc. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering the request, the DOE tentatively found that the firm was not suffering a gross inequity or serious hardship. Accordingly, on June 4, 1993, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 93–14439 Filed 6–17–93; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER93–692–000, et al.]

Potomac Electric Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 14, 1993.

Take notice that the following filings have been made with the Commission:

1. Potomac Electric Power Co.

[Docket No. ER93–692–000]

Take notice that on June 2, 1993, Potomac Electric Power Company (Pepco) submitted for filing revised sheets to the Delivery Point Supplement to Pepco FERC No. 34, its agreement to supply full requirements service to its customer, Southern Maryland Electric Cooperative, Inc. The revised sheets provide for the addition of Hawkins Gate Substation, a new delivery point under the agreement, as of November 1, 1992 as agreed between Pepco and its customer. Waiver of notice is requested.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Co.

[Docket No. ER93–630–000]

Take notice that on June 8, 1993, Northern States Power Company (Minnesota) filed a supplement to the above mentioned docket requesting that this proceeding be consolidated with Docket No. ER93–259–000 for purposes of rehearing. In Docket No. ER93–259–000 NSP filed a request for rehearing in which it (a) applied for rehearing of the Commission's finding on market-based rates and (b) asked the Commission to grant rehearing for purposes of further consideration to allow NSP time to discuss with the Staff and the customers a method of further consideration to allow NSP time to discuss with the Staff and the customers a method of cost-supporting the rates for 1994 and beyond. NSP requests that the filing in the present docket be given the same treatment.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER93–700–000]

Take notice that PSI Energy, Inc. (PSI), on June 8, 1993, tendered for filing an Interchange Agreement, dated January 29, 1993, between PSI and Blue Ridge Power Agency (Blue Ridge).

The Interchange Agreement provides for the following service between PSI and Blue Ridge:

1. Service Schedule A—Emergency Service
2. Service Schedule B—Short-Term Capacity and Energy
3. Service Schedule C—Economy Energy
4. Service Schedule D—Non-Displacement Energy
5. Service Schedule E—Limited-Term Capacity and Energy
6. Service Schedule F—Term Capacity and Energy

PSI and Blue Ridge have requested an effective date of August 4, 1993.

Copies of the filing were served on Blue Ridge Power Agency, the Virginia State Corporation Commission and the Indiana Utility Regulatory Commission.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

PSI Energy, Inc.

[Docket No. EL93–2–002]

Take notice that PSI Energy, Inc. (PSI) on June 8, 1993, tendered for filing its

compliance filing per the Commission's order, issued April 22, 1993, in Docket No. EL93–2–000.

PSI notes that it also filed a Motion for Clarification, Alternative Request for Rehearing and Motion for Extension of Time related to the above referenced docket on May 24, 1993.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER93–701–000]

Take notice that on June 9, 1993, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and City of Tallahassee, Florida. FPL requests an effective date of July 1, 1993.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

Portland General Electric Company

[Docket No. ER93–703–000]

Take notice that on June 9, 1993, Portland General Electric Company (PGE) tendered for filing service agreements under FERC Electric Tariff, Original Volume No. 1 (PGE–1) with Louis Dreyfus Electric Power, Inc. copies of this agreement have been served on the parties included in the distribution list defined in the filing letter.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Midwest Power Systems Inc.

[Docket No. ER93–560–000]

Take notice that on June 8, 1993, Midwest Power Systems Inc. tendered for filing Amendment No. 1 to the filing of an executed Service Schedule Agreement for wholesale electric power and energy between Midwest Power Systems Inc. (MPSI) and the City of Wall Lake, Iowa (City), whereby MPSI will provide wholesale electric power and energy as required by the City above the amount provided by the Western Area Power Administration (Western). MPSI is filing this Agreement pursuant to the established Electric Tariff Volume No. 1, Original Issue Sheets Nos. 7, 8, and 9. Amendment No. 1 contains additional support data and information describing the relationship between MPSI and the City since 1983.

Copies of this filing has been sent to:

Mr. Raymond K. Vawler, Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319

Mr. H.F. Schroeder, Mayor, City of Wall Lake, 418 2nd Street, Wall Lake, Iowa 51466

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14395 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–2107–004]

Arkla Energy Resources; Sale of Natural Gas

June 14, 1993.

Take notice that on May 27, 1993, Arkla Energy Resources (AER), P.O. Box 21734, Shreveport, Louisiana, 71151, submitted the following information regarding the sale of natural gas to be made to an affiliate under AER's Rate Schedule ISS, pursuant to the authorization granted by an order issued August 6, 1992, in Docket Nos. RP91–65–000, –006, and –007; and CP89–2107–000 (60 FERC ¶ 61,160).

(1) *Name of Buyer:* Arkla Energy Marketing

(2) *Location of Buyer:* Shreveport, Louisiana

(3) *Affiliation between AER and Buyer:* Both AER and Arkla Energy Marketing are subsidiaries of Arkla. Inc.

(4) *Nature of the Transaction:* Purchase for consumption.

(5) *Term of Sale:* June 1, 1993, to June 30, 1993.

(6) *Estimated Maximum Daily Quantity:* 30,000 MMBtu
Estimated Total Quantity: 900,000 MMBtu

(7) *Rates:*
Maximum: Current estimated weighted average cost of gas as stated in AER's latest PGA being charged.
Minimum: Spot price index for the month.

Rate to be Charged During the Billing Period: $1.80 per dry MMBtu, plus $0.2752 per MMBtu for transportation and the weighted average rate applicable to all AER points of receipt for gathering.

Arkla Energy Resources Company, Docket No. CP89–2107–004

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of August 6, 1992. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, AER may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14367 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–12–000]

Dow Intrastate Gas Co.; Petition for Rate Approval

June 14, 1993.

Take notice that on June 1, 1993, Dow Intrastate Gas Company (DIGCO) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.1057 per MMBtu plus 0.03% in-kind fuel reimbursement for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

DIGCO states that it is an intrastate pipeline within the definition of section 2(16) of the NGPA and that it owns and operates facilities in the State of Louisiana. DIGCO states in its petition that its last approved rate for

transportation on its system was $0.1328 per MMBtu plus a 0.3% in-kind fuel reimbursement level which was approved by the Commission in Docket No. PR90–6–000. (53 FERC ¶ 61,092)

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 29, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14370 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–140–000]

Gas Research Institute; Notice of Annual Application

June 14, 1993.

Take notice that on June 10, 1993, Gas Research Institute (GRI) filed an application requesting advance approval of its 1994–1998 Five-Year Research, Development and Demonstration (RD&D) Plan, 1994 RD&D Program, and the funding of its R&D activities for 1994, pursuant to the Natural Gas Act and the Commission's Regulations, particularly 18 CFR 154.38(d)(5).

In its application, GRI proposes to maintain its contract obligations at $201.8 million in 1994, which is the same amount as approved for 1993. GRI's application seeks to collect $191,696,000 through jurisdictional rates and charges during the twelve months ending December 31, 1994. This $191.7 million, plus additional funds collected on intrastate transactions, will provide the necessary cash to fund the 1994 RD&D program. GRI also intends to decrease its operating expenses and program management expenses in 1994.

GRI proposes to fund the 1994 R&D program through the following surcharges: (1) A demand/reservation surcharge on two-part rates of 21.8 cents/Dth -mo. for "high load factor customers"; (2) A demand/reservation surcharge on two-part rates of 13.4 cents/Dth -mo. for "low load factor customers"; (3) A volumetric commodity/usage surcharge of 0.85 cents/Dth -mo. for firm services involving two-part rates, and for one-part interruptible rates; (4) A special "small customer" surcharge of 2.0 cents/Dth on one-part, small customer service rates and the commodity/usage component of the two-part, small customer service rates; and (5) A surcharge of 1.57 cents/Dth -mo. for one-part, firm service outside the "small customer" class. GRI asserts that these surcharges comply with the Commission's March 22, 1993 "Order on Contested Settlement" approving, without modification, the "Stipulation and Agreement Concerning Post-1993 GRI Funding Mechanism" (S&A). The S&A, *Inter alia*, establishes a funding mechanism for the GRI program that will apply in 1994 and 1995.

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document on or before August 6, 1993. Comments on the Staff Report and GRI's application by all parties, except GRI, must be filed with the Commission on or before August 20, 1993. GRI's reply comments must be filed on or before September 3, 1993.

Any person desiring to be heard or to protest GRI's application, except for GRI members and state regulatory commissions who are automatically permitted to participate in the instant proceedings as interveners, 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 the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 1, 1993. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party, other than a GRI member or a state regulatory commission, must file a motion to intervene. Copies of GRI's filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14372 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–245–002]

Iroquois Gas Transmission System, L.P.; Notice of Petition To Amend

June 11, 1993

Take notice that on May 26, 1993, Iroquois Gas Transmission System, L.P. (Iroquois), located at ONe Corporate Drive, Suite 606, Shelton, Connecticut 06484, filed in docket No. CP92–245–002 a petition to amend the certificate issued May 20, 1992 in Docket No. CP92–245–000 authorizing the construction and operation of a compressor station in Wright, New York, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Iroquois states that the turbines authorized in the Commission's Order are no longer available from the manufacturer. Iroquois states that it seeks to amend its authorization to allow it to install two Centaur H Gas turbines T–5702 (CS/MD) instead of the turbine model originally specified.

Any person desiring to be head or to make any protest with reference to said petition should, on or before June 18, 1993, file with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14358 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–10–000]

Louisiana State Gas Corp.; Petition for Rate Approval

June 14, 1993.

Take notice that on May 17, 1993, Louisiana State Gas Corporation (LSGC) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.2553 per MMBtu for transportation of natural

gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

LSGC's petition states that it is a Louisiana corporation operating an intrastate pipeline in Louisiana and a wholly-owned subsidiary of LEDCO Inc.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 29, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14369 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–11–000]

Northern Illinois Gas Co.

Notice of Petition For Rate Approval

June 14, 1993.

Take notice that on May 28, 1993, Northern Illinois Gas Company (NI–Gas) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable maximum rates for the transportation and storage of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). NI–Gas requests Commission approval of an interruptible transportation rate of $0.0776 per MMBtu and an interruptible storage rate of $0.0622 per MMBtu per day.

NI–Gas states that it is an intrastate gas distribution public utility subject to the jurisdiction of the Illinois Commerce Commission under the Illinois Public Utilities Act and that it was issued a blanket certificate under § 284.224 in Docket No. CP92–481–000. In addition to the proposed interruptible transportation and storage services, NI–Gas has determined that its facilities can provide the basis for a major market hub or market center, connecting several pipelines and markets in the greater Chicago area.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 29, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 93–14371 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–48–024]

Transwestern Pipeline Co.; Compliance Filing

June 14, 1993.

Take notice that Transwestern Pipeline Company (Transwestern) on June 8, 1993, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to be effective February 1, 1993:

2nd Revised Sheet No. 51B

Transwestern states that the above-referenced tariff sheet is being filed to comply with the Commission's letter order issued May 24, 1993 in Docket Nos. RP89–48–020, 021 and 023. The order required Transwestern to refile the revised tariff sheet within fifteen (15) days to remove the conflicting Production and Gathering (P&G) tariff language on Alternate 1st Revised Sheet No. 51B.

Transwestern states that copies of the filing were served on its jurisdictional customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825, North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 21, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14368 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–409–000]

Questar Pipeline Co. Notice of Application

June 14, 1993.

Take notice that on June 2, 1993, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP93–409–000 an application pursuant to § 7(c) of the Natural Gas Act requesting authority to construct and operate additional facilities required to increase the maximum certificated storage inventory level at Questar's Clay Basin Storage Field (Clay Basin) located in Daggett County, Utah, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar requests authority to (1) construct and operate (a) three additional 6,500 horsepower natural-gas turbine compressors immediately adjacent to its Kastler Compressor Station and (b) 3,850 lineal feet of 6-inch storage lateral within Clay Basin, and (2) increase the maximum certificated storage inventory level at Clay Basin from 100 to 110 Bcf.

Questar states that in order to reach to 110 Bcf storage inventory level, and maintain the current Minimum Required Deliverability concept, it anticipates increasing the current cushion-gas volume from 52.62 Bcf to 63.71 Bcf in order to support a 15.25 Bcf increase in working-gas capacity from 31 Bcf to 46.25 Bcf. Questar explains that the proposed increase in total storage inventory will decrease the Clay Basin cushion/working-gas ratio from 1.70:1.00 to approximately 1.38:1.00. Questar further states that it will only inject cushion-gas volumes in proportion to the level of working-gas volumes actually sold and that no additional injection/withdrawal wells and no observation wells are proposed to be drilled as a result of the proposed Clay Basin expansion.

Questar further explains that, consistent with its January 15 through February 12, 1993, open-season representations, it proposes to offer the expanded Clay Basin firm storage capacity at its currently effective Rate Schedule FSS rates. It is stated that the total cost of the proposed Clay Basin expansion, including compressors, storage laterals, associated dehydrators, heaters, valves, piping and other appurtenant facilities and cushion-gas volumes is approximately $49,600,000.

Questar further requests authority to allow it to honor, to the extent capacity remains available, the service requests tendered during the January 15 through February 12, 1993, open season. Questar clarifies that this authority is required to enable Questar to work its way down the open-season queue until the expansion capacity becomes fully subscribed, or until the open-season queue is exhausted. This could include tendering agreements after implementation of Order No. 636 on Questar's system.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 24, 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 in the public reference room.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by §§ 7 and 15 of the NGPA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is timely filed, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14394 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA93–1–49–001 and TM93–7–49–001]

Williston Basin Interstate Pipeline Co.; Corrected Tariff Filing

June 14, 1993.

Take notice that on June 9, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, tendered for filing Substitute Forty-eighth Revised Sheet No. 10 (Original Volume No. 2) to be substituted for the corresponding tariff sheet filed in its Annual Purchased Gas Cost Adjustment Filing (PGA) submitted June 1, 1993 pursuant to 18 CFR 154.301, et seq. of the Commission's Regulations and Sections 21, 30 and 35 of its FERC Gas Tariff (First Revised Volume No. 1 and Original Volume Nos. 1–A and 1–B, respectively).

The proposed effective date of the corrected tariff sheet is August 1, 1993.

Williston Basin states that in the course of the review of its June 1, 1993 PGA filing an inadvertent error was discovered in the Non-Gas Commodity Rate After Current Adj. Plus Surcharges for Rate Schedule X–3 on Forty-eighth Revised Sheet No. 10 (Original Volume No. 2). Thus, the instant filing contains only a corrected tariff sheet.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 21, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14386 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–52–NG]

Inland Natural Gas Marketing Ltd.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Inland Natural Gas Marketing Ltd. authorization to import a total of up to 50 Bcf and to export a total of up to 50 Bcf of natural gas from and to Canada over a two-year term beginning on the date of first import or export delivery.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 8, 1993.

Clifford P. Tomaszewkski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–14438 Filed 6–17–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4668–3]

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 19, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Accidental Release Information Program, EPA ICR #1331.05 (OMB #2050–0065). This ICR requests renewal of the existing clearance.

Abstract: The Accidental Release Information Program (ARIP) collects data on the causes of chemical accidents and points to steps that could be taken by industrial facilities to prevent accidental releases. In this collection, refined ARIP criteria are used to obtain data on unique chemical accidents that pose a direct hazard to the public and environment. It will survey only those releases that involve injury and death to members of the general public and cause off-site consequences, such as evacuation, sheltering in place, or environmental damage. Fixed facilities responsible for the selected release are required to complete and return a questionnaire which asks for more detailed information on the causes and consequences of the accidental release, and the release prevention practices and technologies in place prior to and following the accident.

The collected information will serve to support a range of chemical accident prevention and preparedness efforts involving industry, local and state governments, as well as EPA regions and headquarters.

Burden Statement: Public reporting burden for this collection of information is estimated to average 25 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. There is no recordkeeping burden.

Respondents: Owners/operators of fixed facilities with accidental releases meeting selection criteria.

Estimated No. of Respondents: 125.

Estimated Total Annual Burden on Respondents: 3,140 hours.

Frequency of Collection: On occasion, when releases meet specific triggers.

Send comment regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460, and

Ron Minsk, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: June 11, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–14427 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4667–4]

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.

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

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: FIFRA section 29–Annual Report on Conditional Registrations. (EPA ICR No: 0601.04; OMB No: 2070–0026). This is a request to extend the expiration date of a currently approved collection.

Abstract: Under section 29 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the EPA is required by Congress to monitor the conditional registration of pesticide products. The Agency grants conditional registration for products for which the submission of some supporting data has been deferred to a future date. However, as one of the conditions for this type of registration, registrants must submit an annual report to the EPA. The report must contain the amount (in gallons or pounds) of the pesticide product produced during the preceding fiscal year for each registered use and, in addition, registrants must keep records of these data. The EPA uses the information to track the number of applications submitted to the Agency each year, monitor productions, and compile these data into a report which, in compliance with section 29 of FIFRA, is submitted to Congress once every year.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1.3 hours per response for reporting and 20 minutes for recordkeeping annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Pesticide registrants.

Estimated No. of Respondents: 30.

Estimated No. of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 84 hours.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 11, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–14424 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4668–5]

Access to Confidential Business Information by Ronson Management Corporation

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Ronson Management Corporation of Springfield, Virginia, for access to information which has been submitted to EPA under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Some of this information may be claimed or determined to be Confidential Business Information.

DATES: EPA will begin transferring data to Ronson five working days from the date of this notice.

ADDRESSES: Send or deliver written comments to Kevin Brittingham, Superfund Accounting Branch, Financial Management Division, Office of the Comptroller (PM–226F), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William Cooke, Acting Chief, Superfund Accounting Branch (PM–226F), Environmental Protection Agency, 401

M Street, SW., Washington, DC 20460. Telephone (202) 260–9268.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W3–0023 Ronson Management Corporation will provide support services and resources to the Environmental Protection Agency to: (1) Maintain Superfund original financial document files and Superfund site-specific files; (2) support the Financial Management Division's Superfund Cost Recovery Process which includes, but is not limited to, reviewing all financial documents and document files to identify and gather all needed Superfund financial information; verify its accuracy and identify corrective actions; prepare and summarize Superfund site-specific cost documentation packages and (3) perform other administrative functions in support of CERCLA in the Regional, Laboratory and Headquarters finance offices which includes, but is not limited to, indexing and scanning of documents into the Superfund Cost Recovery Imaging Processing System (SCRIPS); data preparation for data entry; data entry into local PC applications; document retrieval and quality assurance review.

In providing this support, Ronson Management Corporation employees will have access to Agency documents for the purpose of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking and more. The documents to which Ronson Management Corporation will have access potentially include all financial documents submitted under CERCLA. Some of these documents may contain information which may be claimed or determined to be CBI.

Pursuant to EPA regulations at 40 CFR Part 2, Subpart B, EPA has determined that Ronson Management Corporation requires access to Confidential Business Information to provide the support and services required under the contract. These regulations provide for five working days notice before contractors are given CBI.

Ronson Management Corporation will be required by contract to protect confidential information. These documents are maintained in EPA office and file space.

Dated: June 8, 1993.

Sallyanne Harper,

Acting Assistant Administrator for Administration and Resources Management.

[FR Doc. 93–14426 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4621–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 31, 1993 Through June 04, 1993 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1993 (58 FR 18392).

DRAFT EISs

ERP No. D–SFW–A64055–00 Rating EC2, Refuges 2003—A Plan for the Future, National Wildlife Refuge Management Plan, Implementation.

Summary: EPA had environmental concerns regarding the proposed management plan. These concerns regarded the lack of specificity of the document, tiering of information 1 to future actions, monitoring and mitigation measures, and additional information on secondary uses of refuges.

Dated: June 15, 1993

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–14429 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4621–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed June 07, 1993 Through June 11, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930188, Draft EIS, SCS, KS, Upper Delaware River and Tributaries Watershed Plan, Flood Prevention and Watershed Protection, Funding and COE Section 404 and NPDES Permits, Atchison, Brown, Jackson and Nemaha Counties, KS, Due: August 02, 1993, Contact: James N. Habiger (913) 823–4565.

EIS No. 930189, Draft Supplement, AFS, ID, Cuddy Mountain Roadless Area, Grade/Dukes Timber Sale and Road Construction, New Information concerning Additional Modifications to the Blend Alternative, Implementation, Payette National Forest, Washington and Valley Counties, ID, Due: August 02, 1993, Contact: John Braglin (208) 549–2420.

EIS No. 930190, Draft EIS, AFS, MT, Big Mountain Ski and Summer Resort Expansion Project, Special-Use-Permit, Flathead National Forest, Tally Lake and Glacier View Ranger Districts, Whitefish, MT, Due: August 02, 1993, Contact: Bert Stout (406) 862–2508.

EIS No. 930191, Draft EIS, USN, NC, Camp Lejeune Marine Corps Base, Wastewater Treatment System Upgrading, Construction and Operation, NPDES, COE Section 10 and 404 Permits, Onslow County, NC, Due: August 02, 1993, Contact: Pam Anderson (804) 445–2334.

EIS No. 930192, DRAFT EIS, FHW, NY, Long Island Expressway (I–495)/ Seaford - Oyster Bay Expressway (NY–135) Interchange Project, Improvements between Exit 43 South Oyster Bay Road to Exit 46 Sunnyside Boulevard, Funding and NPDES Permit, Town of Oyster Bay, Nassau County, NY, Due: August 02, 1993, Contact: H.J. Brown (518) 472–3616.

EIS No. 930193, Draft EIS, FHW, WV, US 19 Corridor L Improvements from Nicholas County High School to I–79, Funding and COE Section 404 Permit, Nicholas and Braxton Counties, WV, Due: August 16, 1993, Contact: Billy R. Higginbotham (304) 348–3093.

EIS No. 930194, Draft EIS, FHW, NH, NH–16 and US 302, Transportation Improvements, Funding, COE Section 10 and 404 Permits, Villages of Conway and North Conway, Carroll Counties, NH, Due: August 27, 1993, Contact: William F. O'Donnell (603) 225–1608.

EIS No. 930195, Final EIS, FHW, AZ, AZ–87/Beeline Highway Upgrading, Saguaro Lake Road to near the Maricopa-Gila County Line, Funding, Land Exchange with the Forest Service and COE Section 404 Permit Issuance, Maricopa County, AZ, Due: July 19, 1993, Contact: Ken Davis (602) 379–3646.

EIS No. 930196, Final EIS, AFS, CA, 1992 Cleveland Watershed/Fire Recovery Project, Eldorado National Forest, South Fork American River, Eldorado, Alpine and Amador Counties, CA, Due: July 19, 1993, Contact: Donald Yasuda (916) 644–2349.

EIS No. 930197, Final EIS, NPS, VT, Appalachian National Scenic Trail Protection from Deer Leap Mountain to the Mendon-Shrewsbury Town Line, Pico/Killington Section, Implementation, Rutland County, VT, Due: July 19, 1993, Contact: John F. Byrne (304) 535–6278.

EIS No. 930198, Final EIS, FHW, VA, Blacksburg/Roanoke Connector Improvements, US–460 Bypass South of the Town of Blacksburg to I–81 North to Roanoke, Funding, Montgomery County, VA, Due: July 19, 1993, Contact: James M. Tumlin (804) 771–2371.

Dated: June 15, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–14428 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4668–7]

Science Advisory Board

Environmental Economics Advisory Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that the Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board will meet on Tuesday, July 13, 1993 at the Holiday Inn Georgetown (Wisconsin Room), 2101 Wisconsin Avenue NW., Washington DC 20007. The hotel telephone number is (202) 338–4600.

The meeting, which is open to the public, will start at 8:30 a.m., and adjourn no later than 5:30 p.m. Its main purpose is to review the economic issues and methodologies incorporated in the draft document Regulatory Impact Analysis (RIA) for the Final Rulemaking on Corrective Action for Solid Waste Management Units developed by the Office of Solid Waste. The Committee will address a variety of issues related to the quantification of benefits and costs, including the non-use values of groundwater as estimated by contingent valuation methodology.

Requests for copies of the draft RIA document should be directed to the Resource Conservation and Recovery Act (RCRA) Hotline (1–800–424–9346). The document is not available from the Science Advisory Board. Questions concerning its content should be addressed to Mr. Gary Ballard (OS–311), Regulatory Analysis Branch, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 (202) 260–2429. Members of the public desiring additional information about the conduct of the meeting or the agenda should contact Mr. Samuel Rondberg, Designated Federal Official, Environmental Economics Advisory Committee, Science Advisory Board (A101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 260–6552. Anyone wishing to make a presentation at the meeting should forward a written statement (35 copies) to Mr. Rondberg by July 6, 1993. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: June 8, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–14423 Filed 6–17–93; 8:45 am]

BILLING CODE: 6560–50–P

[PF–576; FRL–4627–2]

Rhone Poulenc Ag. Co.; Request for Extension of Tolerances for Thiodicarb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Rhone Poulenc Ag. Co. requests to extend tolerances for the insecticide thiodicarb on leafy vegetables, broccoli, cabbage, and cauliflower.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-567], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Edwards Jr., Product Manager (PM 19), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 201, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: EPA has received from the Rhone Poulenc Ag. Co., P.O. Box 12014, Research Triangle Park, NC 27709, requests to extend for 1 year a temporary tolerance that expires on July 15, 1994, for the combined residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis[(methylimino) carbonyloxy]]bis [ethanimidothioate]) and its metabolite methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy]thioacetimidate) in or on leafy vegetables at 35 parts per million (ppm) under 40 CFR 180.407(b) and a temporary tolerance that expires on August 15, 1994, for the combined residues of the insecticide thiodicarb and its metabolite methomyl in or on broccoli at 7 ppm, cabbage at 7 ppm, and cauliflower at 7 ppm under 40 CFR 180.407(c).

Authority: 7 U.S.C. 346a and 371.

Dated: June 8, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–14420; Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Crowley American Transport, Inc. et al.

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.: 212–010386–025.

Title: Argentina/U.S. Atlantic & Gulf Ports Pool Agreement.

Parties: Crowley American Transport, Inc., Empresa Lineas Maritimas Argentinas S.A., Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional, A. Bottacchi S.A. de Navegacion

Synopsis: The proposed amendment increases the carrying rate from 98 to 100 percent, thus suspending the future pooling of revenue under the Agreement. It also deletes A. Bottacchi S.A. de Navegacion as a party to the Agreement.

Agreement No.: 212–010388–020

Title: U.S. Atlantic & Gulf Ports/ Argentina Pool Agreement

Parties: Crowley American Transport, Inc., Empresa Lineas Maritimas Argentinas S.A., Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional; A. Bottacchi S.A. de Navegacion

Synopsis: The proposed amendment increases the carrying rate from 98 to 100 percent, thus suspending the future pooling of revenue under the Agreement. It also deletes A. Bottacchi S.A. de Navegacion as a party to the agreement.

Agreement No.: 203–011418

Title: Bermuda Discussion Agreement

Parties: Bermuda Container Line Ltd., Bermuda International Shipping Limited

Synopsis: The proposed Agreement permits the parties to meet, discuss, exchange information and agree upon rates and other transportation and service matters in the trade between United States Atlantic Coast ports, and points within the Continental United States via such ports, and ports and points in Bermuda. Adherence to any agreement reached is strictly voluntary.

Dated: June 14, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–14365 Filed 6–17–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Princess Cruises, Inc., Princess Cruises Liberia, Inc., Birka Cruises Limited and Birka Line A B, 10100 Santa Monica Blvd., Los Angeles, California 90067–4189.

Vessel: GOLDEN PRINCESS.

Dated: June 15, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14412 Filed 6–17–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Cargonauts, Inc, 7331 NW., 54th Street, Miami, FL 33166, Officers: Alberto Spencer, President, Claudio Vicuna, Director.

Venchi International Corp., 780 NW., 42nd Ave. Unit #9, Miami, FL 33126, Officer: Patricia Nazar, President/ Chairman/Stockholder.

L.C. Forwarding International Company, 150 Marine Street, Lake Charles, LA 70601, Officers: Belvin J. Monier, President/Treasurer, Daphne Rachelle Monier, Secretary.

Luma International Forwarding, Inc., 354 Royal Ponciana Blvd. Miami, FL 33126, Officer: Luz Carvajal, President.

Trans-Global Logistics, Corp., 3200 NW., 125th Street, Miami, FL 33167, Officers: Steven Hamersmith, President/Director/Stockholder, Cynthia L. Metcalf, V. President/ Director/Stockholder, Minda Hamersmith, Secretary/Stockholder, Henry Hamersmith, Treasury/ Stockholder, Cheryl Hamersmith, Stockholder.

Fast Way Services, Inc., 8405 NW., 70th Street, Miami, FL 33166, Officers, Juan C. Avendano, President/Director, Yesmin Avendano, Secretary/ Director, Manuel F. Bernal, Vice President of Operations.

All State International Freight Inc., 500 Carson Plaza Dr., Ste. 205, Carson, CA 90746, Officer: Jae Hoon Yoo, President.

A.T.I. USA, Inc., 242 Eyland Avenue, Succasunna, NJ 07876, Officers: Oscar Fufaro, Director/Stockholder, John J. Klingman, Vice President.

O.I.A. (Oregon International Airfreight Co.), 8440 NE. Alderwood Rd., Ste. A Portland, OR 97220, Officers: Junki Yoshida, Chairman, Steven M. Akre, President, Michael A. Temple, Vice President/Secretary, James Woodford Toms, Jr., Vice President, William D. Brady, Asst. Secretary.

Hemisphere Forwarding Inc., 6992 NW., 50th Street, Miami, FL 33166, Officers: Michael Avnet, President/ Treasurer/Director, Lynn Zeunner, Secretary, Alicia Avnet, Vice President.

Ameripack Freight Systems, 7850 SW., 82nd Ave., Miami, FL 33143, Mayda Beatriz Sablon, Sole Proprietor.

"J.I.F." Jet International Forwarding, Inc., 4420 NW., 74th Ave., Miami, FL 33166, Officers: Francisco D. Ferrey, President, Christina Santana, Vice President, Jose Santana, Secretary.

John Kevin Lee, 685 Undercliff Ave., Edgewater, NJ 07020, Sole Proprietor.

U.S. Miami International Freight Forwarders, 8805 SW., 154th Terrace, Miami, FL 33157, Maurice C. Perry, Sole Proprietor.

Inteks Trans-International, Inc., 22431 So. Vermont Ave., Torrance, CA 90502, Officers: Eddie P.C. Yang, President/Chairman, Edmund Tsang, Director/Exec. Vice President, Arthur King, Secretary/Director.

Transport Partner (USA), Inc., 18 Broad Street, Ste. 803, Charleston, SC 29401, Officers: Wim Spinhoven, President, Kathy Morris, General Manager.

By the Federal Maritime Commission.

Dated: June 15, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14443 Filed 6–17–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P27–93]

Petition of Paramount Tariff Service Ltd. on behalf of Various Carriers for Temporary Exemption From Electronic Tariff Filing Requirements

Notice is hereby given of the filing of a petition by the above named petitioner, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioner requests exemption from the June 4, 1993, electronic filing deadline on behalf of 108 carrier customers. Petitioner states it is unable to comply with the June 4, 1993, deadline for filing of World Wide/Asian and South Pacific tariffs for a variety of reasons.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than June 25, 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 90831–0959.

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. 93–14444 Filed 6–17–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/RHYP 92–1]

Runaway and Homeless Youth Program: Fiscal Year 1993 Final Program Priorities, Availability of Financial Assistance for Fiscal Year 1993 and Request for Applications

AGENCY: Family and Youth Services Bureau, Administration on Children, Youth, and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: To correct an error in Appendix D.3: Drug Abuse Prevention Programs for Runaway and Homeless Youth, in the program announcement cited above.

SUMMARY: This notice amends program announcement ACF/ACYF/RHYP 92–1, published in the **Federal Register** on May 18, 1993, by correcting an error in the list of ineligible grantees listed in appendix D.3.

FOR FURTHER INFORMATION CONTACT: Terry Lewis (202) 205–8102.

SUPPLEMENTARY INFORMATION: On May 18, 1993, the Administration on Children, Youth and Families published the Runaway and Homeless Youth Program announcement in the **Federal Register** (Vol. 58, No. 94 29030).

The announcement solicited applications from eligible organizations and agencies to provide services to runaway and homeless youth under the Basic Center Program (BC), Drug Abuse Education and Prevention Program (DAPP), and the Transitional Living Program.

A list of ineligible grantees for the DAPP program was included in Appendix D.3 on page 29055 of the **Federal Register**. Some grantees who are eligible to apply for DAPP funds were inadvertently included on the list. Therefore, we are issuing this amendment to correct the list by indicating that the following grantees, whose name appear originally on the ineligible list, are in fact eligible and encourage to apply:

Region I

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03101, Reed Carver, (603) 668–1920

Rhode Island

Stopover Shelters, 3380 East Main Road, Portsmouth, RI 02871, Peter Marshall, (401) 683–1824

Region II

New Jersey

Crossroads, P.O. Box 321, Lumberton, NJ 08048, Mary Lou Bendit, (609) 261–5400

Ocean's Harbor House, 2445 Windsor Avenue, Toms River, NJ 08754, Albert Borris, (201) 929–0660

Somerset Youth Shelter, 49 Brahma Avenue, Bridgewater, NJ 08807, Jeffrey Fitzko, (201) 526–6605

Together, 7 State Street, Glassboro, NJ 08028, Susan Sasser, (609) 881–6100

New York

Center for Youth Services, 258 Alexander Street, Rochester, NY 14607, Roger Palma, (716) 473–2464

Covenant House, (Under 21), 460 West 41st Street, New York, NH 10036, Eleanor Miller, (212) 354–4323

Equinox, 214 Lark Street, Albany, NY 12210, Donna McIntosh, (518) 465–9524

The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202, Roberta Schofield, (315) 479–1323

Puerto Rico

Centro De Servicios A La Juventud, Box 9368 Cotto Station, Arecbo, PR 00613, Nidra Torres-Martinez, (809) 878–6776

Region III

Virginia

Alternatives, Inc., 1520 Aberdeen Road, Hampton, VA 23666, Richard Goll, (804) 838–2330

Region IV

Georgia

Tri-County Protective Agency, P.O. Box 1937, Hinesville, GA 31313, Bryant Bradley, (912) 368–3344

North Carolina

Mountain Youth Resources, P.O. Box 2847, Cullowhee, NC 28723, Elizabeth Chambers, (704) 586–8958

Region V

Illinois

Omni Youth Services, 1111 Lake Cook Road, Buffalo Grove, IL 60089, Dennis Depcik, (708) 537–6878

Michigan

The Sanctuary, 1232 South Washington, Royal Oak, MI 48067, Meri Pohutsky, (313) 547–2260

Ohio

New Life Youth Services, 1527 Madison Road, Cincinnati, OH 45206, Robert Mecum, (513) 221–3350

Region VI

Oklahoma

Youth and Family Services of Canadian County, 2404 Sunset Srive, El Reno, OK 73036, Les Sparks, (405) 262–6555

Youth and Family Services of North Oklahoma, 2925 North Midway, Enid, OK 73701, Jane Webber, (405) 233–7220

Youth Services of Oklahoma County, 2915 N. Lincoln, Oklahoma City, OK 73105, Sharon Wiggins, (405) 235–7537

Texas

The Bridge Association, 115 West Broadway, Fort Worth, TX 76104, Jan Viles, (817) 877–1121

Region VII

Iowa

Youth Homes, Inc., P.O. Box 324, Iowa City, IA 52244, William McCarty, (319) 337–4523

Missouri

Youth In Need, 529 Jefferson, St. Charles, MO 63301, James Braun, (314) 946–0101

Region VIII

Montana

Yellowstone County (Tumbleweed Runaway Program, Inc.), P.O. Box 35000, 217 N. 27th Street, Billings, MT 59107

North Dakota

Mountain Plains Youth Services, 311 North Washington, Bismarck, ND 58501, Linda Wood, (701) 255–7229

Region IX

Arizona

Center for Youth Resources, 915 N. Fifth Street, Phoenix, AZ 85004, Michael Garvey, (602) 271–9849

The Navajo Nation, P.O. Box 1599, Window Rock, AZ 86515, Irving Toddy, (602) 871–6744

California

Community Service Program, 17200 Jamboree, Irvine, CA 92714, Margot Carlson, (714) 494–4311

Klein Bottle, 401 N. Milpas, Santa Barbara, CA 93103, David Edelman, (805) 564–7830

Los Angeles Free Clinic, 8405 Beverly Boulevard, Los Angeles, CA 90048, Andrea Sobbe, (213) 653–8622

Orange County Youth and Family Services, 12900 Garden Grove Blvd., Garden Grove, CA 92668, Kevin Meehan, (714) 978–6896

Santa Clara Social Advocates, 509 View Street, Mountain View, CA 94041, Paul Schutz, (408) 253–3540

Region X

Alaska

Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508, Sheila Gaddis, (907) 274–6541.

(Catalog of Federal Domestic Assistance Program Number 93.657, Drug Abuse Prevention Program for Runaway and Homeless youth)

Dated: June 10, 1993.

Joseph Mottolar,

Acting Commissioner Administration on Children, Youth and Families.

[FR Doc. 93–14391 Filed 6–17–93; 8:45 am]

BILLING CODE 4184–01–M

Agency for Toxic Substances and Disease Registry

Agency for Toxic Substance and Disease Registry (ATSDR) Community Public Health Assessment Workshop; Meeting

ATSDR announces the following meeting.

Name: ATSDR-Community Public Health Assessment Workshop.

Times and Dates: 5 p.m.–6.m., July 27, 1993; 8 a.m.–5 p.m., July 28, 1993; 8 a.m.–12 noon, July 29, 1993.

Place: Omni Parker House, 60 School Street, Boston, Massachusetts 02108, (800/843–6664).

Status: Open to the public for observation and participation, limited only by the space available. The meeting room accommodates approximately 200 people.

Matters to be Considered: The meeting will convene a group of interested parties to discuss the ATSDR Public Health Assessment process as it addresses U.S. Department of Defense sites. The ATSDR Public Health Assessment is the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects. The group will consider such areas as the Public Health Assessment definition and purpose, its scope and limitations, how it is initiated, the roles of ATSDR staff, ATSDR-public interaction and community involvement, the steps and activities in a public health assessment, and possible follow-up health actions.

Contact Person for More Information: Chris Schmidt, Division of Health Assessment and Consultation, ATSDR, (MS E32), 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639-0605.

Dated: June 14, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 93–14388 Filed 6–17–93; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control and Prevention

CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI): Subcommittee on Promoting Knowledge of Serostatus (Counseling, Testing, Referral, Partner Notification); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: CDC ACPHI Subcommittee on Promoting Knowledge of Serostatus (Counseling, Testing, Referral, Partner Notification).

Time and Date: 3 p.m.–6 p.m., July 12, 1993.

Place: New York Society for Ethical Culture, 2 West 64th Street (on Central Park West), 1st Floor Auditorium, New York, NY 10023.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to discuss policies and issues related to HIV-antibody counseling, testing, referral, and partner notification programs and services.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone 404/639–2918.

Dated: June 14, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14387 Filed 6–17–93; 8:45 am]

BILLING CODE 4160–18–M

CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI): Subcommittee on Monitoring the HIV/AIDS Epidemic; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: CDC ACPHI Subcommittee on Monitoring the HIV/AIDS Epidemic.

Time and Dates: 8:30 a.m.–5 p.m., July 6–7, 1993.

Place: Swissotel Atlanta, 3391 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to continue to review current behavioral, exposure, infection, and disease surveillance systems and address information needs for monitoring behaviors and exposures to HIV.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone 404/639–2918.

Dated: June 14, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14385 Filed 6–17–93; 8:45 am]

BILLING CODE 14385

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Allergenic Products Advisory Committee

Date, time, and place. July 20, 1993, 8:30 a.m., Holiday Inn Bethesda, Versailles Ballroom I, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 to 12:30 p.m.; closed committee deliberations, 12:30 p.m. to 5:30 p.m.; Jack Gertzog or Sandy Salins, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–295–9054.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 12, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will consider presentations on: (1) The Laboratories of Immunoregulation, Immunobiochemistry, Parasitology and Biochemistry, and Biophysics in the Center for Biologics Evaluation and Research's Division of Allergenic Products and Parasitology; (2) conversion of the radioallergosorbent test (RAST) inhibition assay to the enzyme-linked immunosorbent assay (ELISA); (3) the points to consider document for production and testing of allergenic products; (4) marker proteins, monoclonal antibodies and automation; and (5) conversion of standardized grass pollen extracts to bioequivalent allergy units.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications and product licensing applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. July 26, 1993, 1 p.m., Food and Drug Administration, Bldg. 29, Conference rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion, 1 p.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 3:30 p.m.; open public hearing, 3:30 p.m. to 4:30 p.m., unless public participation does not last that long; Nancy Cherry, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–295–9054.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 19, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the intramural scientific programs of the Laboratory of Bacterial Toxins, Center for Biologics Evaluation and Research, and vaccine initiatives for Fiscal Year 1994.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a

clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 11, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93–14392 Filed 6–17–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0187]

Animal Drug Export; Estradiol Benzoate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Boehringer Ingelheim Animal Health, Inc., has filed an application requesting approval for the export of the animal drug estradiol benzoate injection for use in feedlot cattle to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of food-animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8646.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Boehringer Ingelheim Animal Health, Inc., 2621 North Belt Hwy., St. Joseph, MO 64506–2002, has filed an application requesting approval for the export of the animal drug estradiol benzoate injection to Canada. The product is intended to provide programmed release of estradiol in feedlot steers and heifers for increased rate of weight gain and improved feed efficiency. The application was received and filed in the Center for Veterinary Medicine on May 11, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 28, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: June 10, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–14393 Filed 6–17–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, May 14, 1993.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Work Activity Report (Self-Employed Person) and Work Activity Report (Employee)—0960–0059. The information on forms SSA–820 and SSA–821 is used by the Social Security Administration to help determine if an individual meets the disability provisions for entitlement to benefits. The respondents are claimants for initial or continuing disability benefits who are or were engaging in substantial gainful activity.

Number of Respondents: 250,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 125,000 hours

2. Report on Individual with Mental Impairment—0960–0058. The information on form SSA–824 is used by the Social Security Administration to help determine the claimant's medical status prior to making a disability determination. The respondents are physicians, medical directors, medical record libraries, and other health care providers.

Number of Respondents: 50,000
Frequency of Response: 1
Average Burden Per Response: 36 minutes
Estimated Annual Burden: 30,000 hours

3. Report on Individual with Childhood Impairment—0960–0084. The information on form SSA–1323 is used by the Social Security Administration to determine the dates and results of psychometric testing and to determine how the impairment affects the individual's progress in school. The respondents are public and nonpublic schools and agencies which provide medical treatment to the claimant or applicant for benefits.

Number of Respondents: 7,000
Frequency of Response: 1
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 2,333 hours

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 9, 1993.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 93–14094 Filed 6–17–93; 8:45 am]

BILLING CODE 4190–29–M

Public Health Service

Cooperative Agreements To Implement the "Put Prevention Into Practice" National Prevention Education Program

The Office of the Assistant Secretary for Health, on behalf of the agencies of the U.S. Public Health Service (PHS), announces the availability of Fiscal Year (FY) 1993 funds for cooperative agreements with national organizations of primary care providers to implement "Put Prevention Into Practice," a national program to help achieve selected health promotion and disease prevention objectives for the Nation established in Healthy People 2000.

The goal of "Put Prevention Into Practice" is to improve the delivery of clinical preventive services in primary care settings. Clinical preventive services include immunizations (e.g., influenza vaccination), appropriate screening tests for the early detection of disease (e.g., Pap smear), and counseling interventions for risk reduction (e.g., smoking cessation advice). The "Put Prevention Into Practice" campaign provides primary care clinicians with a kit of materials to assist them in the performance of a broad range of clinical preventive services for all of their patients. These materials have three major targets: patients, providers, and office system/staff.

The Public Health Service is committed to achieving the health promotion and disease prevention goals and objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This program announcement is related specifically to objectives of Healthy People 2000 that target the provision of clinical preventive services by primary care providers. Copies of Healthy People 2000 may be ordered from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238), stock number 017–001–00474–0.

This cooperative agreement program will be administered by the Office of Disease Prevention and Health Promotion (ODPHP) on behalf of the PHS. Located within the Office of the Assistant Secretary for Health, the mission of ODPHP is to provide leadership and coordination for prevention policy and programs undertaken by the PHS.

Awards

In FY 1993, the PHS expects to fund two to four cooperative agreements under this announcement, with awards ranging from $100,000 to $300,000, depending on scope of work and organizational size. PHS intends to award these funds in September 1993. It is anticipated that FY 1994 funds will be available to fund two to four additional cooperative agreements of the same size to organizations whose applications have been submitted and reviewed under this program announcement. PHS expects to award the FY 1994 cooperative agreements in October-December 1993.

Cooperative Agreement Activities

National primary care provider organizations receiving these cooperative agreements will be expected to:

- Develop and implement a strategy for efficient and effective dissemination of "Put Prevention Into Practice" (PPIP) materials. This should include creative ways to market the materials to members and to educate members in the use of the materials.
- Provide dedicated staff support to manage the implementation of the PPIP program in their organization.
- Develop public-private partnerships and cost-recovery mechanisms to defray the costs of production and dissemination of PPIP materials.
- Target minority, undeserved, disadvantaged, and/or rural populations to facilitate use of the PPIP materials by primary care providers serving these groups
- Evaluate the use of the PPIP materials by providers and their patients, as well as their effectiveness. Results of the evaluation should be used to develop recommendations both for revisions or additions to the materials to improve their effectiveness and for strategies to improve program implementation.

Eligibility Requirements

Cooperative agreements will be awarded only to national membership organizations of primary care providers, due to limitations on availability of funds. Requests to Congress for funds for the National Health Promotion Program have specified this limitation of applicant eligibility. As representatives of special constituencies, membership organizations are in a unique position to be able to identify realistic, appropriate, and effective strategies for reaching their members or the populations that their members represent.

Applicant organizations must meet all of the following requirements:

- Be a national, private, nonprofit organization of providers delivering comprehensive primary care services (including physicians, nurses/nurse practitioners, and physician assistants);
- Have a national membership, state/local chapters, and/or otherwise well-defined affiliate structure;
- Demonstrate an understanding of the current and potential role of their membership in health promotion and disease prevention efforts;
- Have in place a variety of communication channels that are appropriate for informing members and other constituencies about how to

become involved in meeting the objectives of the cooperative agreement; and

• Demonstrate top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership.

For purposes of this announcement, national membership organizations are defined as organizations with individual members in more than one state and region of the United States. "Members" must voluntarily and expressly associate themselves with the organization, as through payment of a membership fee or other declaration of association (i.e. request and receipt of membership card or certificate of membership).

Period of Performance

Cooperative agreements under this announcement will be awarded for a nonrenewable period of up to 18 months.

Terms and Conditions

Federal funds allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the proposed projects. Applicants should demonstrate a commitment of financial or in-kind resources to the project. Award recipients are encouraged to seek additional sources of funds from the public and private sectors to complement the activities of the proposed project. Organizations participating in the cooperative agreement program may use awarded funds to support salaries of individuals assigned to the project.

It is expected that awarded funds will not be use primarily to purchase "Put Prevention Into Practice" materials.

U.S. Public Health Service Involvement

The Public Health Service will:

• Provide a significant portion of the time of one or two professional staff to work with the award recipients on the cooperative agreement and to coordinate its activities with PHS activities.

• Make available both the printing mechanicals for production and customization of the "Put Prevention Into Practice" materials and sample materials.

• Facilitate technical assistance from and liaison with PHS, other Federal agencies, and other sources, as needed and appropriate.

Application Process

1. All applications must be submitted with a signed copy of PHS Form 5161 (revised July 1992), with the required information filled in appropriately. All potential applicants must request the required application form, instructions, and examples of the "Put Prevention Into Practice" materials from Ms. Carla Williams at the Office of Disease Prevention and Health Promotion, Department of Health and Human Services, Switzer 2132, 330 C Street SW., Washington, DC 20201. Telephone requests will be accepted at (202) 205–8660.

2. All applications must be either received or postmarked on or before 5 p.m. on August 17, 1993. Applications postmarked later than 5 p.m. (E.D.T.) on that day will be ineligible. Applications postmarked but not received by August 17, 1993 will be eligible only if they are received in time for orderly process and review.

3. Application packages should be mailed or delivered to: Ms. Carla Williams, ODPHP/PHS/DHHS, Switzer 2132, 330 C Street, SW., Washington, DC 20201.

4. Applications must be typed on one side of the page only.

5. The original and two copies of each application, with attachments and documentation, must be submitted.

6. Applications for projects that are national in scope are not required to carry out the provisions of Executive Order 12372. This announcement is exempt from the Public Health System Reporting Requirements.

Application Requirements

Applications must include the following information:

• A description of the organization and its membership and documentation that it meets all the eligibility requirements, with examples of the organization's prior efforts and activities to substantiate its capability to undertake the proposed project.

• A detailed delineation of the tasks that will be undertaken and the outcomes expected.

• A detailed budget for the proposal. Applicants should include in their budget funds for three one-day trips to Washington, DC to meet with project staff and other grantees.

• A timetable for the project.

• An evaluation plan that will show how the project and materials will be assessed on an ongoing basis.

• The background and qualifications of individuals who will manage and staff the project. If the individuals are not now known, provide a list of the qualifications that will be sought.

• If it is anticipated that any individuals or other organizations will be subcontracted, information about the role they will play and their qualifications.

• If organizations are collaborating on a proposal, information about the role each will play, along with complete eligibility information and specification of which will have leadership responsibility for overall project management. One organization should be identified as the lead to receive and manage funds.

Review and Selection Process

Applications will be screened by ODPHP upon receipt to assure that all eligibility requirements have been met. Applications meeting these requirements will be reviewed by a committee composed of PHS agency representatives who will make award recommendations to the Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

Evaluation Criteria

1. Understanding the Program—15

Understanding of the "Put Prevention Into Practice" materials and of barriers to the implementation of preventive care.

2. Methodology and Approach—50

Soundness, practicality, and feasibility of the technical approach to the work, including how the tasks are to be carried out, anticipated problems and proposed solutions. The potential for the project to make an innovative, significant impact on the delivery of preventive care. Feasibility and appropriateness of the proposed ongoing evaluation of project materials and activities.

3. Organizational Commitment and Experience—20

Commitment of management and members to the project, as demonstrated, in part, through commitment of financial or in-kind resources, to support the proposed project. Relevant experience of the organization in conducting similar projects.

4. Project Direction, Management, and Staffing—15

Qualifications and relevant experience of proposed staff and consultants both in the content and execution of proposed project. Management plan and advisory and supervisory structure for the project.

Further Information

This **Federal Register** Notice contains information collection required from respondents for the subject cooperative agreements. The information collection is approved under OMB control number 0937–0189.

To request additional copies of this notice, application materials, sample "Put Prevention Into Practice" materials or for further clarification, contact Ms. Carla Williams, (202) 205–8660. For business and grants management assistance, contact Ms. Cindy Oswald (301) 443–8826. For program assistance, contact Dr. Douglas Kamerow (202) 205–8660 or Dr. Hurdis Griffith (202) 205–8180.

(National Health Promotion Program, Catalog of Domestic Assistance Number 93.990)

Dated: May 21, 1993.

J. Michael McGinnis,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 93–14404 Filed 6–17–93; 8:45 am]

BILLING CODE 4160–17–M

Subcommittee of the National Vaccine Advisory Committee (NVAC), Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing the forthcoming meeting of the NVAC Subcommittee on State and Local Level Impediments to Immunization Services.

DATES: Date, Time and Place: July 8, 1993, at 9 a.m. to 4:30 p.m., Parklawn Building, Conference room E, Third Floor, 5600 Fishers Lane, Rockville, Maryland. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Kenneth J. Bart, M.D., Executive Secretary, National Vaccine Advisory Committee, Natinal Vaccine Program Office, 5600 Fishers Lane, Parklawn Building, room 13A–56, Rockville, Maryland 20857, (301) 443–6264.

AGENDA: OPEN PUBLIC HEARING: Interested persons may formally present data, information, or views orally or in writing on issues to be discussed by the Subcommittee. Those desiring to make presentations should make a request to the contact person before July 1, and submit a brief description of the information they wish to present to the Subcommittee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

OPEN SUBCOMMITTEE DISCUSSION: The Subcommittee acts in an advisory capacity to the NVAC to identify state and local impediments to the improvement of immunization services, i.e., policy and management barriers, health services gaps, barriers to efficiency, impact of rules and regulations pertaining to Federal entitlements and programs which deter immunization services. Detailed discussion will be structured around gaps and new issues, as well as the following specific issues:

- Federal guidance to States administering Federal programs involving immunization;
- State and local leadership in immunization service delivery;
- Sustainability of State and local level vaccine delivery infrastructure expansion;
- Immunization coverage under private insurance and Medicaid.

A Subcommittee report will be presented to the full NVAC later this year.

A list of Subcommittee members and the charter of the NVAC will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: June 9, 1993.

Kenneth J. Bart,

Executive Secretary, NVAC.

[FR Doc. 93–14403 Filed 6–17–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environment and Energy

[Docket No. I–93–162]

Intended Environmental Impact Statement; Martin Luther King, Jr. Plaza Project, Oakland, CA

The Department of Housing and Urban Development gives notice that the City of Oakland, CA intends to prepare an Environmental Impact Statement (EIS) for a project at the former University High School and former Merritt College site and the construction of a Martin Luther King, Jr. Plaza Project.

The proposed project involves redevelopment, reuse and limited preservation of the former University High School and Merritt College site for multiple uses. The entire site is listed on the National Register of Historic Places. The City envisions the site used for housing (or alternatively, for a medical facility) in conjunction with community services, open space, and retail uses. Key objectives of the project include:

(1) Preservation of the main building on the site;

(2) Allocation of a significant portion of the existing building to community services;

(3) Inclusion of retail and job-producing functions in the mix of uses on the site;

(4) Preservation of existing neighborhood scale and density in new construction, particularly on the former athletic field, and

(5) Provision of a small neighborhood park.

The City of Oakland has acquired federal funds from the U.S. Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974 (Pub. L. 93–383) to purchase the property described below and is now proposing a project for this site;

The combined environmental impact report/environmental impact statement (EIR/EIS) will analyze potential environmental effects of five alternative projects. The alternative projects described here are not intended to represent final development plans for the site (proposals for development of the site are currently being solicited), but illustrative of varying options for development, enabling an evaluation of the full range of potential environmental impacts in the EIR/EIS. The final development plan will represent a mix of uses which fall within the range of impacts identified within the EIR/EIS alternatives.

Alternative 1 is the No Project alternative, consideration of which is required by the California Environmental Quality Act (CEQA) and by the National Environmental Policy Act (NEPA). The project size would remain in its current unused state under this alternative. The existing buildings on the site would not be rehabilitated, nor would any portion of the buildings be demolished.

Alternative 2 would allow the highest density of conventional housing, along with the largest square footage of retail uses. It would provide 40,000 square feet of retail use in the southern portion of the building. The retail uses would consist of an "anchor" store, such as a large drug store, combined with small retail shops and services. Fifty-one one-bedroom units would be developed in the old academic building. Fourplexes, with a total of 84 two-bedroom units would be built on the former athletic field. A senior center, a child care

center, and 5,000 square feet of community space would also be developed. In addition, a small neighborhood park would be centered on the property.

Alternative 3 would involve a medical rehabilitation facility, along with a variety of community service uses. Alternative 3 would provide 15,000 square feet of retail use (local food and service shops), community service uses (including an education and training center, a senior center, and an ethnic cultural center), a health club/gymnasium, medical services (offices, medical library, public outpatient clinic), a two-story medical rehabilitation facility, 12 three-bedroom single-family units, and a small neighborhood park.

Alternative 4 would devote the majority of the academic building to housing for senior citizens. It would also provide 125 studio apartments for senior citizens, a senior center, a child care center, 3,000 square feet of community space, 70 two-bedroom units in duplexes on the site of the former athletic fields, and a neighborhood park.

Alternative 5 would preserve all existing buildings on the site, and would devote the site to low density housing and community services. This alternative involves development of 56 two-bedroom units in the academic building, a senior center, a child care center, community space, an auditorium within the existing auditorium, a gymnasium within the existing gymnasium building, 16 three-bedroom units on the site of the athletic fields, and a liner park extending along Martin Luther King, Jr. Way. This alternative would not require any building demolition.

Environmental effects of the proposed project include: Land use impacts; public policy conformity; visual and design factors; cultural resources effects; transportation effects, including circulation and parking; vegetation and wildlife impacts, air quality effects; noises impacts; geotechnical (geology and soils) effects; hydrologic impacts; hazardous materials, demands on municipal services and utilities; employment and housing effect; and cumulative effects.

It has been determined that the project may constitute an action significantly affecting the quality of the human environment and an Environmental Impact Statement will be prepared by the City of Oakland in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190) on such project.

Responses to this notice will be used to:

1. Determine significant environmental issues;

2. Identify data which the EIS should address; and

3. Identify agencies and other parties which will participate in the EIS process and the basis for their involvement.

This notice is in accordance with the regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

The Draft Environmental Impact Statement will be published and distributed about July 15, 1993 and a copy of same will be on file at 1330 Broadway, Third Floor, Oakland, CA. 94612 and available for public inspection, or copies may be attained at the same address, upon request.

All interested agencies, groups and persons are invited to submit written comments on the within-named project and the Draft Environmental Impact Statement to the City of Oakland, Office of Planning and Building, 1330 Broadway, Third Floor, Oakland, CA 94612. Such comments should be received by the office within 15 days of the publication of this notice in the **Federal Register** and all comments so received will be considered prior to the preparation and distribution of the Draft Environmental Impact Statement.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and data which the EIS should consider and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This notice shall be effective for 1 year. If 1 year after the publication of the notice in the **Federal Register** a Draft EIS has not been filed on a project, then the notice for that project shall be cancelled. If a draft EIS is expected more than 1 year after the publication of the notice in the **Federal Register** then a new and updated notice of intent will be published.

Dated: June 11, 1993.

Richard H. Broun,

Director, Office of Environment and Energy.

[FR Doc. 93–14436 Filed 6–17–93; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–36]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for

homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; (this is not a toll-free number).

Dated: June 11, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/18/93

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. T00221
Fort McClellan
Fort McClellan Co: Calhoun AL 36205–5000
Location: Take left turn off Baltzell Gate Road.
Landholding Agency: Army
Property Number: 219110042
Status: Underutilized
Comment: 4125 sq. ft., 1-story wood frame; needs major rehab; termite infested; presence of asbestos; off-site use only.

Bldg. T00796
Fort McClellan
Fort McClellan Co: Calhoun AL 36205–5000
Location: Intersection of 19th and 20th Streets.
Landholding Agency: Army
Property Number: 219110043
Status: Unutilized
Comment: 1340 sq. ft.; 1-story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldg. T00883
Fort McClellan
3rd Avenue
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219110044
Status: Unutilized
Comment: 760 sq. ft.; 1-story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldgs. T01121, T01123, T01124
Fort McClellan
MacArthur Avenue
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Numbers: 219110048–219110050
Status: Unutilized
Comment: 2400 sq. ft. each; 2-story wood frame; needs rehab; presence of asbestos; off-site use only.

Bldg. T00108
Fort Rucker
6th Avenue
Fort Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219120270
Status: Unutilized
Comment: 24992 sq. ft., 1-story wood structure, most recent use—youth center gymnasium, possible asbestos, off-site use only.

Bldg. 8913, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219140025
Status: Unutilized
Comment: 3100 sq. ft., 1-story wood, most recent use—chaplain's conference room, off-site use only.

Bldg. 8914, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219140026
Status: Unutilized
Comment: 2250 sq. ft., 1-story wood, most recent use—chaplain's headquarters, off-site use only.

Bldgs. T03202–T03203, T03206–T03208, T03211, T03213, T03216–T03217
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Numbers: 219210001–219210009
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. T03214, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230001
Status: Unutilized
Comment: 3306 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.

Bldg. T03215, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230002
Status: Unutilized
Comment: 3452 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.

Bldg. 9014, Fort Rucker
5th Avenue
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219240772
Status: Unutilized
Comment: 25'x50', 1-story wood frame, needs rehab, most recent use—children's chapel, off-site use only.

Bldg. 9303, Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219310300
Status: Unutilized
Comment: 1250 sq. ft., 1-story wood structure, needs rehab, most recent use—storage, off-site use only.

Arizona

Bldg. T67208
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120113
Status: Unutilized
Comment: 2546 sq. ft., one story wood, most recent use—storage.

Bldg. T70224
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120149
Status: Unutilized
Comment: 1252 sq. ft., one story wood; most recent use—Administrative.

Bldgs. 70117–70120

Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Numbers: 219120306–219120309
Status: Excess
Comment: 3434 sq. ft. each, 1 story wood structures, presence of asbestos, most recent use—general instructional.

Bldg. 70225—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120310
Status: Excess
Comment: 3813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83006—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120311
Status: Excess
Comment: 2062 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83007—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120312
Status: Excess
Comment: 2000 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83008—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120313
Status: Excess
Comment: 2192 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83015—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120314
Status: Excess
Comment: 2325 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 81001
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240720
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81017
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240721
Status: Unutilized
Comment: 2269 sq. ft., 1 story wood frame, possible asbestos, most recent use—classroom, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81020
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240722
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only.

Bldg. 67204
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240723
Status: Unutilized
Comment: 4332 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81010
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240724
Status: Unutilized
Comment: 1955 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81013
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240725
Status: Unutilized
Comment: 1955 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81024
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240726
Status: Unutilized
Comment: 1265 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81025
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240727
Status: Unutilized
Comment: 1265 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 66151
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240728
Status: Unutilized
Comment: 4194 sq. ft., 2 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72219
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240729
Status: Unutilized
Comment: 2730 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72220
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240730
Status: Unutilized
Comment: 2879 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240731
Status: Unutilized
Comment: 3736 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 85007
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240732
Status: Unutilized
Comment: 4385 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 67108
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240733
Status: Unutilized
Comment: 2403 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 70226
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240734
Status: Unutilized
Comment: 1868 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 71116
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240735
Status: Unutilized
Comment: 3470 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 71215
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240736
Status: Unutilized
Comment: 4854 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 70110
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240739
Status: Unutilized

Comment: 2675 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70111
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240740
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70113
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240741
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70114
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240742
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70115
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240743
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70123
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240744
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70124
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240745
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70126
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240746
Status: Unutilized
Comment: 3343 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70210
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240747
Status: Unutilized
Comment: 3258 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70211
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240748
Status: Unutilized
Comment: 2966 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240749
Status: Unutilized
Comment: 2526 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70222
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240750
Status: Unutilized
Comment: 1627 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 71214
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240751
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 82013
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240752
Status: Unutilized
Comment: 2193 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 90327
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240753
Status: Unutilized
Comment: 279 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 71213
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240754
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 82007
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240755
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 82009
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240756
Status: Unutilized
Comment: 2444 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 70216
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310287
Status: Excess
Comment: 3725 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70215
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310288
Status: Excess
Comment: 3706 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70214
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310289
Status: Excess
Comment: 3142 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70212
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310290
Status: Excess
Comment: 3534 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70220
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310291
Status: Excess
Comment: 1249 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70218
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310292

Status: Excess
Comment: 3475 sq. ft., 1-story wood, presence of asbestos, most recent use—classroom, off-site use only.

Bldg. 70217
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310293
Status: Excess
Comment: 304 sq. ft., 1-story concrete block, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 80010
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310294
Status: Excess
Comment: 2318 sq. ft., 1-story wood, presence of asbestos, most recent use—admin.

Bldg. 31211
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310295
Status: Excess
Comment: 4459 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—admin.

Bldg. 84103, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310296
Status: Excess
Comment: 984 sq. ft., 1-story, presence of asbestos and lead paint, most recent use—admin.

Bldg. 67101, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310297
Status: Excess
Comment: 2216 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—classroom.

Bldg. 30012, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage.

Bldg. 90328, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310299
Status: Excess
Comment: 144 sq. ft., 1-story wood, most recent use—storage.

California

Bldg. 186
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120317
Status: Unutilized
Comment: 996 sq. ft., 1-story steel, off-site use only, most recent use—storage.

Bldg. 196
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120318
Status: Unutilized
Comment: 1029 sq. ft., stucco structure, off-site use only, most recent use—storage.

Bldg. 197
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120319
Status: Unutilized
Comment: 720 sq. ft., 1-story stucco structure, off-site use only, most recent use—storage, possible asbestos.

Bldgs. 262–263, 265, 268
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Numbers: 219120320–219120323
Status: Unutilized
Comment: 448 sq. ft., trailers, off-site use only, most recent use—storage.

Colorado

Bldgs. T–803, 2341, T–2440 Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Numbers: 219310269, 219310275, 219310278
Status: Excess
Comment: 1750 sq. ft. ea., 1-story wood, possible asbestos, needs rehab, most recent use—admin., off-site use only.

Bldg. T–1641, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310270
Status: Excess
Comment: 3663 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T–1818, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310271
Status: Excess
Comment: 5310 sq. ft., 2-story, possible asbestos, most recent use—admin., off-site use only.

Bldg. T–2241, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310272
Status: Excess
Comment: 4070 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. T–2245, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310273
Status: Excess
Comment: 2508 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. T–2340, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310274
Status: Excess
Comment: 3663 sq. ft. 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. 2342, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310276
Status: Excess
Comment: 2400 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. 2345, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310277
Status: Excess
Comment: 8044 sq. ft., 2-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T–2441, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310279
Status: Excess
Comment: 1150 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T–2442, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310280
Status: Excess
Comment: 3404 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T–848, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310281
Status: Excess
Comment: 5419 sq. ft., 1-story wood, possible asbestos, needs repair, most recent use—classrooms, off-site use only.

Bldg. T–1444, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310283
Status: Excess
Comment: 3302 sq. ft., 1-story wood, possible asbestos, most recent use—chapel, off-site use only.

Bldg. T–3549, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310284
Status: Excess
Comment: 3030 sq. ft., 1-story wood, possible asbestos, excellent condition, most recent use—chapel, off-site use only.

Bldg. S–6233, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310286
Status: Excess
Comment: 24800 sq. ft., 2-story concrete block, possible asbestos, needs repair, most recent use—storage, off-site use only.

Bldg. T–804, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219320203
Status: Unutilized
Comment: 18260 sq. ft., 1-story wood frame, needs rehab, off-site removal only, most recent use—motor pool.

Bldg. T–6017, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army

Property Number: 219320207
Status: Unutilized
Comment: 3663 sq. ft., 1-story wood frame, needs rehab, off-site removal only, most recent use—gym.

Georgia

Bldgs. 5390, 5392, 5391
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219010137, 219010151–219010152
Status: Unutilized
Comment: 2432 sq. ft. ea; most recent use—dining room; needs rehab.

Bldg. 5362
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219010147
Status: Unutilized
Comment: 5559 sq. ft.; most recent use—service club; needs rehab.

Bldg. 5363
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219010148
Status: Unutilized
Comment: 3759 sq. ft.; most recent use—recreation bldg.; needs rehab.

Bldg. 4605
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011493
Status: Unutilized
Comment: 915 sq. ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4487
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011681
Status: Unutilized
Comment: 1868 sq. ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.

Bldg. 4484
Fort Benning, GA, Muscogee, Zip:
Landholding Agency: Army
Property Number: 219011682
Status: Unutilized
Comment: 1098 sq. ft.; most recent use—storehouse; needs substantial rehabilitation; 1 floor.

Bldg. 4319
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011683
Status: Unutilized
Comment: 2584 sq. ft.; most recent use—vehicle maintenance shop; needs substantial rehabilitation; 1 floor.

Bldg. 4481
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011685
Status: Unutilized
Comment: 1507 sq. ft.; most recent use—administrative (day room); needs substantial rehabilitation; 1 floor.

Bldg. 3400
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011694
Status: Unutilized
Comment: 2570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.

Bldg. 2285
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 4092
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011709
Status: Unutilized
Comment: 336 sq. ft.; most recent use—inflammable materials storage; needs substantial rehabilitation; 1 floor.

Bldg. 4089
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011710
Status: Unutilized
Comment: 176 sq. ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor.

Bldg. 5266
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012364
Status: Unutilized
Comment: 1400 sq. ft.; one story; most recent use—day room; in poor condition; needs major rehab.

Bldg. 5267–5271, 5283
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219012365–219012370, 219012386
Status: Unutilized
Comment: 2124 sq. ft. each; 2 story; most recent use—barracks; poor condition; needs major rehab.

Bldg. 4939
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012392
Status: Unutilized
Comment: 1800 sq. ft.; one story; most recent use—classrooms; poor condition; needs major rehab.

Bldg. 5287
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012411
Status: Unutilized
Comment: 1216 sq. ft.; 1 story; most recent use—arms building; poor condition; needs major rehab.

Bldgs. 1235, 1236
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219014887–219014888
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 1251
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014889
Status: Unutilized
Comment: 18385 sq. ft.; 1 story building; needs rehab; most recent use—Arms Repair Shop.

Bldg. 2591
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014906
Status: Unutilized
Comment: 1663 sq. ft.; 1 story building; needs rehab; most recent use—General storehouse.

Bldgs. 3005–3010
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219014907–219014912
Status: Unutilized
Comment: 7688 sq. ft. each; 2 story building; needs rehab; most recent use—Barracks.

Bldg. 3080
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014913
Status: Unutilized
Comment: 1372 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 3081
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014914
Status: Unutilized
Comment: 2284 sq. ft.; 1 story building; needs rehab; most recent use—clinic.

Bldg. 4022
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014915
Status: Unutilized
Comment: 1712 sq. ft.; 1 story building; needs rehab; most recent use—Clinic.

Bldg. 4491
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014916
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 4633
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014919
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldg. 4634
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014920
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldg. 4649
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014922
Status: Unutilized
Comment: 2250 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.

Bldg. 95
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120253
Status: Unutilized
Comment: 1006 sq. ft., 1 story, most recent use—fire station annex, needs rehab.

Bldg. 1234
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120254
Status: Unutilized
Comment: 16148 sq. ft., 2 story, most recent use—officer's club, needs rehab.

Bldg. 1684
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120255
Status: Unutilized
Comment: 2671 sq. ft., 1 story, needs rehab, most recent use—administration/general purpose.

Bldg. 1827
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 2190120257
Status: Unutilized
Comment: 943 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2150
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120258
Status: Unutilized
Comment: 3909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.

Bldgs. 2212, 2213
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219120259–219120260
Status: Unutilized
Comment: 4720 sq. ft. each, 2 story, needs rehab, most recent use—drug abuse center.

Bldg. 2214
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120261
Status: Unutilized
Comment: 2253 sq. ft., 1 story, needs rehab, most recent use—enlisted persons dining room.

Bldg. 2215
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120262
Status: Unutilized
Comment: 1844 sq. ft., 1 story, needs rehab, most recent use—day room.

Bldg. 2409
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120263
Status: Unutilized
Comment: 9348 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2548
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120264
Status: Unutilized
Comment: 2337 sq. ft., 1 story, needs rehab, most recent use—clinic w/o beds.

Bldg. 2590
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120265
Status: Unutilized
Comment: 3132 sq. ft., 1 story, needs rehab, most recent use—vehicle maintenance shop.

Bldg. 3828
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120266
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouse.

Bldg. 5284, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120267
Status: Unutilized
Comment: 5310 sq. ft; 2 story, needs rehab; most recent use—trainee barracks.

Bldgs. 3084, 3086, 3089, 3092, 3094, 3097, 2601
Ft. Benning GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220687–219220692, 219220784
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story, most recent use—barracks. needs major rehab, off-site removal only.

Bldg. 499, Fort Benning
Ft. Benning GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220693
Status: Unutilized
Comment: 840 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1252, Fort Benning
Ft. Benning GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1253, Fort Benning
Ft. Benning GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220695
Status: Unutilized
Comment: 617 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1678, Fort Benning
Ft. Benning GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220697
Status: Unutilized
Comment: 9342 sq. ft.; 1 story; most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1733, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220698
Status: Unutilized
Comment: 9375 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldgs. 3083, 3093, 3100, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219220699, 219220701–219220702
Status: Unutilized
Comment: 1372 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3091, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220700
Status: Unutilized
Comment: 1635 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3856, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220703
Status: Unutilized
Comment: 4111 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4099, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220704
Status: Unutilized
Comment: 2740 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4216, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220705
Status: Unutilized
Comment: 9211 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4941, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220708
Status: Unutilized
Comment: 2485 sq. ft., 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 4943, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220709
Status: Unutilized

Comment: 960 sq. ft., 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 5214, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220711
Status: Unutilized
Comment: 1520 sq. ft., 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3011, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220713
Status: Unutilized
Comment: 2775 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3012, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220714
Status: Unutilized
Comment: 2794 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3085, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220715–219220716
Status: Unutilized
Comment: 2253 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3087, 3095, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220717–219220718
Status: Unutilized
Comment: 1884 sq. ft., 1 story, most recent use—day room, needs major rehab, off-site removal only.

Bldg. 3246, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220719
Status: Unutilized
Comment: 973 sq. ft., 1 story, most recent use—tailor shop, needs major rehab, off-site removal only.

Bldg. 3730, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220720
Status: Unutilized
Comment: 13587 sq. ft., 1 story, most recent use—gym, needs major rehab, off-site removal only.

Bldg. 5261–5265, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220721–219220725
Status: Unutilized
Comment: 1750 sq. ft., 1 story, most recent use—day room, needs major rehab, off-site removal only.

Bldg. 2537, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220726
Status: Unutilized
Comment: 820 sq. ft., 1 story, most recent use—storage, needs major rehab, off-site removal only.

Bldg. 4882, 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220727–219220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, needs repair, off-site removal only.

Bldg. 1230, 1231 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Federal Register Notice Date: 08/07/92
Landholding Agency: Army
Property Numbers: 219220729–219220730
Status: Unutilized
Comment: 4386 sq. ft., ea., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 5394, 5396 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220733–219220734
Status: Unutilized
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 247, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220735
Status: Unutilized
Comment: 1144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only.

Bldg. 4977, 4978 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220736–219220737
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, needs repairs, off-site removal only.

Bldg. 3099, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220738
Status: Unutilized
Comment: 2794 sq. ft., 1 story, most recent use—administration, needs major rehab, off-site removal only.

Bldg. 4833, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220739
Status: Unutilized
Comment: 5088 sq. ft., 1 story, most recent use—administration, needs repairs, off-site removal only.

Bldg. 5153, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220740
Status: Unutilized
Comment: 8044 sq. ft., 1 story, most recent use—administration, needs major rehab, off-site removal only.

Bldg. 1240, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220741
Status: Unutilized
Comment: 1197 sq. ft., 1 story, most recent use—recreation, needs major rehab, off-site removal only.

Bldg. 3743, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220743
Status: Unutilized
Comment: 6954 sq. ft., 1 story, most recent use—recreation center, needs major rehab, off-site removal only.

Bldg. 3805, 3806 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220744–219220745
Status: Unutilized
Comment: 2330 sq. ft., 1 story, most recent use—recreation bldg., needs major rehab, off-site removal only.

Bldg. 4944, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need rehab, off-site removal only.

Bldg. 4946, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220748
Status: Unutilized
Comment: 3444 sq. ft., 1 story, most recent use—vehicle maintenance shop, needs major rehab, off-site removal only.

Bldgs. 4947–4949 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220749–219220751
Status: Unutilized
Comment: 3444 sq. ft., 1 story, most recent use—vehicle maintenance shop, needs major rehab, off-site removal only.

Bldg. 4960, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 1724, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army

Property Number: 219220754
Status: Unutilized
Comment: 7873 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1758, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220755
Status: Unutilized
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1680, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220756
Status: Unutilized
Comment: 9243 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1682, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220757
Status: Unutilized
Comment: 9250 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3817, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220758
Status: Unutilized
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3082, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220761
Status: Unutilized
Comment: 2794 sq. ft., 1 story, most recent use—headquarters bldg., needs major rehab, off-site removal only.

Bldg. 4884, 4964, 4966, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220762–219220764
Status: Unutilized
Comment: 2000 sq. ft. ea., 1 story, most recent use—headquarters bldgs., need repairs, off-site removal only.

Bldg. 5105, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220765
Status: Unutilized
Comment: 2350 sq. ft., 1 story, most recent use—headquarters bldg., needs major rehab, off-site removal only.

Bldg. 5260, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220766
Status: Unutilized
Comment: 1750 sq. ft., 1 story, most recent use—headquarters bldg., needs major rehab, off-site removal only.

Bldg. 4679, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220767
Status: Unutilized
Comment: 8657 sq. ft., 1 story, most recent use—supply bldg., needs major rehab, off-site removal only.

Bldg. 4883, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220768
Status: Unutilized
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 4965, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 2513, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220770
Status: Unutilized
Comment: 9483 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2526, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220771
Status: Unutilized
Comment: 11855 sq. ft., 1 story, most recent use— training center, needs major rehab, off-site removal only.

Bldg. 2589, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220772
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg., needs major rehab, off-site removal only.

Bldg. 4970, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220776
Status: Unutilized
Comment: 4912 sq. ft., 1 story, needs repairs, off-site removal only.

Bldg. 4971, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220777
Status: Unutilized
Comment: 1944 sq. ft., 1 story, needs repairs, off-site removal only.

Bldg. 4976, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220778
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—gas station, needs repairs, off-site removal only.

Bldg. 4945, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.

Bldg. 4979, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, needs repairs, off-site removal only.

Bldg. 5200, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220781
Status: Unutilized
Comment: 14934 sq. ft., 2 story, most recent use—theater, needs major rehab, off-site removal only.

Bldg. 5285, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220782
Status: Unutilized
Comment: 1520 sq. ft., 1 story, most recent use—arms bldg., needs major rehab, off-site removal only.

Bldg. 4215, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220785
Status: Unutilized
Comment: 11850 sq. ft., 1-story, most recent use—sales store, needs major rehab, off-site removal only.

Bldg. 4627, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220786
Status: Unutilized
Comment: 1676 sq. ft., 1-story, most recent use—sentry station, needs major rehab, off-site removal only.

Bldg. 5286, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220788
Status: Unutilized
Comment: 1520 sq. ft., 1-story, most recent use—arms bldg., needs major rehab, off-site removal only.

Bldg. 517, Fort Gillem
Forest Park, GA, Clayton, Zip: 30051–
Landholding Agency: Army
Property Number: 219310314
Status: Underutilized
Comment: 455 sq. ft., 1-story concrete frame, needs rehab, most recent use—dispatch office, off-site use only.

Bldg. 611, Fort Gillem
Forest Park, GA, Clayton, Zip: 30051–
Landholding Agency: Army
Property Number: 219310315
Status: Underutilized
Comment: 3200 sq. ft., 1-story concrete/metal frame, needs rehab, most recent use—motor repair shop, off-site use only.

Bldg. 629, Fort Gillem
Forest Park, GA, Clayton, Zip: 30051–
Landholding Agency: Army
Property Number: 219310316
Status: Underutilized
Comment: 600 sq. ft., 1-story concrete frame, needs rehab, most recent use—storage, off-site use only.

Bldgs. 4114, 4117–4118, 4125–4126, 4129–4130, 4137–4138, 4140, Fort Benning
Fort Benning, GA, Muscogee, Zip: 31905–

Landholding Agency: Army
Property Numbers: 219310407–219310416
Status: Unutilized
Comment: 4425 sq. ft. ea., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldgs. 4002, 4004, 4008–4010, 4012, 4015, 4020, 4106, 4115–4116, 4127–4128, 4139, 4149–4150
Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310417–219310432
Status: Unutilized
Comment: 4720 sq. ft. ea., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldgs. 4030, 4029 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310433–219310434
Status: Unutilized
Comment: 7688 sq. ft. ea., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4017, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310435
Status: Unutilized
Comment: 7700 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldgs. 4112, 4119, 4124, 4141, 4136, 4131 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310436–219310441
Status: Unutilized
Comment: 1144 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4108, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310442
Status: Unutilized
Comment: 1171 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 1835, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310443
Status: Unutilized
Comment: 1712 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldgs. 4013, 4007 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310444
Status: Unutilized
Comment: 1884 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4107, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310446
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 3072, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310447
Status: Unutilized
Comment: 479 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldgs. 4001, 4103 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310448–219310449
Status: Unutilized
Comment: 1635 sq. ft. ea., 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 3004, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310450
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldgs. 4019, 4018, 3003, 3002 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310451–219310454
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 4019, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310455
Status: Unutilized
Comment: 2253 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4014, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310456
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4006, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310457
Status: Unutilized
Comment: 3023 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldgs. 4135, 4123, 4111, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310458–219310460
Status: Unutilized
Comment: 3755 sq. ft. ea., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4023, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4024, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4040, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310463
Status: Unutilized
Comment: 1815 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only.

Bldg. 4026, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310464
Status: Unutilized
Comment: 2330 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only.

Bldg. 4067, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310465
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only.

Bldg. 4025, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310466
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—admin., off-site use only.

Bldgs. 4110, 4122, 4134 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310467–219310469
Status: Unutilized
Comment: 1017 sq. ft. ea., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4021, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310470
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 2501, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310471
Status: Unutilized
Comment: 4073 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4060, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310472
Status: Unutilized
Comment: 16,900 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4113, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310473
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 10439, Fort Benning

Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310474
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10304, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310475
Status: Unutilized
Comment: 1040 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10847, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310476
Status: Unutilized
Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10768, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310477
Status: Unutilized
Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2683, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310478
Status: Unutilized
Comment: 1816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2504, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310479
Status: Unutilized
Comment: 729 sq. ft., 1-story, needs rehab, most recent use—snack bar, off-site use only.

Bldg. 4035, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310480
Status: Unutilized
Comment: 3375 sq. ft., 1-story, needs rehab, most recent use—recreation, off-site use only.

Bldg. 4027, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310481
Status: Unutilized
Comment: 3750 sq. ft., 1-story, needs rehab, most recent use—recreation, off-site use only.

Bldg. 4066, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310482
Status: Unutilized
Comment: 4388 sq. ft., 1-story, needs rehab, most recent use—fire station, off-site use only.

Bldg. 2422, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310484
Status: Unutilized
Comment: 3228 sq. ft., 1-story, needs rehab, most recent use—fire station, off-site use only.

Bldg. 4205, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310485
Status: Unutilized
Comment: 3378 sq. ft., 1-story, needs rehab, most recent use—fire station, off-site use only.

Bldg. 4031, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310486
Status: Unutilized
Comment: 2381 sq. ft., 1-story, needs rehab, most recent use—exchange branch, off-site use only.

Bldgs. 4121, 4133, 4143, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310487–219310489
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldgs., off-site use only.

Bldgs. 4105, 4005, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310490–219310491
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—arms bldgs., off-site use only.

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu, HI 96818
Location: Approx. 600 feet from Maine Gate on Aliamanu Drive
Landholding Agency: Army
Property Number: 219030324
Status: Unutilized
Comment: 45216 sq. ft. underground tunnel complex, pres. of asbestos, clean-up required of contamination, use of respirator required by those entering property, use limitations.

Indiana

Bldg. 703–1C
Indiana Army Ammunition Plant
Charleston Co: Clark, IN
Location: Gate 22 off Highway 22
Landholding Agency: Army
Property Number: 219013761
Status: Unutilized
Comment: 4000 sq. ft.; 2 story brick frame; possible asbestos; most recent use—exercise area.

Bldg. 1011 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark IN
Location: East of State Highway 62 at Gate 3
Landholding Agency: Army
Property Number: 219013762
Status: Underutilized
Comment: 4040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternative access; most recent on the use—office.

Bldg. 1001 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark IN
Location: South end of 3rd Street, East of Highway 62 at entrance gate.
Landholding Agency: Army
Property Number: 219013763
Status: Underutilized
Comment: 55630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternative access; most recently use—cloth bag manufacturing.

Bldg. 2542
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240717
Status: Unutilized
Comment: 1954 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—heating facility.

Bldg. 2531
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240718
Status: Unutilized
Comment: 119746 sq., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—storage.

Kansas

Bldg. T–2502, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310244
Status: Unutilized
Comment: 3195 sq. ft., l-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2520, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310245
Status: Unutilized
Comment: 3059 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldgs. T–2532, T–2538, T–2539, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Numbers: 219310246, 219310248–219310249
Status: Unutilized
Comment: 1327 sq. ft. each, 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2535, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310247
Status: Unutilized
Comment: 3843 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2540, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310250
Status: Unutilized
Comment: 3186 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2549, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army

Property Number: 219310251
Status: Unutilized
Comment: 3082 sq. feet, 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldgs. T–2521—T–2528, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Numbers: 219310252—219310259
Status: Unutilized
Comment: 4826 sq. ft. each, 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T–2533, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310260
Status: Unutilized
Comment: 1327 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—admin.

Bldgs. T–2541–2548, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Federal Register Notice Date: 06/18/93
Landholding Agency: Army
Property Numbers: 219310261–219310268
Status: Unutilized
Comment: 4826 sq. ft. each, 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Kentucky

Bldg. 104
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010937
Status: Underutilized
Comment: 15066 sq. ft.; two story; possible asbestos; most recent use—barracks.

Bldgs. 126, 141, 147, 149, 161, 165, 167, 169, 143
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010938, 219010940–219010946, 219013139
Status: Underutilized
Comment: 12576 sq. ft. each; two story; possible asbestos; most recent use—storage/child care/administration.

Bldg. 122
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010939
Status: Underutilized
Comment: 1488 sq. ft.; two story; possible asbestos; most recent use—storage and administration.

Bldg. 2244
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010948
Status: Underutilized
Comment: 4248 sq. ft.; possible asbestos, two story; most recent use—storage.

Bldg. 3110
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010950
Status: Unutilized
Comment: 1000 sq. ft.; one story; possible asbestos; most recent use—administration.

Bldgs. 5954, 5956, 5958, 5960
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010953, 219010956, 219010958, 219010961
Status: Unutilized
Comment: 2179 sq. ft. each; one story; possible asbestos; most recent use—Military Vehicle Maintenance Shop, Organizational.

Bldg. 6605
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010968
Status: Underutilized
Comment: 1968 sq. ft.; one story; most recent use—storage.

Bldg. 3148
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219013223
Status: Underutilized
Comment: 2200 sq. ft.; 1 story; possible asbestos; selected periods used for military/training exercises.

Bldg. 00837, Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219220447
Status: Unutilized
Comment: 2296 sq. ft., 1-story wooden structure with metal siding, presence of asbestos, most recent use—railroad repair shop, off-site removal only.

Bldg. 06864, 06866
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240757, 219240759
Status: Unutilized
Comment: 1000 sq. ft. ea., 1 story wood frame, most recent use—storage, off-site use only.

Bldg. 06865
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240758
Status: Unutilized
Comment: 1200 sq. ft., 1 story wood frame, most recent use—storage, off-site use only.

Bldg. 70
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240760
Status: Unutilized
Comment: 979 sq. ft., 1 story wood frame, secured area w/alternate access, off-site use only.

Bldg. 0074
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240761
Status: Unutilized
Comment: 5400 sq. ft., 2 story wood frame, secured area w/alternate access, off-site use only.

Bldgs. 2184, 2560, 2558
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Numbers: 219240762–219240764
Status: Unutilized
Comment: 5310 sq. ft. ea., 2 story wood frame, secured area w/alternate access, off-site use only.

Maryland

Bldgs. E5878, E5879
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Numbers: 219012652, 219012653
Status: Unutilized
Comment: 213 sq. ft. each; structural deficiencies; possible asbestos; and contamination.

Bldg. 10302
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012666
Status: Unutilized
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.

Bldg. E5975
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012677
Status: Unutilized
Comment: 650 sq. ft.; possible contamination; structural deficiences most recent use—training exercises/chemicals and explosives; potential use—storage.

Bldg. 6599
Fort George G. Meade
Zimborski Road
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014852
Status: Unutilized
Comment: 4173 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access.

Bldg. 6687
Fort George G. Meade
Mapes and Zimborski Roads
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219220446
Status: Unutilized
Comment: 1150 sq. ft., presence of asbestos, wood frame, most recent use—veterinarian clinic, off-site removal only.

Bldg. 584
Fort George G. Meade
Chamberlain Avenue
Ft. Mead Co: Anne Arundel MD 20755–5115
Landingholding Agency: Army
Property Number: 219310241
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame, needs rehab, most recent use—child support center.

Bldg. 594
Fort George G. Meade
9th Street
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219310242
Status: Unutilized

Comment: 1828 sq. ft., 1 story wood frame, needs rehab, most recent use—admin/child support.

Bldg. 2833
Fort George G. Meade
Earnie Pyle Street
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219310243
Status: Unutilized
Comment: 7670 sq. ft., 2 story wood frame, needs rehab, most recent use—administrative.

Michigan

Bldg. 300, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220448
Status: Unutilized
Comment: 52 sq. ft., sentry station, secured area w/alternate access.

Bldg. 301, Arsenal Acres
24140 Mount Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220449
Status: Unutilized
Comment: 3125 sq. ft., 2-story colonial style home, secured area w/alternate access

Bldgs. 302, 303
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220450–219220451
Status: Unutilized
Comment: 2619 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Bldgs. 304, 305
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220452–219220787
Status: Unutilized
Comment: 2443 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Missouri

Bldg. T451
Fort Leonard Wood
Ft. Leonard Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219220568
Status: Underutilized
Comment: 4640 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, not handicapped accessible, most recent use—admin/general purpose.

Bldg. T3057
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219220580
Status: Underutilized
Comment: 2650 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, not handicapped accessible, most recent use—admin/general purpose.

Bldg. T2383
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230228
Status: Underutilized
Comment: 9267 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—general purpose.

Bldg. T1376
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski 65473
Landholding Agency: Army
Property Number: 219230237
Status: Underutilized
Comment: 1296 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—Hdqtrs building.

Bldg. T599
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230260
Status: Underutilized
Comment: 18270 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.

Bldg. T1311
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230261
Status: Underutilized
Comment: 2740 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.

Bldg. T1333
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230263
Status: Underutilized
Comment: 1144 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.

Bldg. T3071
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219240719
Status: Underutilized
Comment: 2500 sq. ft., 1 story wood frame, possible asbestos, heating fuel storage tanks nearby, off-site use only, most recent use—mess hall.

Nebraska

Bldg. RG–1
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210292
Status: Unutilized
Comment: 1080 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Bldg. RG–2
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210293
Status: Unutilized
Comment: 576 sq. ft., 1 story garage, secured area with alternate access.

Bldg. RG–3
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210294
Status: Unutilized
Comment: 936 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Bldg. RG–4
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210295
Status: Unutilized
Comment: 1040 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Bldg. RG–5
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210296
Status: Unutilized
Comment: 490 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Bldg. RG–6
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210297
Status: Unutilized
Comment: 510 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Nevada

Bldgs. 00425–00449
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Numbers: 219011946–219011952, 219011954, 219011956, 219011959, 219011961, 219011964, 219011968, 219011970, 219011974, 219011976–219011978, 219011980, 219011982, 219011984, 219011987, 219011990, 219011994, 219011996
Status: Unutilized
Comment: 1310–1640 sq. ft. each, one floor residential, semi/wood construction, good condition.

New York

Bldg. 503
Fort Totten
Ordnance Road
Bayside Co: Queens NY 11357–
Landholding Agency: Army
Property Number: 219012564
Status: Underutilized
Comment: 510 sq. ft., 1 floor, most recent use—storage, needs major rehab/no utilities.

Bldg. 323
Fort Totten
Story Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012567
Status: Underutilized
Comment: 30,000 sq. ft., 3 floors, most recent use—barracks & mess facility, needs major rehab.

Bldg. 304
Fort Totten
Shore Road

Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012570
Status: Underutilized
Comment: 9610 sq. ft., 3 floors, most recent use—hospital, needs major rehab/utilities disconnected.

Bldg. 211
Fort Totten
211 Totten Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012573
Status: Underutilized
Comment: 6329 sq. ft., 3 floors, most recent use—family housing, needs major rehab, utilities disconnected.

Bldg. 332
Fort Totten
Theater Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012578
Status: Underutilized
Comment: 6288 sq. ft., 1 floor, most recent use—theater w/stage, needs major rehab, utilities disconnected.

Bldg. 504
Fort Totten
Ordnance Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012580
Status: Underutilized
Comment: 490 sq. ft., 1 floor, most recent use—storage, no utilities, needs major rehab.

Bldg. 322
Fort Totten
322 Story Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012583
Status: Underutilized
Comment: 30,000 sq. ft., 3 floors, most recent use—barracks, mess & administration, utilities disconnected, needs rehab.

Bldg. 326
Fort Totten
326 Pratt Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012586
Status: Underutilized
Comment: 6000 sq. ft., 2 floors, most recent use—storage, offices & residential, utilities disconnected/needs rehab.

Bldg. 627
U.S. Military Academy—West Point
Pitcher Road, North Dock
Highland Co. Orange NY 10996–1592
Landholding Agency: Army
Property Number: 219030185
Status: Unutilized
Comment: 23,185 sq. ft.; 1 story wood frame; needs rehab; presence of asbestos; most recent use—storage warehouse.

Ohio

15 Units Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266
Landholding Agency: Army
Property Number: 219230354
Status: Unutilized
Comment: 7–3 bedroom units (1824 sq. ft. ea.) 8–4 bedroom units (2430 sq. ft. ea.), 2 story wood frame, presence of asbestos, off-site use only.

7 Units Military Family Housing
Ravenna Army Ammunition Plant
Revenna Co: Portage OH 44266
Landholding Agency: Army
Property Number: 219230355
Status: Unutilized
Comment: One-4 stall garage and Six-3 stall garages, off-site use only, presence of asbestos.

Oklahoma

Bldg. T–2545, Fort Sill
2544 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011255
Status: Unutilized
Comment: 1994 sq. ft.; asbestos; wood frame; 2 floors, no operating sanitary facilities; most recent use—barracks.

Bldg. T–2606
Fort Sill
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011273
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–3507
Fort Sill
3507 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011315
Status: Unutilized
Comment: 2904 sq. ft.; possible asbestos; potential heavy metal contamination; wood frame; most recent use—chapel.

Bldgs. T–3779, T–3780
Fort Sill
3779 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Numbers: 219011343, 219011344
Status: Unutilized
Comment: 4720 sq. ft.; each; possible asbestos, wood frame, 2 floors, most recent use—barracks.

Bldg. T–4720
Fort Sill
4720 Hartell Blvd.
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011405
Status: Unutilized
Comment: 13225 sq. ft.; visual asbestos; wood frame; 2 floors; most recent use—recreation bldg.

Bldg. T–4919
Fort Sill
4919 Post Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014842
Status: Unutilized
Comment: 603 sq. ft.; 1 story mobile home trailer; possible asbestos; needs rehab.

Bldg. T–4523, Fort Sill
4523 Wilson Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014933
Status: Unutilized
Comment: 1639 sq. ft., 1 story wood frame, needs rehab, possible asbestos, most recent use—storage.

Bldg. T–283, Fort Sill
283 Knox Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220608
Status: Unutilized
Comment: 2419 sq. ft., wood frame, 2 story, off-site removal only, most recent use—classroom.

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–3621, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220613
Status: Unutilized
Comment: 2265 sq. ft. ea., wood frame, 1 story, off-site removal only, most recent use—storage.

Bldg. P–7452, Fort Sill
Lake Elmer Thomas Rec Area
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220619
Status: Unutilized
Comment: 450 sq. ft., metal frame, 1 story, off-site removal only, most recent use—garage.

Bldg. T–314, Fort Sill
314 Fowler Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240652
Status: Unutilized
Comment: 2798 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin supply.

Bldg. T–315, Fort Sill
315 Fowler Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240653
Status: Unutilized
Comment: 2787 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—training aids center.

Bldg. T–3541, Fort Sill
3541 Tracy Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240654
Status: Unutilized
Comment: 3873 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin/supply.

Bldg. T–2702, Fort Sill
2702 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240655

Status: Unutilized
Comment: 5520 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.

Bldg. T–3311, Fort Sill
3311 Naylor Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240656
Status: Unutilized
Comment: 1468 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.

Bldg. T–3545, Fort Sill
3545 Tacy Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240657
Status: Unutilized
Comment: 1647 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—general instruction.

Bldg. T–942, Fort Sill
942 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240658
Status: Unutilized
Comment: 149 sq. ft., 1 story metal frame, needs rehab, off-site use only, most recent use—gas station bldg.

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–1050, Fort Sill
1050 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240660–219240661
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldgs. T–3703, thru T–3705, T–3709 Fort Sill
3703 Walker Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240662–219240665
Status: Unutilized
Comment: 4524 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldg. T–5121, Fort Sill
5121 Post Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240666
Status: Unutilized
Comment: 8156 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldgs. T–2703, T–2704, Fort Sill
2703 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240667–219240668
Status: Unutilized
Comment: 5520 sq. ft. ea., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldg. T–2740, Fort Sill
2740 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240669
Status: Unutilized
Comment: 8210 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2745, Fort Sill
2745 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240670
Status: Unutilized
Comment: 8288 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2633, Fort Sill
2633 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240672
Status: Unutilized
Comment: 19,455 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—enlisted mess.

Bldg. T–2701, Fort Sill
2701 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240673
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–2907 Fort Sill
2907 Marcy Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240674
Status: Unutilized
Comment: 3861 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–2928 Fort Sill
2928 Custer Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240675
Status: Unutilized
Comment: 2315 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–4050 Fort Sill
4050 Pitman Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240676
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–5110 Fort Sill
5110 Post Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240677
Status: Unutilized
Comment: 457 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. P–3032 Fort Sill
3032 Haskins Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240678
Status: Unutilized
Comment: 101 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—general storehouse.

Bldg. T–5115, Fort Sill
5115 Post Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240679
Status: Unutilized
Comment: 1260 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storehouse.

Bldg. T–3302, Fort Sill
3302 Naylor Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240680
Status: Unutilized
Comment: 114 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—flammable storage.

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T–3540, Fort Sill
3540 Tacy Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240682
Status: Unutilized
Comment: 3833 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—classroom.

Bldg. T–3708, Fort Sill
3708 Walker Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240683
Status: Unutilized
Comment: 4526 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—day room.

Bldg. T–2911, Fort Sill
291 Craig Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240684
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—dispensary.

Bldg. T–260, Fort Sill
260 Corral Road
Lawton, OK, Comanche, Zip: 73503–5000
Landholding Agency: Army
Property Number: 219240776
Status: Unutilized
Comment: 4838 sq. ft., 2 story wood frame, off-site use only, possible asbestos, most recent use—admin.

Bldg. T–228, Fort Sill
228 Corral Road

Lawton, OK, Comanche, Zip: 73503–5000
Landholding Agency: Army
Property Number: 219240777
Status: Unutilized
Comment: 4884 sq. ft., 2 story wood frame, off-site use only, possible asbestos, most recent use—storage.

Bldg. T–2933, Fort Sill
2933 Marcy Road
Lawton, OK, Comanche, Zip: 73503–5000
Landholding Agency: Army
Property Number: 219240778
Status: Unutilized
Comment: 13545 sq. ft., 1 story wood frame, off-site use only, possible asbestos, most recent use—theatre w/stage.

Bldg. P–653, Fort Sill
Lawton, OK, Comanche, Zip: 73501–5100
Landholding Agency: Army
Property Number: 219310303
Status: Unutilized
Comment: 3680 sq. ft., 1 story wood frame, needs rehab, most recent use—garage, off-site use only.

Bldgs. T–3633, T–3655, T–3636, T–3649, T–3650, T–3652, T–3653
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Numbers: 219310304–219310310
Status: Unutilized
Comment: 5324 sq. ft. each, 2 story wood frame, needs rehab, most recent use—barracks, off-site use only

South Carolina

Bldgs. M2625–M2627, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Numbers: 219310311–219310313
Status: Unutilized
Comment: 826 sq. ft. each, 1 story wood frame, needs rehab, most recent use—rental lodges, off-site use only

Tennessee

Robert Joel Ridings
US Army Reserve Center
920 Cherokee Avenue
Nashville Co: Davidson TN 37207–
Landholding Agency: Army
Property Number: 219011667
Status: Excess
Comment: 40,000 sq. ft.; 3.67 acres; concrete block; utilities disconnected; site vandalized.

Texas

Bldg. P–3350, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220397
Status: Underutilized
Comment: 992 sq. ft., 1-story wood structure, possible asbestos, off-site removal only.

Bldg. P–3824, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220398
Status: Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic District, off-site removal only.

Bldg. P–2340, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220435
Status: Underutilized
Comment: 6093 sq. ft., 1-story concrete and tile structure, off-site removal only.

Bldgs. 6202–6207, 6162–6166
Bradshaw Avenue, Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Numbers: 219240685–219240695
Status: Unutilized
Comment: 5400 sq. ft. ea., 2 story wood frame, 4-unit residences, needs rehab, off-site use only.

Bldgs. 6208, 6217–6219, 6209–6212, 6227, 6229, 6231, 6233, 6238, 6240, 6242, 6244
Bradshaw Avenue, Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Numbers: 219240696–219240711
Status: Unutilized
Comment: 5040 sq. ft. ea., 2 story wood frame, 4-unit residences, needs rehab, off-site use only.

Bldg. 4241, Fort Bliss
4241 Logan Heights
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219240712
Status: Unutilized
Comment: 1383 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—administrative.

Bldg. 56301, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219310355
Status: Unutilized
Comment: 6768 sq. ft., 1-story, needs rehab, most recent use—hdqts. bldg., off-site use only

Bldg. 56304, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219310356
Status: Unutilized
Comment: 5760 sq. ft., 1-story, needs rehab, most recent use—admin. bldg., off-site use only

Bldg. 56314, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219310357
Status: Unutilized
Comment: 2295 sq. ft., 1-story, needs rehab, most recent use—admin. bldg., off-site use only

Bldg. 56502, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219310358
Status: Unutilized
Comment: 4396 sq. ft., 1-story, needs rehab, most recent use—clinic, off-site use only

Bldgs. 56807, 56806, 56803, 56801, 56826, 56823, 56821, 56811, 56841, 56831, 56827, 56846, 56843, 56851, 56847 Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Numbers: 219310359–219310373
Status: Unutilized
Comment: 450 sq. ft. each, 1-story, needs rehab, most recent use—dining facilities, off-site use only.

Bldg. 4569, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310374
Status: Unutilized
Comment: 2154 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4576, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310375
Status: Unutilized
Comment: 1803 sq. ft., 1-story wood frame, needs rehab, most recent use admin., off-site use only.

Bldg. 4580, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310376
Status: Unutilized
Comment: 2859 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 4622, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310377
Status: Unutilized
Comment: 1832 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 5349, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310378
Status: Unutilized
Comment: 916 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 5353, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310379
Status: Unutilized
Comment: 914 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 5354, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310380
Status: Unutilized
Comment: 1070 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 5416, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310381
Status: Unutilized
Comment: 129 sq. ft., 1-story metal frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 5418, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310382
Status: Unutilized
Comment: 1904 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 4625, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310383

Status: Unutilized
Comment: 1644 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4637, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310384
Status: Unutilized
Comment: 1830 sq. ft., 1-story wood frame, needs rehab, most recent use—admin./storage, off-site use only.

Bldg. 4658, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Federal Register Notice Date: 6/18/93
Property Number: 219310385
Status: Unutilized
Comment: 949 sq. ft., 1-story wood frame, needs rehab, most recent use—store, off-site use only.

Bldg. 4660, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310386
Status: Unutilized
Comment: 972 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4661, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310387
Status: Unutilized
Comment: 963 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4675, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310388
Status: Unutilized
Comment: 2200 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.

Bldg. 4690, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310389
Status: Unutilized
Comment: 1104 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 4775, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310390
Status: Unutilized
Comment: 2202 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 703, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310391
Status: Unutilized
Comment: 5330 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 1033, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310392
Status: Unutilized
Comment: 1713 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 1034, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310393
Status: Unutilized
Comment: 2054 sq. ft., 1-story wood frame, needs rehab, most recent use—education facility, off-site use only.

Bldgs. 7180, 7193, 7183–7192, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219310394–219310405
Status: Unutilized
Comment: 645 sq. ft. each, 1-story, needs rehab, most recent use—auto garage, off-site use only.

Bldg. 7194, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310406
Status: Unutilized
Comment: 1593 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only

Virginia

Bldg. T–6015
U.S. Army Logistics Center & Fort Lee
Shop Road
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219012376
Status: Unutilized
Comment: 2124 sq. ft., 2 story, most recent use—barracks; poor condition; needs major rehab.

Bldg. T–6018
U.S. Army Logistics Center and Fort Lee
Shop Road
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219012396
Status: Unutilized
Comment: 1575 sq. ft., 1 floor, no utilities, possible asbestos, needs rehab, off site use only.

Bldg. T–229, Fort Monroe
Ft. Monroe VA 23651
Landholding Agency: Army
Property Number: 219310301
Status: Unutilized
Comment: 4364 sq. ft., 1 story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. T–1069, Fort Story
Ft. Story Co: Princess Ann VA 23459–5000
Landholding Agency: Army
Status: Unutilized
Comment: 2095 sq. ft., 1 story wood frame, needs rehab, most recent use—storage, off-site use only.

Wisconsin

Bldgs. T–01069, T–01071—T–01080, T–01082—T–01084
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013502, 219013521–219013533
Status: Unutilized
Comment: 4829 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10122
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013436
Status: Unutilized
Comment: 1900 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10123
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013437
Status: Unutilized
Comment: 2405 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10127
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013440
Status: Unutilized
Comment: 1148 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. P–10137
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013442
Status: Unutilized
Comment: 192 sq. ft.; 1 story wood frame, possible asbestos; hospital/patient ward buildings; most recent use—power plant.

Bldg. T–01095–01097
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013453–219013455
Status: Unutilized
Comment: 5295 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10118
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013450
Status: Unutilized
Comment: 1250 sq.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10120
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013451
Status: Unutilized
Comment: 1250 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10113

Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013456
Status: Unutilized
Comment: 2393 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–10102–T–10103
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013461–219013462
Status: Unutilized
Comment: 3944 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10124
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013467
Status: Unutilized
Comment: 3115 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–10125–T10126
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013468–219013469
Status: Unutilized
Comment: 3590 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10110
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013470
Status: Unutilized
Comment: 2548 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—vehicle storage.

Bldgs. T–01085—T–01086
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013534–219013535
Status: Unutilized
Comment: 4686 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–01065—T–01067
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013498–219013500
Status: Unutilized
Comment: 4793 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01068
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013501
Status: Unutilized
Comment: 4848 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10112
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013508
Status: Unutilized
Comment: 1273 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—morgue.

Bldg. T–01098
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013513
Status: Unutilized
Comment: 7133 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01081
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013541
Status: Unutilized
Comment: 7133 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. 2112, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe Zip: 54656–
Landholding Agency: Army
Property Number: 219210310
Status: Underutilized
Comment: 582 sq. ft.; 1 story, most recent use—ice house, needs repair.

Bldgs. 440–442
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210348–210350
Status: Underutilized
Comment: 5310 sq. ft. ea., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—housing.

Bldgs. 216–217, 226–227, 316–317, 405–406, 416–417
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210351–219210360
Status: Underutilized
Comment: 2950 sq. ft. ea., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—mess halls.

Bldgs. 426–427, 439
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210361–219210362, 219210364
Status: Underutilized
Comment: 2350 sq. ft. ea., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—mess halls.

Bldgs. 438, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219210363
Status: Underutilized
Comment: 2500 sq. ft., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—mess hall.

Bldgs. 221–222, 232–233. 321 333 401 411 421, 433
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210365–219210368, 219210371–219210375, 219210378
Status: Underutilized
Comment: 3250 sq. ft. ea., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Bldg. 234, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219210369
Status: Underutilized
Comment: 2682 sq. ft., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Bldg. 240, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219210370
Status: Underutilized
Comment: 1750 sq. ft., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office.

Bldgs. 422, 432, 443
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210376–219210377, 219210380
Status: Underutilized
Comment: 2750 sq. ft. ea., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Bldgs. 434, 444
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210379, 219210381
Status: Underutilized
Comment: 2682 sq. ft. ea., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Land (by State)

Kansas

Parcel 1

Fort Leavenworth
Combined Arms Center
Ft. Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012333
Status: Underutilized
Comment: 14.4+ acres.

Parcel 3
Fort Leavenworth
Combined Arms Center
Ft. Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012336
Status: Underutilized
Comment: 261+ acres; heavily forrested; no access to a public right-of-way; selected periods are reserved for military/training exercises.

Parcel 4
Fort Leavenworth
Combined Arms Center
Ft. Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012339
Status: Underutilized
Comment: 24.1+ acres; selected periods are reserved for military/training exercises; steep/wooded area.

Parcel 6
Fort Leavenworth
Combined Arms Center
Ft. Leavenworth Co: Leavenworth KS 66027–5020
Location: Extreme north east corner of installation in Flood Plain of the Missouri River.
Landholding Agency: Army
Property Number: 219012340
Status: Underutilized
Comment: 1280 acres; selected periods are reserved for military/training exercises.

Parcel F
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012552
Status: Unutilized
Comment: 33.4 acres; area is land locked; heavily wooded; periodic flooding.

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120269
Status: Underutilized
Comment: Approx. 25 acres, possible contamination, secured area with alternate access.

Nevada

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 219012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 219012056
Status: Unutilized
Comment: 1920 acres; road and utility easements, no utility hookup, possible flooding problem.

Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Landholding Agency: Army
Property Number: 219012057
Status: Unutilized
Comment: 85 acres; road and utility easements, no utility hookup.

Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359.
Landholding Agency: Army
Property Number: 219012058
Status: Unutilized
Comment: 955 acres; road and utility easements, no utility hookup.

New Jersey

Land—Camp Kilmer
Plainfield Avenue
Edison Co: Middlesex NJ 08817
Landholding Agency: Army
Property Number: 219230357
Status: Underutilized
Comment: approx. 10 acres in the center portion of site, most recent use—ballfields/recreation.

Land—Camp Kilmer
Plainfield Avenue
Edison Co: Middlesex NJ 08817–
Landholding Agency: Army
Property Number: 219230358
Status: Underutilized
Comment: approx. 10 acres in the southwest corner of site, most recent use—reserve training, wooded area.

Tennessee

Milan Army Ammunition Plant
Milan Co: Carroll TN 38358–
Location: Plant boundary in the northeast corner of the plant & housing area
Landholding Agency: Army
Property Number: 219010547
Status: Excess
Comment: 17.2 acres; right of entry legal constraint.

Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012338
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives.

Land
Milan Army Ammunition Plant
NE corner of plant & housing area
Milan Co: Carroll TN 38358
Landholding Agency: Army
Property Number: 219240780
Status: Unutilized
Comment: 17.2 acres, secured area w/ alternate access, most recent use—buffer zone.

Texas

Land Saginaw Army Aircraft Plt
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014814
Status: Unutilized
Comment: 154.3 acres; includes buildings/structures/parking and air strip.

Vacant Land, Fort Sam Houston
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220438
Status: Unutilized
Comment: 250.33 acres, 85% located in floodplain, possibility of unexploded ordnance.

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Bldgs. 240, 246, 260, 267, 502, 507
Fort Richardson
Ft. Richardson Co: Anchorage AK
Landholding Agency: Army
Property Numbers: 219240766–219240771
Status: Unutilized
Comment: 13059 sq. ft. ea., Status: 3 story wood frame, asbestos/lead paint, off-site use only, most recent use—residential.

California

Bldg. 60
Los Alamitos Armed Forces Reserve Center
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120315
Status: Unutilized
Comment: 1024 sq. ft., 2 story concrete/wood plaster, possible asbestos, off-site use only, most recent use—nose hanger

Bldg. 95
Los Alamitos Armed Forces Reserve Center
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 21912316
Status: Unutilized
Comment: 392 sq. ft., 1 story raised portable, off-site use only, most recent use—radar maint. shop

Colorado

Bldg. T–641, Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219310282
Status: Excess
Comment: 3030 sq. ft., 1 story wood frame, possible asbestos, need repairs, most recent use-Scout Bldg., off-site use only.

Bldg. T–6016, Fort Carson
Colorado Springs Co: El Pasco CO 80913
Landholding Agency: Army
Property Number: 219310285
Status: Excess
Comment: 2988 sq. ft., 1 story wood frame, possible asbestos, most recent use—family center, off-site use only.

Georgia

Bldg. 2500, Fort Benning
Ft. Benning Co: Muscogee GA 21905
Landholding Agency: Army
Property Number: 219310483
Status: Unutilized
Comment: 50390 sq. ft., 1 story, needs rehab, most recent use—laundry facility, off-site use only

Kentucky

Bldg. 2945
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219012543
Status: Unutilized
Comment: 4248sq. ft., 2 story; selected periods are reserved for military/training exercises; possible asbestos

Bldgs. 144, 145
Ft. Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Numbers: 219013140–219013141
Status: Underutilized
Comment: 12576 sq. ft., 2 story; possible asbestos; most recent use—basic training central issue facility.

Texas

Bldg. P–16, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220366
Status: Underutilized
Comment: 76,102 sq. ft., 2-story stone bldg., within National Landmark Historic District.

Bldg. P–44, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220367
Status: Unutilized
Comment: 95,332 sq. ft., 3-story concrete bldg., possible asbestos

Bldg. P–122, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220368
Status: Underutilized
Comment: 12,782 sq. ft., 1-story brick bldg., within National Landmark Historic District

Bldg. P–125, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220369
Status: Underutilized
Comment: 1593 sq. ft., 1-story brick bldg., within National Landmark Historic District

Bldg. P–126, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220370
Status: Underutilized
Comment: 12,445 sq. ft., 3-story brick bldg., within National Landmark Historic District

Bldg. P–127, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220371
Status: Underutilized
Comment: 1593 sq. ft., 1-story brick bldg., within National Landmark Historic District

Bldg. P–133, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220372
Status: Underutilized
Comment: 13,232 sq. ft., 2-story brick bldg., within National Landmark Historic District

Bldgs. P–135, P–140 Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Numbers: 219220373–219220374
Status: Underutilized
Comment: 1593 sq. ft. ea., 1-story brick bldg., within National Landmark Historic District

Bldg. P–142, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220375
Status: Underutilized
Comment: 4735 sq. ft., 3-story brick bldg., within National Landmark Historic District

Bldg. P–155, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220378
Status: Underutilized
Comment: 7374 sq. ft., 2-story brick bldg., within National Landmark Historic District

Bldg. P–198, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220380
Status: Underutilized
Comment: 5468 sq. ft., 3-story stucco bldg., within National Landmark Historic District

Bldg. P–252, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220381
Status: Underutilized
Comment: 1830 sq. ft., 1-story stucco bldg.

Bldgs. P–260, P–261 Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Numbers: 219220382–219220383
Status: Underutilized
Comment: 1749 sq. ft. ea., 1-story brick bldg., within National Landmark Historic District

Bldg. P–366, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220384
Status: Underutilized
Comment: 2844 sq. ft., 1-story stucco bldg.

Bldg. P–367, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220385
Status: Underutilized
Comment: 19,830 sq. ft., 1-story stucco bldg., possible asbestos

Bldg. P–369, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220386
Status: Underutilized
Comment: 10,361 sq. ft., 2-story concrete bldg.

Bldg. P–912, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220387
Status: Underutilized
Comment: 4390 sq. ft., 1-story stone bldg.

Bldg. P–1029, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220388
Status: Underutilized
Comment: 51,236 sq. ft., 3-story brick structure

Bldg. P–2000, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220389
Status: Underutilized
Comment: 49,542 sq. ft., 3-story brick structure, within National Landmark Historic District

Bldg. P–2001, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220390
Status: Underutilized
Comment: 16,539 sq. ft., 4-story brick structure, within National Landmark Historic District

Bldg. P–2007, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220391
Status: Underutilized
Comment: 13,058 sq. ft., 3-story brick structure, within National Landmark Historic District

Bldg. P–2267, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220392
Status: Underutilized
Comment: 7075 sq. ft., 2 story brick structure, within National Landmark Historic District

Bldg. P–2268, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220393
Status: Underutilized
Comment: 10,260 sq. ft., 2-story brick structure, within National Landmark Historic District, possible asbestos

Bldg. P–2289, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000

Landholding Agency: Army
Property Number: 219220394
Status: Underutilized
Comment: 4720 sq. ft., 2-story wood structure, possible asbestos

Bldg. P–2840, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220396
Status: Underutilized
Comment: 102,194 sq. ft., 4-story concrete structure

Bldg. T-189, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220402
Status: Underutilized
Comment: 11,949 sq. ft., 4-story brick structure, within National Landmark Historic District, possible lead contamination

Bldg. T-300, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220406
Status: Underutilized
Comment: 8352 sq. ft., 1-story wood structure, possible asbestos

Bldg. T-942, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220409
Status: Underutilized
Comment: 2740 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos

Bldg. T-2066, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220424
Status: Underutilized
Comment: 4720 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos

Bldg. T-2067, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220425
Status: Underutilized
Comment: 2664 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos

Bldg. T-2250, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220432
Status: Underutilized
Comment: 13,483 sq. ft., 3-story brick structure, within National Landmark Historic District, possible asbestos

Virginia

Bldg. T3004, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310317
Status: Unutilized
Comment: 2350 sq. ft., 1-story wood frame, needs repair, most recent use—clinic

Bldg. T3022—T3024 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310318–219310320
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks

Bldg. T3026, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310321
Status: Unutilized
Comment: 3550 sq. ft., 1-story wood frame, needs repair, most recent use—dining room

Bldg. T3025, T3040–T3041, T3049–T3050 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310322–219310326
Status: Unutilized
Comment: 2950 sq. ft., 1-story wood frame, needs repair, most recent use—dining room

Bldgs. T3029–T3030, T3037–T3039, T3042–T3048, T3051–T3054, T3027–T3028 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824-
Landholding Agency: Army
Property Numbers: 219310327–219310344
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood frame, needs repair, most recent use—barracks

Bldgs. T3031–T3036, T3057 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824-
Landholding Agency: Army
Property Numbers: 219310345–219310351
Status: Unutilized
Comment: 2987 sq. ft. each, 1-story wood frame, needs repair, most recent use—admin./supply

Bldg. T3055, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824-
Landholding Agency: Army
Property Number: 219310352
Status: Unutilized
Comment: 2488 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply

Bldg. TT3001, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824-
Landholding Agency: Army
Property Number: 219310353
Status: Unutilized
Comment: 3302 sq. ft., 1-story wood frame, most recent use—chapel

Bldg. TA3002, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824-
Landholding Agency: Army
Property Number: 219310354
Status: Unutilized
Comment: 360 sq. ft., 1-story wood frame, most recent use—clinic

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 270
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120324
Status: Unutilized
Comment: 90 sq. ft., concrete/aluminum, off-site use only, most recent use—aircraft steam cleaning bldg.

Maryland

Bldg. 101
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910-
Landholding Agency: Army
Property Number: 219012678
Status: Underutilized
Comment: 18438 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 104
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910-
Landholding Agency: Army
Property Number: 219012679
Status: Underutilized
Comment: 12495 sq. ft., needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 107
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910-
Landholding Agency: Army
Property Number: 219012680
Status: Unutilized
Comment: 4107 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Bldg. 120
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910-
Landholding Agency: Army
Property Number: 219012681
Status: Underutilized
Comment: 2442 sq. ft., possible structural deficiencies; possible asbestos; historic property.

Unsuitable Properties

Buildings (by State)

Alabama

69 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 219014000, 219014003–219014005, 219014009, 219014012, 219014015–219014051, 219014057, 219014060, 219014068–219014080, 219014291–219014292, 219110109, 219120247–219120250, 219140614–219140615, 219230190
Status: Unutilized
Reason: Secured Area

Bldg. T00862
Fort McClellan
Off 21st Street between 2nd & 3rd Avenue
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219130019
Status: Unutilized
Reason: Extensive deterioration

Two Bedroom Apt.
Anniston Army Depot
Wherry Housing-Terrace Homes Apt.
Anniston Co: Calhoun AL 36201–
Landholding Agency: Army
Property Number: 219130108
Status: Excess
Reason: Extensive deterioration

77 Bldgs.
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210018–219210094
Status: Excess
Reason: Secured Area

L006T1, L006T2, L006T3
Troy Municipal Airport
Troy Co: Pike AL 36081
Landholding Agency: Army
Property Number: 219220294
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 3403, 24201–24203, 620, 24112 Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219220341–219220344, 219310016, 219320001
Status: Unutilized
Reason: Extensive deterioration

27 Bldgs.
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220789–219220815
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs. Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219310006–219310014
Status: Unutilized
Reason: Extensive deterioration

Alaska

16 Bldgs.
Fort Greely
Ft. Greely AK 99790–
Landholding Agency: Army
Property Number: 219210124–219210125, 219220319–219220332
Status: Unutilized
Reason: Extensive deterioration

Bldg. 47022, Fort Richardson
Ft. Richardson Co: Anchorage AK 99505
Landholding Agency: Army
Property Number: 219220351
Status: Unutilized
Reason: Within airport runway clear zone

15 Bldgs. Fort Richardson
Ft. Richardson Co: Anchorage AK 99505
Landholding Agency: Army
Property Number: 219220352, 219220355, 219230185–219230186, 219240270–219240272, 219310015, 219320002–219320008
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

Bldgs. 1126, 1578, Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99505
Landholding Agency: Army
Property Number: 219230183–219230184
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1144, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703
Landholding Agency: Army
Property Number: 219240273
Status: Unutilized
Reason: Secured Area—Within airport runway clear zone

Bldgs. 5001, 5002, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703
Landholding Agency: Army
Property Number: 219240274–219240275
Status: Unutilized
Reason: Secured Area—Floodway

Bldg. 1501, Fort Greely
Ft. Greely AK 99505
Landholding Agency: Army
Property Number: 219240327
Status: Unutilized
Reason: Secured Area

Bldg. 914, Fort Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 219240330
Status: Unutilized
Reason: Secured Area—Within airport runway clear zone—Structural Damage

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 Miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120175–219120181
Status: Unutilized
Reason: Secured Area

Bldgs. 22330, 84001
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219210016–219210017
Status: Excess
Reason: Extensive deterioration

Bldgs. T–2005, T–2006
Yuma Proving Ground
Yuma Co: Yuma/LaPaz AZ 85365–9104
Landholding Agency: Army
Property Number: 219320009–219320010
Status: Unutilized
Reason: Extensive deterioration

Arkansas

Fort Smith USAR Center
Fort Smith
1218 South A Street
Fort Smith Co: Sebastian AR 72901–
Landholding Agency: Army
Property Number: 219014928
Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Army Reserve Center
Hwy 79 North
Camden Co: Calhoun Ar 71701–3415
Landholding Agency: Army
Property Number: 219220345
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5169, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230173
Status: Unutilized
Reason: Extensive deterioration

California

Bldgs. P–99, T–324
Fort Hunter Liggett
Jolon Co: Monterey Ca 93944–
Landholding Agency: Army
Property Number: 219012413, 219012420
Status: Unutilized
Reason: Latrine, detached structure.

Bldgs. P–177, P–178, 325, S–308, S–308A, T–308B
Fort Hunter Liggett
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Numbers: 219012414–219012415, 219012600, 219240284—219240285, 219240287
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are in a secured area.)

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material—Secured Area

Bldgs. T–323, T–322
Fort Hunter Liggett
Mission Road
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219012601-219012602
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582-219013588, 219013590, 219240444-219240446
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219013903–219013906, 219120048–219120051, 219140568
Status: Unutilized
Reason: Secured Area

Bldgs. S–108, S–20, S–290
Sharpe Army Depot
Lathrop Co: San Joaquin CA 95331–
Location: Roth Road
Landholding Agency: Army

Property Number: 219014290, 219230178–219230179
Status: Underutilized
Reason: Secured Area

Bldg. S–184
Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928–
Location: POL Road
Landholding Agency: Army
Property Number: 219014602
Status: Underutilized
Reason: Secured Area

16 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014705, 219014708–219014710, 219014713–219014717, 219014719–219014721, 219230180–219230182, 219320012
Status: Unutilized
Reason: Secured Area

Bldg. P–88
Sierra Army Depot
Road Oil Storage
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014707
Status: Unutilized
Reason: Oil Storage Tank

Bldgs. 173, 177, 197
Roth Road—Sharpe Army Depot
Lathrop Co: San Joaquin CA
Landholding Agency: Army
Property Number: 219014940–219014942
Status: Unutilized
Reason: Secured Area

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

Bldg. 81
Los Alamitos Armed Forces Reserve Center
Los Alamitos Co: Orange CA 90720–5001
Location: Main entrance on Lexington Dr.
Landholding Agency: Army
Property Number: 219120276
Status: Unutilized
Reason: Detached latrine

10 Bldgs., Sharpe Site
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219140262–219140266, 219240151–219240155
Status: Unutilized
Reason: Secured Area

Bldg. T–187, Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928
Landholding Agency: Army
Property Number: 219240321
Status: Unutilized
Reason: Secured Area—Extensive deterioration

Bldg. 84, Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 219320011
Status: Unutilized
Reason: Structural damage

Colorado

72 Bldgs.
Pueblo Army Depot
Pueblo Co: Pueblo CO 81001–
Location: 14 miles East of Pueblo City on Highway 50
Landholding Agency: Army
Property Number: 219012209, 219012211, 219012214, 219012216, 219012221, 219012223–219012224, 219012226–219012228, 219012230–219012237, 219012239–219012257, 219012260–219012275, 219012287, 219012290–219012298, 219012300, 219012743, 219012745, 219012747–219012748, 219120058–219120061
Status: Unutilized
Reason: Secured Area

26 Bldgs., Pueblo Depot Activity
Pueblo CO 81001
Landholding Agency: Army
Property Number: 219240466–219240482
Status: Unutilized
Reason: Secured Area—Extensive deterioration

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material—Secured Area—Extensive deterioration

Bldgs. T–800, P–3291, T–1001
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219320017–219320019
Status: Unutilized
Reason: Extensive deterioration

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack

23 Bldgs.
Fort Gordon
Augusta Co: Richmons GA 30905–
Landholding Agency: Army
Property Number: 219140180, 219220264–219220269, 219220279, 219220281, 219220291–219220293, 219240319, 219320020–219320029
Status: Unutilized
Reason: Extensive Deterioration

11 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219140182–219140184, 219140186–219140187, 219140189, 219140193–219140194, 219140203, 219140205–219140206
Status: Unutilized
Reason: Structural damage

Bldgs. GT001, GT002, GT003, GT004, 11726–11727
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219210136, 219210138–219210139
Status: Unutilized
Reason: Secured Area

8 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220333–219220340
Status: Unutilized
Reason: Detached lavatory

Bldg. 1673, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220742
Status: Unutilized
Reason: Extensive deterioration

25 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219240280–219240283, 219310091–219310107, 219320030–219320033
Status: Unutilized
Reason: Extensive deterioration

Hawaii

PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Schofield Barracks
Kolekole Pass Road
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837
Status: Unutilized
Reason: Secured Area

P–3384 East Range
Schofield Barracks
East Range Road
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219030361
Status: Unutilized
Reason: Secured Area

3 Bldgs., Fort Shafter
Honolulu Co: Honolulu HI 96819
Landholding Agency: Army
Property Number: 219230128, 219230133, 219320035
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs, Schofield Barracks
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219230135–219230146, 219320034
Status: Unutilized
Reason: extensive deterioration

Illinois

576 Bldgs. and Groups
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010153–219010317, 219010319–219010407, 219010409–219010413, 219010415–219010439, 219011750–219011879, 219011881–219011908, 219012331, 219013076–

219013138, 219014722–219014781, 219030277–219030278, 219040354, 219140441–219140446, 219210146, 219240457–219240465
Status: Unutilized
Reason: Secured Area; many within 2000 ft. of flammable or explosive materials; some within floodway.

Bldg. 725
Fort Sheridan
Highwood Co: Lake IL 60037–5000
Landholding Agency: Army
Property Number: 219013769
Status: Underutilized
Reason: Secured Area

Bldgs. 58, 59 and 72, 69, 64, 105
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108
Status: Unutilized
Reason: Secured Area

Bldg. 133, Rock Island Arsenal
Gillespie Avenue
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219210100
Status: Underutilized
Reason: Extensive deterioration

Bldgs. 250, 253, Savanna Army Depot Activity
Savanna Co: Carroll Il 61074
Landholding Agency: Army
Property Number: 219230126–219230127
Status: Unutilized
Reason: Extensive deterioration

Indiana

211 Bldgs.
Indiana Army Ammunition Plant (INAAP)
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219010913–219010919, 219010925–219010926, 219010929–219010936, 219010952; 219010955, 219010957, 219010959–219010960, 219010962–219010964, 219010966–219010967, 219010969–219010970, 219011449, 219011454, 219011456–219011457, 219011459–219011464, 219013764, 219013848, 219014608–219014620, 219014622–219014651, 219014653, 219014655–219014661, 219014663–219014683, 219030315, 219120168–219120171, 219140425–219140440, 219320036–219320111
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

6 Bldgs.
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219010920, 219010924, 219010927–219010928, 219014621, 219014652
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

58 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149–219210151, 219220220, 219230032–219230033
Status: Unutilized
Reason: Secured Area

29 Bldgs.
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219210152–219210155, 219230034–219230037
Status: Unutilized
Reason: Secured Area

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2635, Indiana Army Ammunition Plant
Charlestown Co: Clark IN 471111
Landholding Agency: Army
Property Number: 219240322
Status: Unutilized
Reason: Secured area; Extensive deterioration

Iowa

13 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Numbers: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219120172–219120174
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

33 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA
Landholding Agency: Army
Property Numbers: 219013706–219013738
Status: Unutilized
Reason: Secured Area

26 Bldgs. Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Numbers: 219230005–219230029, 219310017
Status: Unutilized
Reason: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Numbers: 219011909–219011945
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

219 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Numbers: 219040039, 219040045, 219040048–219040051, 219040053, 219040055, 219040063–219040067, 219040072–219040080, 219040086–219040099, 219040102, 219040111–219040112, 219040118–219040119, 219040121–219040124, 219040126, 219040128–219040133, 219040136–219040137, 219040139–219040140, 219040143, 219040149–219040154, 219040156, 219040160–219040165, 219040168–219040170, 219040180, 219040182–219040185, 219040190–219040191, 219040202, 219040205–219040207, 219040208, 219040210–219040221, 219040234–219040239, 219040241–219040254, 219040256–219040257, 219040260, 219040262–219040267, 219040270–219040279, 219040282–219040319, 219040321–219040323, 219040325–219040327, 219040329–219040335, 219040349, 219040353, 219140569–219140577, 219140580–219140591, 219140594, 219140599–219140601, 219140606–219140612
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area

21 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Numbers: 219040007–219040008, 219040010–219040012, 219040014–219040027, 219040030–219040031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway

Bldg. 9002
Sunflower Army Ammunition Plant
35525 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219110073
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

5 Bldgs.
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219240032, 219240078–219240080, 219310207
Status: Unutilized
Reason: Extensive deterioration

11 Latrines
Sunflower Army Ammunition Plant
35425 West 103rd
Desoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219140578–219140579, 219140593, 219140595–219140598, 219140602–219140605
Status: Unutilized
Reason: Detached Latrine

219 Bldgs., Sunflower Army Ammunition Plant
DeSoto Co: Johnson KS 66018
Landholding Agency: Army
Property Number: 219240333–219240437
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Extensive deterioration

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot

Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area; Sewage treatment facility

Bldg. 12
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant.

23 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219320112–219320134
Status: Unutilized
Reason: Extensive deterioration

Bldgs., T05650, T06136, T06382, T06486
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219210132–219210135
Status: Unutilized
Reason: Secured Area
Comment: Extensive deterioration

17 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240450–219240456, 219320135–219320143, 219320259
Status: Unutilized
Reason: Extensive deterioration

Bldg. 06862, Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240782
Status: Unutilized
Reason: Detached latrine

Louisiana

26 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011668–219011670, 219011700, 219011714–219011716, 219011735–219011737, 219012112, 219013571–219013572, 219013863–219013869, 219110124, 219110127, 219110131, 219110135–219110136, 219120290
Status: Unutilized
Reason: Secured Area: (Most are within 2000 ft. of flammable or explosive material)

Staff Residences
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219120284–219120286
Status: Excess
Reason: Secured Area

Bldg. A–102
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219230087
Status: Unutilized
Reason: Extensive deterioration

14 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219240137–219240150
Status: Unutilized
Reason: Secured Area

Bldg. T–2924, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219240323
Status: Unutilized
Reason: Extensive deterioration

Maryland

56 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219011406–219011417, 219012608, 219012610, 219012612, 219012614, 219012616–219012617, 219012619, 219012623, 219012625–219012629, 219012631, 219012633–219012635, 219012637–21912642, 219012645–219012651, 219012655–219012664, 219013773, 219014711–219014712, 219030316, 219110140, 219240329
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway)

P501
Installation #24235
Ballast House
La Plata Co: Charles MD 20646–
Location: At the end of the access road
Landholding Agency: Army
Property Number: 219011643
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

1 Bldg.
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014789
Status: Unutilized
Reason: Secured Area

Bldg. 10401
Aberdeen Proving Ground
Aberdeen Area
Harford Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110138
Status: Unutilized
Reason: Seward treatment plant

Bldg. 10402
Aberdeen Proving Ground
Aberdeen Area
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110139
Status: Unutilized
Reason: Sewage pumping station

Bldg. 142–146, USARC Gaithersburg
8510 Snouffers School Road
Gaithersburg Co: Montgomery MD 20879–1624
Landholding Agency: Army
Property Number: 219120009–219120013
Status: Unutilized
Reason: Secured Area

45 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219130059, 219140458, 219140460–219140461, 219140465–219140467, 219140472, 219140484, 219140493, 219140510, 219210123, 219220126–219220127, 219220142, 219220146–219220148, 219220153, 219220161, 219220171–219220173, 219220190–219220193, 219220195–219220197, 219240121, 219310021–219310033, 219320144
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 129, 144 Fort Ritchie
Ft. Ritchie Co: Washington MD 21719–5010
Landholding Agency: Army
Property Number: 219310058–219310059
Status: Underutilized
Reason: Secured Area

Bldg. 4900, Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219230089
Status: Unutilized
Reason: Within airport runway clear zone

Massachusetts

Material Technology Lab
405 Arsenal Street
Watertown CO: Middlesex MA 02132-
Landholding Agency: Army
Property Number: 219120161
Status: Underutilized
Reason: within 2000 ft. of flammable or explosive material Floodway Secured Area

Bldgs. T–102, T–110, T–111, Hudson Family Hsg
Natick RD&E Center
Bruen Road
Hudson Co: Middlesex MA 01749
Landholding Agency: Army
Property Number: 219220105–219220107
Status: Unutilized
Reason: Extensive deterioration

3462, Camp Edwards
Massachusette Military Reservation
Bourne Co: Barnstable MA 024620–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldgs. 3596, 1209–1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230096, 219310018–219310020
Status: Unutilized
Reason: Secured Area

Michigan

Bldgs. 602, 604
US Army Garrison Selfridge
Mt. Clemens Co: Macomb MI 48043–
Landholding Agency: Army
Property Number: 219012355–219012356
Status: Unutilized
Reason: Within airport runway clear zone; Floodway, Secured Area

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Underutilized

Reason: Secured Area

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area; Extensive deterioriation

25 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 219014947–219014963, 219140447–219140454
Status: Unutilized
Reason: Secured Area

Minnesota

Bldgs. 113, 575, 598
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120167
Status: Unutilized
Reason: Secured Area

12 Bldgs.
Twin Cities Army Ammunition Plant
Old Highway 8
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219210014–219210015, 219220227–219220235, 219240328
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material

14 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219310055–219310056, 219320145–219320156
Status: Underutilized
Reason: Secured Area

Mississippi

Bldgs. 8301, 8303–8305, 9158
Mississippi Army Ammunition Plant
Stennis Space Center Co: Hancock MS 39529–7000
Landholding Agency: Army
Property Number: 219040438–219040442
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Missouri

Lake City Army Ammo. Plant 59, 59A, 59C, 59B
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669
Status: Unutilized
Reason: Secured Area

Bldg. #1, 2, 3
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120069
Status: Unutilized
Reason: Secured Area

2 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140422–219140423
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Nebraska

13 Bldgs.
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68802–
Location: 4 miles west (Potash Road)
Landholding Agency: Army
Property Number: 219013849–219013861
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldgs. 1L–19, 1CH19, 1P019, A0001, A0004
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219230092–219230094, 219310238–219310239
Status: Unutilized
Reason: Extenstive deterioration

Bldg. A0002
Corhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219310240
Status: Unutilized
Reason: Standby Generator Bldg.

Nevada

7 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219011953, 219011955, 219012061–219012062, 219012106, 219013614, 219230090
Status: Unutilized
Reason: Secured Area

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East side of Decatur Street—North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area

51 Bldgs.
Hawthorne Army Ammunition Plan
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Numbers: 219012009, 219012013, 219012021, 219012044, 219013615–219013651, 219013653–219013656, 219013658–219013661, 219013663, 219013665
Status: Underutilized
Reason: Secured Area (Some within airport run way clear zone; many within 2000 ft. of flammable or explosive material)

62 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: North Mag. Area
Landholding Agency: Army
Property Number: 219120150
Status: Unutilized
Reason: Secured Area

259 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South & Central Mag. Areas
Landholding Agency: Army
Property Number: 219120151
Status: Unutilized
Reason: Secured Area

Facility No. 00169
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415
Landholding Agency: Army
Property Number: 219240276
Status: Unutilized
Reason: Extensive deterioration

New Jersey

183 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Location: Route 15 north
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010667, 219010669–219010721, 219012423–219012424, 219012426–219012428, 219012430–219012431, 219012433–219012472, 219012474–219012475, 219013787, 219014306–219014307, 219014311, 219014313–219014321, 219030269, 219140617
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

18 Bldgs.
Armament Reserve Dev. and Engineering Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219012756–219012760, 219012763–219012767, 219230118–219230125
Status: Excess
Reason: Secured Area

12 Bldgs.
Fort Monmouth
Wall Co: Monmouth NJ 07719–
Landholding Agency: Army
Property Number: 219012829–219012833, 219012837, 219012841–219012842, 219013786, 219210102, 219230177, 219320157
Status: Unutilized
Reason: Secured Area

Bldgs. 13–14, 15A, 41, 100, 110–111
Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Location: Foot of 32nd Street and Route 169.
Landholding Agency: Army
Property Number: 219013890–219013896
Status: Unutilized
Reason: Floodway; Secured Area

Bldgs. 820C, 3598
Armament Research, Dev & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219240315–219240316
Status: Unutilized
Reason: Secured Area; Extensive deterioration

New York

Bldgs. 10, 20, 40
Watervliet Arsenal
Watervliet Co: Albany NY 12189–4050
Landholding Agency: Army

Property Number: 219012514, 219012516, 219012519
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 25
Watervliet Arsenal
Watervliet Co: Albany NY 12189–4050
Landholding Agency: Army
Property Number: 219012521
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Comment: contamination

Bldg. 110
Fort Totten
110 Duane Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012589
Status: Unutilized
Reason: Other
Comment: contamination

Bldgs. 202, 204, Fort Totten
Bayside Co: Queens NY 11357–
Landholding Agency: Army
Property Number: 219210130–219210131
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 110, Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439
Status: Unutilized
Reason: Secured Area

Bldgs. 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240440–219240443
Status: Unutilized
Reason: Secured Area; Extensive deterioration

North Carolina

12 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219230097, 219230099, 219310054, 219320158–219320166
Status: Unutilized
Reason: Extensive deterioration

Ohio

63 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148
Status: Unutilized
Reason: Secured Area

Bldgs. T–404, T–78, T–79, T–97, T–80, 309, 317
Defense Construction Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 219240331, 219310034–219310039
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated.)

Oklahoma

547 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Number: 219011674, 219011680, 219011684, 219011687, 219012113, 219013792, 219013981–219013991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004
Status: Underutilized
Reason: Secured Area; (Some are within 2000 ft. of flammable or explosive material)

P–3042, Fort Sill
3042 Austin Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130060
Status: Unutilized
Reason: Structurally unsound

19 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219140524, 219140525, 219140527–219140529, 219140535, 219140545, 219140548, 219140550–219140555, 219320167–219320169
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–3711, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240082
Status: Unutilized
Reason: Detached latrine

Bldgs. 26, 55–56, 463, 97, 563
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 219310050–219310053, 219320170–219320171
Status: Unutilized
Reason: Secured Area

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area

24 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 219320201
Status: Unutilized
Reason: Secured Area

Pennsylvania

Defense Personnel Support Ctr.
2800 South 20th Street
Philadelphia Co: Philadelphia PA 19101–8419
Landholding Agency: Army
Property Number: 219011664
Status: Underutilized
Reason: Other environmental; Secured Area
Comment: Friable asbestos

Hays Army Ammunition Plant
300 Miffin Road
Pittsburgh Co: Allegheny PA 15207–
Landholding Agency: Army
Property Number: 219011666
Status: Excess
Reason: Secured Area

58 Bldgs.
Fort Indiantown GAP
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219140267–219140324
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 82001, Reading USARC
Reading Co: Berks PA 19604–1528
Landholding Agency: Army
Property Number: 219320173
Status: Unutilized
Reason: Extensive deterioration

South Carolina

5 Bldgs. Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219310062–219310066
Status: Unutilized
Reason: Detached latrines

31 Bldgs. Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219310067–219310089, 219320174–219320181
Status: Unutilized
Reason: Extensive deterioration

Tennessee

Bldg. 100
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number: 219010475
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

23 Bldgs.
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number: 219010477, 219010479–219010500
Status: Underutilized
Reason: Secured Area. (Some are within 2000 ft. of flammable or explosive material).

23 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012312, 219012314, 219012316–

219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030266, 219140613
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).

30 Bldgs.
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37422
Landholding Agency: Army
Property Number: 219240127–219240136
Status: Unutilized
Reason: Secured Area.

Bldgs. I–156, J–52, K–8, T–1, T–2, T–10, T–104
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320185
Status: Unutilized
Reason: Secured Area.

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Texas

Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76079–
Landholding Agency: Army
Property Number: 219011665
Status: Unutilized
Reason: Other
Comment: easement to city of Saginaw for sewer pipeline ending 5/15/2023.

18 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 0021A, 0027A
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219012546, 219012548
Status: Unutilized
Reason: Secured Area

Bldg. 9042
Possum Kingdom Rec Area
Star Route, Box 200
Grayford Co: Palo Pinto TX 76045–
Landholding Agency: Army
Property Number: 219040397
Status: Unutilized
Reason: Detached latrine

Bldg. 9046
Possum Kingdom Rec Area
Star Route, Box 200
Grayford Co: Palo Pinto TX 76045–
Landholding Agency: Army
Property Number: 219040399
Status: Unutilized
Reason: Sewage treatment plant

Bldg. 9047
Possum Kingdom Rec Area
Star Route, Box 200
Grayford Co: Palo Pinto TX 76045–
Landholding Agency: Army
Property Number: 219040400
Status: Unutilized
Reason: Chlorine Building

12 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219120064, 219130002, 219140255, 219230109–219230115, 219320193–219320194
Status: Unutilized
Reason: Secured Area

Bldg. T–5000
Camp Bullis
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220100
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Swimming Pools
Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219230108
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs., Fort Hood
Ft. Hood Co: Coryell TX 76544
Landholding Agency: Army
Property Number: 219310166–219310170
Status: Unutilized
Reason: Detached latrines

Bldgs. 4134, 4135, 4137, Fort Hood
Ft. Hood Co: Coryell TX 76544
Landholding Agency: Army
Property Number: 219310171–219310173
Status: Unutilized
Reason: Secured Area

7 Bldgs., Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 219320186–219320192
Status: Unutilized
Reason: Extensive deterioration

Utah

23 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012115, 219012138, 219012140, 219012150, 219012153, 219012159, 219012162, 219012165–219012166, 219012172, 219012752, 219030366, 2190120283, 219240263, 219310040–219310049
Status: Unutilized
Reason: Secured Area

17 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012143–219012144, 219012148–219012149, 219012152, 219012155, 219012156, 219012158, 219012163, 219012171, 219012742, 219012751, 219014938, 2190120281, 219240265–219240267
Status: Unutilized
Reason: Secured Area

12 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013996–219013999, 219130008, 219130011–219130013 219130015–2190130018
Status: Underutilized
Reason: Secured Area

8 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219014693, 219130009–21930010, 219130014, 219220204–219220207
Status: Unutilized
Reason: Secured Area

Bldg. 104
Tooele Army Depot, North Area
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219120014
Status: Unutilized
Reason: Extensive deterioration

17 Bldgs.
Tooele Army Depot, South Area
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219120015–219120027, 219240264, 219240268, 219320195–219320196
Status: Unutilized
Reason: Extensive deterioration

Virginia

164 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633
Status: Unutilized
Reason: Within 2000 ft of flammable or explosive material; Secured Area

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Comment: Latrine, detached structure

30 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army

Property Number: 219120035–219120037, 219130006, 219230106, 219240083–219240118
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

Bldg. T–221
Vint Hill Farms Station
Warrenton Co: Fauquier VA 22186–
Landholding Agency: Army
Property Number: 219210142
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210–219220218, 219230100–219230103
Status: Unutilized
Reason: Secured Area

5 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219220312, 219220314, 219220316–219220318
Status: Underutilized
Reason: Extensive deterioration

44 Bldgs., Fort A.P. Hill
Bowling Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219240288–219240314
Status: Underutilized
Reason: Detached latrines

Bldg. B7103–01, Motor House
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Extensive deterioration

Bldg. 191, Fort Eustis
Newport News VA 23604
Landholding Agency: Army
Property Number: 219310090
Status: Underutilized
Reason: Extensive deterioration

32 Bldgs., Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219310133–219310159, 219310161–219310165
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3311, Fort Eustis
Newport News Co: None VA 23604
Landholding Agency: Army
Property Number: 219320197
Status: Unutilized
Reason: gas chamber

Washington

Bldg. 209
Yakima Firing Center
Yakima Co: Yakima WA 98901–5000
Location: Exit 26 off I–82 on Yakima Firing Center Road
Landholding Agency: Army
Property Number: 219040363
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

27 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219310108–219310132, 219320198–219320199
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

Bldg. 785, Vancouver Barracks
Vancouver Co: Clark WA 98661–3896
Landholding Agency: Army
Property Number: 219240325
Status: Unutilized
Reason: Extensive deterioration

Bldg. T209, Fort Lawton Cemetary
Seattle Co: King WA 98199
Landholding Agency: Army
Property Number: 219240326
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Other environmental; Secured Area
Comment: friable asbestos

154 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011254, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319, 219011320–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other environmental; Secured Area
Comment: friable asbestos

Bldg. P–10111
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013443
Status: Unutilized
Reason: Structure is boiler plant for hospital.

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area

3 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878
Status: Unutilized
Reason: Secured Area

Bldgs. 6513–27, 6823–2, 6861–4
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219210097–219210099
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

142 Bldgs., Fort McCoy
US Hwy. 21
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219210103–219210113, 219210115, 219240161–219240162, 219240164, 219240166–219240262, 219310208–219310237
Status: Unutilized
Reason: Extensive deterioration

17 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219220295–219220311
Status: Unutilized
Reason: Secured Area

Bldg 2126, Fort McCoy
Ft. McCoy Co: Monroe WI 54656
Landholding Agency: Army
Property Number: 2193320200
Status: Underutilized
Reason: Detached latrine

Land (by State)

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210095–219210096
Status: Excess
Reason: Secured Area

Alaska

Campbell Creek Range
Fort Richardson
Anchorage Co: Greater Anchorage AK 99507
Landholding Agency: Army
Property Number: 219230186
Status: Unutilized
Reason: Inaccessible

Illinois

Group 66A
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010414
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Parcel 1
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Location: South of the 811 Magazine Area, adjacent to the River Road.

Landholding Agency: Army
Property Number: 219012810
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Floodway

Parcel No. 2, 3
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013796–219013797
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway

Parcel No. 4, 5, 6
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013798–219013800
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway

Homewood USAR Center
18760 S. Halsted Street
Homewood Co: Cook IL 60430–
Landholding Agency: Army
Property Number: 219014067
Status: Underutilized
Reason: Secured Area

38,000 sq. ft. & 4,000 sq. ft. of Land
Rock Island Arsenal
South Shore Moline Pool Miss. River
Moline Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219240317–219240318
Status: Unutilized
Reason: Floodway

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway; Secured Area

Nebraska

Land
Cornhusker Army Ammunition Plant
Potash Road
Grand Island Co: Hall NE 68802–
Location: 4 miles west of Grand Island
Landholding Agency: Army
Property Number: 219013785
Status: Underutilized
Reason: Floodway

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

New York

Watervliet Arsenal
Watervliet Co: Albany NY 12189–4050
Location: East of Main Arsenal Reservation
Landholding Agency: Army
Property Number: 219012508
Status: Excess
Reason: Easement to N.Y. State, 6-lane highway construction.

Oklahoma

McAlester Army Ammo. Plant
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Pennsylvania

Lickdale Railhead
Fort Indiantown Gap
Lickdale Co: Lebanon PA 17038–
Landholding Agency: Army
Property Number: 219012359
Status: Excuss
Reason: Floodway

Tennessee

Land
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219013791
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN
Location: Area around VAAP—Outside fence in buffer zone.
Landholding Agency: Army
Property Number: 219013880
Status: Untilized
Reason: Withing 2000 ft. of flammable or explosive material; Secured Area

Utah

Land—32 Acres
Tooele Army Depot
Tooele Co: Tooele UT 84084
Landholding Agency: Army
Property Number: 219240269
Status: Unutilized
Reason: Secured Area

Virginia

Fort Belvoir Military Reservation—5.6 Acres
South Post located West of Pohick Road
Fort Belvoir Co: Fairfax VA 22060–
Location: Rightside of King Road
Landholding Agency: Army
Property Number: 219012550
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area
Comment: 5.6 acres

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unitilized
Reason: Secured Area

[FR Doc. 93–14195 Filed 6–17–93; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–02–4210–05; WYW101874]

Realty Action; Modified Competitive Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, modified competitive sale of public lands in Crook County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by modified competitive sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 STAT. 2750; 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

T. 54 N., R. 64 W.,
Sec. 27, SW¼SE¼.
40.00 acres.

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Area Manager, Bureau of Land Management, Newcastle Resource Area, 1101 Washington Blvd., Newcastle, Wyoming 82701, 307–746–4453.

SUPPLEMENTARY INFORMATION: This sale is consistent with Bureau of Land Management policies and the Newcastle Management Framework Plan. The purpose of this sale is to dispose of an isolated parcel of public land. The fair market values, planning document, and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Newcastle Resource Area, Newcastle, Wyoming.

The parcel will be offered by modified competitive sale to the adjoining landowners. The adjoining landowners will be required to submit proof of adjoining land ownership before a bid can be accepted.

The publication of this Notice of Realty Action in the Federal Register

shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant if the Notice segregates the land from the use applied for in the application. The segregative effect of this Notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation Notice is published, whichever occurs first.

Sale Procedures

1. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

2. Sealed bidding is the only acceptable method of bidding. All bids must be received in the Newcastle Resource Area Office by 11 a.m., August 25, 1993, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked on the front lower left-hand corner with the words "Public Land Sale, (WYW101874), Sale held August 25, 1993."

3. All sealed bids must be accompanied by a payment of not less than 10 percent of the total bid. Each bid and final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: Department of the Interior-BLM.

4. Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be honored or the land will be reoffered under competitive procedures. If two or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

5. If the parcel fails to sell, it will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Newcastle Resource Area Office by 11 a.m. on the fourth Wednesday of each month beginning September 22, 1993. Reoffered land will remain available for sale until sold or until the sale action is canceled or terminated. Reappraisals of the parcel will be made periodically to reflect the current fair market value. If the fair market value of the parcel changes, the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals will be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the BLM Newcastle Resource Area Office.

3. Any conveyance will be subject to the grazing use of Neimans' 77 Ranches, Inc. The rights of Neimans' 77 Ranches, Inc. to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. GR49–8406 shall cease two years from their receipt of notification which was April 8, 1993. The successful bidder is entitled to receive annual grazing fees from Neimans' 77 Ranches, Inc. in an amount not to exceed that which would be authorized under the Federal grazing fee published in the **Federal Register**.

For a period of 45 days from the date of this notice published in the **Federal Register**, interested parties may subject comments to the BLM, District Manager, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: June 9, 1993.

Karl S. Osvald,

Acting District Manager.

[FR Doc. 93–14357 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–22–M

[OR–942–00–4730–02: GP3–260]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 16 S., R. 1 W., accepted May 7, 1993 (Sheets 1 & 2)
T. 24 S., R. 2 W., accepted May 17, 1993
T. 35 S., R. 3 W., accepted April 29, 1993
T. 32 S., R. 7 W., accepted April 28, 1993
T. 29 S., R. 9 W., accepted April 29, 1993
T. 28 S., R. 10 W., accepted May 3, 1993

Washington

T. 8 N., R. 13 E., accepted May 24, 1993
T. 23 N., R. 19 E., accepted April 29, 1993
T. 28 N., R. 15 W., accepted April 28, 1993 (Sheets 1 & 2)

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 8, 1993.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–14355 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–33–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0055), Washington, DC 20503, telephone 202–395–7340.

Title: Rights of Entry, 30 CFR Part 877.
OMB Number: 1029–0055.
Abstract: This regulation establishes procedures for nonconsensual entry upon private lands by a regulatory authority for the purpose of reclamation activities or exploratory studies when the landowner's consent is refused or the landowner is not available.
Burean Form Number: None.
Frequency: On occasion.
Description of Respondents: Regulatory Authorities.
Estimated Completion Time: ½ hour.
Annual Responses: 130.
Annual Burden Hours: 65.
Bureau Clearance Officer: John A. Trelease, (202) 343–1475.

Dated: April 14, 1993.

Andrew F. DeVito,

Acting Chief, Division of Technical Services.

[FR Doc. 93–14406 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer; and to the Office of Management and Budget, Paperwork Reduction Project (1029–0091), Washington, DC 20503, telephone 202–395–7340.

Title: Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands—30 CFR part 750
OMB Approval Number: 1029–0091
Abstract: Operators who propose to conduct surface coal mining and reclamation operations on Indian lands must comply with the permitting and approval requirements of Part 750 which supplements the regulatory program by specifying additional requirements unique to Indian lands and outside the scope of the regulatory program.
Bureau form number: None.
Frequency: On occasion
Description of respondents: Surface coal mining companies
Estimated Completion Time: 22 hours
Annual Responses: 34
Annual Burden Hours: 72
Bureau Clearance Officer: John A. Trelease, 202–343–1475.

Dated: May 13, 1993.

Gene E. Krueger,

Chief Division of Abandoned Mine Land Reclamation.

[FR Doc. 93–14405 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,267 et al.]

Chevron U.S.A. Production Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification applicable to all workers of Chevron U.S.A. Production Company on July 19, 1992. The Notice was published in the **Federal Register** on August 4, 1992 (57 FR 34308).

The Department is amending the subject certification to reflect name changes resulting from a consolidation by the company.

The amended notice applicable to TA–W–27,267; TA–W–27,308; TA–W–27,310; TA–W–27,311; TA–W–27,312; TA–W–27,313; TA–W–27,316; TA–W–27,317; and TA–W–27,318 is hereby issued as follows:

All workers of Chevron U.S.A. Production Company operating at various Business Units and locations in the following cited States who became totally or partially separated from employment on or after the respective impact date listed below are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Impact Date of May 5, 1991

TA–W–27,267 Mid-Continent Business Unit—South Permian Profit Center, Midland, Texas
TA–W–27,267A Mid-Continent Business Unit—North Permian Profit Center, Midland, Texas
TA–W–27,267B Mid-Continent Business Unit—South Permian Profit Center, West Texas South of Midland, Texas
TA–W–27,267C Mid-Continent Business Unit—North Permian Profit Center, West Texas North of Midland, Texas
TA–W–27,267D Mid-Continent Business Units—North Permian Profit Center, New Mexico

Impact Date of May 19, 1991

TA–W–27,308 Western Business Unit, Bakersfield, California
TA–W–27,308A And operating at other locations in California
TA–W–27,310 Mid-Continent Business Unit—Central Profit Center Houston, Texas
TA–W–27,310A And operating at other locations in Texas
TA–W–27,310B Operating in Oklahoma
TA–W–27,310C Operating in North Dakota
TA–W–27,310D Operating in Mississippi
TA–W–27,310E Operating in Alabama
TA–W–27,310F Operating in Kansas
TA–W–27,310G Operating in Arkansas
TA–W–27,310H Operating in Louisiana
TA–W–27,311 Gulf of Mexico Business Unit, New Orleans, LA
TA–W–27,311A And operating at other locations in Louisiana
TA–W–27,311B Operating in Texas
TA–W–27,312 Mid-Continent Business Unit, Englewood Colorado
TA–W–27,312A Mid-Continent Business Unit—Rangely Profit Center Colorado, (except Englewood, Colorado)
TA–W–27,312B Utah
TA–W–27,312C Evanston Profit Center, Wyoming
TA–W–27,312D North Dakota
TA–W–27,312E Evanston Profit Center, Colorado (exc. Englewood, Colo)
TA–W–27,313 Natural Gas Business Unit, Houston, Texas
TA–W–27,313A Operating at other locations in Texas
TA–W–27,313B Operating in Louisiana
TA–W–27,313C Operating in California
TA–W–27,316 Land Business Unit, Houston, Texas
TA–W–27,316A And operating at other locations in Texas
TA–W–27,316B Operating in Colorado
TA–W–27,316C Operating in California
TA–W–27,316D Operating in Louisiana
TA–W–27,316E Operating in Alaska
TA–W–27,317 Exploration Business Unit, Houston, Texas
TA–W–27,317A And operating at other locations in Texas
TA–W–27,317B Operating in California
TA–W–27,317C Operating in Colorado

TA–W–27,317D Operating in Louisiana
TA–W–27,317E Operating in Alaska
TA–W–27,318 Finance Division, Concord, California
TA–W–27,318A And operating at other locations in California

Signed in Washington, D.C., this 8th day of June, 1993.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–14414 Filed 6–17–93; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than June 28, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 28, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 1st day of June, 1993.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Eddy Potash (USWA)	Carlsbad, NM	06/01/93	05/14/93	28,712	Potash.
Rohr, Inc. (UAW)	Hagerstown, MD	06/01/93	05/18/93	28,713	Aircraft parts.
Advanced Fabrications (workers)	Lansing, MI	06/01/93	05/19/93	28,714	Aircraft components.
New York Air Brake Corp. (IAMAW)	Watertown, NY	06/01/93	05/17/93	28,715	Rail braking systems.
Babco/Textron, Inc. (workers)	Danvers, MA	06/01/93	05/14/93	28,716	Jet engine parts.
Oberdorfor High Tex, Inc. (workers)	Sandpoint, ID	06/01/93	05/17/93	28,717	Forming fabrics for paper mills.
Cyprus Sierrita Corp. (workers)	Green Valley, AZ	06/01/93	05/13/93	28,718	Copper and molybdenum.
Celebrations, Inc. (workers)	Bronx, NY	06/01/93	05/03/93	28,719	Leather and vinyl cosmetic cases.
Capacitor & Power Protection (UERMW).	Fort Edward, NY	06/01/93	05/20/93	28,720	Capacitors.
Boeing Commercial Airplane Group (workers).	Seattle, WA	06/01/93	05/28/93	28,721	Airplanes.
Anchor Woven Label Co. (ACTWU)	Alcoa, TN	06/01/93	05/21/93	28,722	Woven labels.
Allied Signal Aerospace (workers)	Eatontown, NJ	06/01/93	05/20/93	28,723	Power generators.
Cherry-Burrell, Process Equip. (CBIU)	Little Falls, NY	06/01/93	05/19/93	28,724	Stainless steel tanks and vessels.
Schmitt Forge, Inc. (workers)	Portland, OR	06/01/93	05/19/93	28,725	Turnbuckles, chain and anchor shackles.
Rogue River National Forest (NFFE)	Medford, OR	06/01/93	04/29/93	28,726	Standing timber.
Ohio Edison/Penn Power (workers)	Lorain, OH	06/01/93	05/21/93	28,727	Electrical power.
Dayton Walther Corp. (Co)	Muncie, IN	06/01/93	05/17/93	28,728	Truck fifth wheels.
Mountain Fir Chip Co. (workers)	(The) Dallas, OR	06/01/93	05/12/93	28,729	Wood chips.
DeLong Sportswear (Co)	Harmony, ME	06/01/93	05/18/93	28,730	Ladies', Mens' and childrens' jackets.
Cleveland Pneumatic Co. (Co)	Cleveland, OH	06/01/93	05/21/93	28,731	Aircraft landing gears.
Cleveland Plating Co. (Co)	Cleveland, OH	06/01/93	05/21/93	28,732	Aircraft landing gears.

[FR Doc. 93–14413 Filed 6–17–93; 8:45 am]
BILLING CODE 4510–30

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects

to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Florida
FL930055 (June 18, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama
AL930015 (Feb. 19, 1993)
AL930032 (Feb. 19, 1993)
Massachusetts
MA930010 (Feb. 19, 1993)
New Jersey
NJ930002 (Feb. 19, 1993)
NJ930003 (Feb. 19, 1993)
Pennsylvania
PA930001 (Feb. 19, 1993)
PA930002 (Feb. 19, 1993)
PA930008 (Feb. 19, 1993)
PA930022 (Feb. 19, 1993)

Volume II

Iowa
IA930007 (Feb. 19, 1993)
Illinois
IL930001 (Feb. 19, 1993)
IL930015 (Feb. 19, 1993)
Michigan
MI930001 (Feb. 19, 1993)
Missouri
MO930001 (Feb. 19, 1993)
MO930003 (Feb. 19, 1993)
MO930010 (Feb. 19, 1993)
Nebraska
NE930015 (Feb. 19, 1993)
NE930016 (Feb. 19, 1993)
NE930017 (Feb. 19, 1993)
NE930018 (Feb. 19, 1993)
NE930024 (Feb. 19, 1993)
NE930040 (Feb. 19, 1993)
NE930055 (Feb. 19, 1993)
NE930056 (Feb. 19, 1993)

Volume III

Arizona
AZ930002 (Feb. 19, 1993)
Washington
WA930001 (Feb. 19, 1993)
WA930002 (Feb. 19, 1993)
WA930005 (Feb. 19, 1993)
WA930006 (Feb. 19, 1993)
WA930008 (Feb. 19, 1993)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 11th day of June 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–14178 Filed 6–17–93; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE 93–056]

NASA Wage Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 21321, Notice Number 93–030, April 20, 1993.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: June 30, 1993, 1:30 p.m. to 3:30 p.m. The National Aeronautics and Space Administration, room 3G38, Two Independence Square, 300 E. Street, SW., Washington, DC 20546–0001.

CHANGES IN THE MEETING: Dates changed to July 15, 1993, 10 a.m. to 12 Noon.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Green Glasco, Code FPP, National Aeronautics and Space Administration, Washington, DC 20546, (202/358–1218).

Dated: June 11, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–14445 Filed 6–17–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; New System of Records

AGENCY: NATIONAL SCIENCE FOUNDATION (NSF).

ACTION: Add a system of records.

SUMMARY: The National Science Foundation (NSF) proposes to add a record system to its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on July 18, 1993 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the NSF Privacy Act Officer, Division of Contracts, Policy, and Oversight, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. Herman G. Fleming, Privacy Act Officer, at (202) 357–7335.

SUPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that the NSF proposes to establish a system of records identified as NSF–57, entitled: Delinquent Debtors File.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be provided a 30-day period in which to comment on the new record system.

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on June 7, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Government Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 1985 (50 FR 52738, December 24, 1985).

Dated: June 15, 1993.

Herman G. Fleming,

Reports Clearance and Privacy Act Officer, National Science Foundation.

NSF–57

SYSTEM NAME:

Delinquent Debtors File.

SYSTEM LOCATION:

Division of Financial Management, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, panelists, recipients of fellowship stipends and others indebted and owing money to the National Science Foundation (NSF).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on individual debtor. Normally, the name, Social Security Number, address, amount of debt or delinquent amount, basis of the debt, date debt arose, office referring debt, agency collection efforts, credit reports, debt collection letters, correspondence to or from the debtor relating to the debt and correspondence with employing agencies of debtors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966, Pub. L. 89–508; Debt Collection Act of 1982, Pub. L. 97–365; and E.O. 9397.

PURPOSE(S):

Information is used for the purpose of collecting monies owed NSF arising out of any administrative or program activities or service administered by NSF. The file represents the basis for the debt and amount of debt and actions taken by NSF to collect the monies owed under the debt. The credit report or financial statement provides an understanding of the individual's financial condition with respect to requests for deferment of payment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b)(3) of the Privacy Act, these records or information contained therein, may specifically be disclosed outside the agency as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use listed shall be construed to limit or waive any other routine use specified herein:

1. To the U.S. General Accounting Office (GAO), Department of Justice, United States Attorney, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

2. To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

3. To a debt collection agency for the purpose of collection services to recover indebtedness owed to NSF.

4. Debtor's name, Social Security Number, the amount of debt owed, and the history of the debt may be disclosed to any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on NSF's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365).

5. To any other Federal agency including, but not limited to, the Internal Revenue Service (IRS) pursuant to 31 U.S.C. 3720A, for the purpose of effecting an administrative offset against the debtor of a delinquent debt owed to NSF by the debtor.

6. To the Internal Revenue Service by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by NSF against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217 and 3718.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other NSF purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individual for its own debt collection purpose.

7. Data base information consisting of debtor's name, Social Security Number, and amount owed may be disclosed to the Defense Manpower Data Center (DMDC), Department of Defense, the U.S. Postal Service or to any other Federal, state, or local agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, so as to identify and locate delinquent debtors in order to start a recoupment process on an individual basis of any debt owed NSF by the debtor arising out of any administrative or program activities or services administered by NSF.

8. Disclosure of personal and financial information from this record system on current, retired or former employees of NSF may be made to any creditor Federal agency seeking assistance for the purpose of that agency implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the United States government from an individual. An exception to this routine use is an individual's mailing address obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this record system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are automated and may also be maintained in file folders.

RETRIEVABILITY:

Records are retrieved by the name or Social Security Number.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. Records are kept in limited access areas during duty hours and in locked cabinets at all other times.

RETENTION AND DISPOSAL:

Records are disposed of when ten years old except documents needed for an ongoing investigation in which case the record will be retained until no longer needed in the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Management, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Division of Financial Management, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Individual should furnish full name, Social Security Number, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Division of Financial Management, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Individual should furnish full name, Social Security Number, current address and telephone number.

CONTESTING RECORD PROCEDURES:

The National Science Foundation's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in NSF Manual No. 1; 45 CFR part 613; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records obtained from the individual, institution, award records, collections agencies, and other appropriate agencies, i.e., DMDC, IRS, GAO, USPS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–14447 Filed 6–17–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.160, "monitoring the Effectiveness of Maintenance at Nuclear Power Plants," provides guidance on meeting the Commission's rules on maintenance and on monitoring the effectiveness of maintenance in nuclear power plants. The maintenance rule, 10 CFR 50.65, "Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," becomes effective on July 10, 1996.

The Regulatory Analysis and the Backfit Analysis prepared for Regulatory Guide 1.160 are available for inspection or copying in the NRC Public Document Room, 2120 L Street NW., Washington, DC. Copies of all regulatory guides are also available in the NRC Public Document Room. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202)512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 4th day of June 1993.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director Office of Nuclear Regulatory Research.

[FR Doc. 93–14401 Filed 6–17–93; 8:45 am]

BILLING CODE 7590–01–M

Bingham Engineering

[Docket No. 40–9014]

Final Finding of No Significant Impact and Notice of Intent to Issue Source and Byproduct Material License SUA–1556 to Bingham Engineering, Salt Lake County, Utah, to Authorize Extraction and Testing of Mill Tailings Solution

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Final Finding of No Significant Impact and Intent to Issue a Source and Byproduct Material License.

1. Proposed Action

The proposed administrative action is to issue a source and byproduct material license which will authorize Bingham Engineering to extract leachate solution from mile tailings. A portion of the leachate solution will be used to test the hydraulic properties of clay material that would serve as a clay liner for a proposed disposal cell. Effluent from this test, as well additional unused leachate solution, will be transferred to an EPA-certified laboratory for further analyses.

2. Reasons for Final Finding of No Significant Impact

Bingham Engineering has been contracted by Envirocare of Utah to test that the clay liner for a proposed mill tailings disposal cell will adequately protect against leakage of tailings seepage. Upon review of the license application dated May 12, 1993, the Commission has determined that no significant impacts will result from the proposed activity, and that an Environmental Assessment is not warranted.

The following statements support the final Finding of No Significant Impact and summarize the project evaluation based on the license application.

A. The licensee will receive a small quantity (25 kg) of byproduct material in sealed containers. Throughout the testing procedures, the only exposure of byproduct material to the atmosphere will be during the initial transfer of material from the transportation containers to laboratory containers.

B. The licensee has committed to a Radiation Safety Program in conformance with Title 10 of the Code of Federal Regulations, part 20.

C. All waste, including processed materials and clothing, will be returned to the source of the byproduct material.

In accordance with 10 CFR 51.33(e), the Director, Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact in the **Federal Register**. Concurrent with this finding, the staff will issue Source and Byproduct Material License SUA–1556 which authorizes Bingham Engineering to receive and handle 25 kg of byproduct material. The licensee is required to return any contaminated materials and waste developed from tests which employed the tested byproduct material back to the byproduct material source.

This finding, together with documents setting forth the bases for the finding, are available for public inspection and copying at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Denver, Colorado, this 9th day of June 1993.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office, Region IV.

[FR Doc. 93–14400 Filed 6–17–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–77 and DPR–79, issued to the Tennessee Valley Authority, licensee for the Sequoyah Nuclear Plant Units 1 and 2. The plants are located at the licensee's site in Hamilton County, Tennessee. The exemption was requested by the licensee by letter dated June 5, 1993.

Environmental Assessment

Identification of Proposed Action

The proposed action requests an exemption from certain requirements of 10 CFR 50.60, "Acceptance criteria for fracture prevention measures for light-water nuclear power reactors for normal operation," to allow application of an alternate methodology to determine the low temperature overpressure protection (LTOP) setpoint for the Sequoyah Nuclear Plant Units 1 and 2. The proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineer (ASME) working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, "Low Temperature Overpressure Protection," which has been approved by the ASME Code Committee. NRC endorsement of the WGOPC methodology, and publication of the Code Case, are expected in the near future.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintain the Technical Specification P/T limits applicable for normal heatup and cooldown in accordance with Appendix G to 10 CFR part 50 and sections III and XI of the ASME Code.

The Need for the Proposed Action

10 CFR 50.60 states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR 50 defines P/T limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of Power Operated Relief Valves (PORVs) that are set at a pressure low enough that if a transient occurred while the coolant temperature is below the LTOP enabling temperature, they would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint. The P/T limits and operability requirements for the LTOP system are incorporated into Technical Specification 3.4.12.

The licensee has determined that the generic methodology used by Westinghouse Electric Corporation to calculate the LTOP setpoint for Sequoyah is deficient since it did not account for the differential pressure across the reactor core during reactor coolant pump operation. The resultant errors consist of: (a) Static head differences between the reactor coolant system (RCS) wide range pressure transmitter sensing point and the referenced point of the Appendix G curves, (b) Flow velocity induced pressure drops throughout the RCS, and (c) nozzle differential pressure drop. As a result, the analytically determined maximum pressure limits for LTOP events for a certain design basis condition exceeded the pressure limits of the 10 CFR part 50 Appendix G curves. Therefore, the licensee proposed

that in determining the PORV setpoint for LTOP events for Sequoyah, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by Appendix G to 10 CFR part 50. The alternate methodology is consistent with ASME Code Case N–514 that is expected to be approved and published in the near future.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated June 5, 1993, the licensee requested an exemption from 10 CFR 50.60.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) Assuming a flaw at the surface with a depth of one quarter of the vessel wall thickness and a length of six times its depth, and (c) Using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Sequoyah reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients. In addition, application of the Code Case would allow continued operation with the present PORV setpoints and Technical Specification requirements.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environment impact.

With regard to potential non-radiological impacts, the proposed change involves use of more realistic safety margins for determining the PORV setpoint during LTOP events. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

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 did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of the Sequoyah Nuclear Plant, dated February 13, 1974.

Agencies and Persons Consulted

The NRC staff consulted with the state of Tennessee regarding the environmental impact of the proposed action. The state official had no comments.

Finding Of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes 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 request for exemption dated June 5, 1993, which is available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 15th day of June 1993.

For the Nuclear Regulatory Commission

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–14399 Filed 6–17–93; 8:45 am]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Moon River, Indian River County, FL

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Moon River, located in Vero Beach, Indian River County, Florida, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until September 16, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Morris Bocian, Resolution Trust Corporation, c/o BEI/Ritz Asset Management, Department: VF, 3000 Hadley Road, South Plainfield, NJ 07080, (908) 412–9100; Fax (908) 412–9119.

SUPPLEMENTARY INFORMATION: The Moon River property is located along State Road A–1–A in Vero Beach, Indian River County, Florida. The site is situated within a floodplain and borders the Indian River Intercoastal Waterway. The Indian River-Malabar to Vero Beach State Aquatic Preserve comprises the adjacent waters and State lands known as Wabasso Island are located immediately west of the site. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The Moon River property consists of approximately 73.74 acres of land, 16 acres of which consist of developed condominium units. The remaining 57.74 acres is unimproved. The property is irregular in shape, generally level with a downward slope towards the shoreline, and located within a Flood Hazard Zone.

Property size: Approximately 73.74 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before September 16, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by September 16, 1993 to Mr. Morris Bocian at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Moon River

Federal Register Publication Date: June 18, 1993

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: June 15, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–14430 Filed 6–17–93; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; Mountain Lakes Estates, Passaic County, NJ

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Mountain Lakes Estates, located near Wanaque, Passaic County, New Jersey, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until September 16, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Michael Dunigan, Resolution Trust Corporation, c/o BEI/Ritz Asset Management, Department: Somerset, 3000 Hadley Road, South Plainfield, NJ 07080, (908) 412–9100; Fax (908) 412–9119.

SUPPLEMENTARY INFORMATION: The Mountain Lakes Estates property is located in Midvale on the south side of Conklintown Road and Linda Road, ¾ miles east of Ringwood and ¾ miles west of Skyline Drive. The property contains wetlands, Stephens Lake, and is adjacent to Ramapo Lake Natural Area and Ramapo Mountain State Forest. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The Mountain Lakes Estates property is irregular in shape and consists of approximately 138.3 acres of undeveloped land. The property contains several areas of wetlands, a small watercourse, and a large portion of wetlands on the east side of Stephens Lake. Elevations on the site range from 320 feet to 550 feet.

Property size: Approximately 138.3 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before September 16, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by September 16, 1993 to Mr. Michael Dunigan at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Mountain Lakes Estates

Federal Register Publication Date: June 18, 1993.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: June 15, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–14431 Filed 6–17–93; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; Tract 17413–4 & Parcel 14 of PM 23910, Riverside County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Tract 17413–4 & Parcel 14 of PM 23910, located in Lake Elsinore, Riverside County, California, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until September 16, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. E. Ted Hine, Resolution Trust Corporation, California Field Office, 4000 MacArthur Blvd., Third Floor, East Tower, Newport Beach, CA 92660–2516, (714) 263–4648; Fax (714) 852–7770.

SUPPLEMENTARY INFORMATION: Tract 17413–4 & Parcel 14 of PM 23910 are located in Lake Elsinore, California, and consist of two parcels separated by a 200 foot wide strip of land owned by the Elsinore Valley Municipal Water District. The site has recreational value and one of the parcels is zoned for open space. Canyon Lake is also adjacent to the site and owned by the Elsinore Valley Municipal Water District. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: Tract 17413–4 & Parcel 14 of PM 23910 consist of approximately 103.9 total acres. The site is undeveloped and bisected by a riparian channel used for overflow water from Canyon Lake. Tract 17413–4 consists of hillside lots some of which overlook Canyon Lake Reservoir. Parcel 14 of PM 23910 consists of rock covered hills and is zoned for open space.

Property size: Approximately 103.9 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before

September 16, 1993 by the Elsinore Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal Government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by September 16, 1993 to Mr. E. Ted Hine at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Tract 17413–4 & Parcel 14 of PM 23910

Federal Register Publication Date: June 18, 1993

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife, refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: June 15, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–14432 Filed 6–17–93; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32455; File Nos. SR-Amex-93–07; SR–BSE–93–08; SR–MSE–93–03; SR–NASD–93–11; SR–NYSE–93–13; SR–PSE–93–04; and SR-Phlx-93–09)]

Self-Regulatory Organizations; American Stock Exchange; Boston Stock Exchange; Midwest Stock Exchange; National Association of Securities Dealers; New York Stock Exchange; Philadelphia Stock Exchange; Pacific Stock Exchange; Order Approving Proposed Rule Changes Relating to the Book-Entry Settlement of Securities Transactions

June 11, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the above mentioned self-regulatory organizations ("SROs") filed proposed rule changes[2] with the Securities and Exchange Commission ("Commission") regarding the book-entry settlement of securities transactions. The Commission published notice in the **Federal Register** to solicit comments on the proposed rule changes from interested persons.[3] No comments were received. This order approves the proposals.

I. Description

The proposed rule changes require members, member organizations, or affiliated members of SROs to use the facilities of a securities depository[4] for the book-entry settlement of all transactions in depository-eligible securities[5] with another financial intermediary (broker, dealer, or bank). In addition, the rules prohibit members, member organizations, or affiliated members of the SROs from effecting a delivery-versus-payment ("DVP") or receipt-versus-payment ("RVP") transaction in a depository-eligible security with an institutional customer unless the transaction is settled by book-entry using the facilities of a securities depository.[6] The proposed rules supersede any existing provisions of the SROs' rules that are inconsistent with the proposed rules.

The proposed rules do not apply to transactions in securities that are not depository-eligible or transactions in which settlement occurs outside the U.S.[7] The proposed rules also contain exceptions for transactions for same-day settlement where the deliverer cannot by reasonable efforts deposit the securities prior to a depository's cut-off time for same-day crediting of deposited securities and other special transactions where the deliverer cannot by reasonable efforts deposit the securities prior to a cut-off date that is established by a depository. With respect to the exception for transactions for same-day settlement, the NASD's form of the proposed rule change omits the phrase "cannot by reasonable efforts" and allows the exception only where the deliverer "is unable to" deposit the securities prior to a depository's cut-off time for same-day crediting of deposited securities and for other special transactions where the deliverer "is unable to" deposit the securities prior to a cut-off date that is established by a depository. In order to provide broker-dealers with sufficient time to implement internal systems and procedural changes for compliance with the book-entry settlement requirement,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Proposed rule changes were filed with the Commission by each SRO in conjunction with substantially similar rule filings by the other SROs as follows: The American Stock Exchange ("Amex") on February ?, 1993; the Boston Stock Exchange ("BSE") on February ?, 1993; the Midwest Stock Exchange ("MSE") on February 17, 1993; the National Association of Securities Dealers ("NASD") on March 1, 1993; the New York Stock Exchange ("NYSE") on March 4, 1993; the Pacific Stock Exchange ("PSE") on March 5, 1993; and the Philadelphia Stock Exchange ("Phlx") on March 5, 1993. The PSE's and BSE's proposed rule changes as originally filed were designated as filings of the Boston Stock Exchange Clearing Corporation and the Pacific Clearing Corporation, respectively. On March 17, 1993, and March 18, 1993, the PSE and the BSE, respectively, amended their proposed rule changes to designate the rule changes as filings of the exchanges. Letter to Jack Drogin, Special Counsel, Division of Market Regulation, Commission, from Michael D. Pierson, Market Regulation, PSE, dated March 17, 1993; and letter to Jack Drogin from Karen A. Aluise, Attorney, BSE, dated March 18, 1993.

[3] Securities Exchange Act Release No. 32039 (March 23, 1993), 58 FR 16893.

[4] For purposes of this rule, the term "securities depository" means a securities depository registered as a clearing agency under section 17A of the Act.

[5] The term "depository-eligible securities" means securities that (i) are part of an issue (as identified by a single CUSIP number [CUSIP is the acronym for the Committee on Uniform Securities Identification Procedures] of securities that is eligible for deposit at a securities depository and (ii) with respect to a particular transaction, are eligible for book-entry transfer at the depository at the time of settlement of the transaction.

[6] Currently, the SRO rules require book-entry settlement of all depository-eligible securities transactions between a member firm and its institutional clients, *i.e.*, the rules effectively create an exception for book-entry settlement of transactions between member firms. One of the practical effects of this proposal will be to expand the requirement of book-entry settlement to securities transactions among member firms. See *e.g.*, NYSE Rule 387, NASD Uniform Practice Code Section 64, and MSE Rules, Article XV, Rule 5.

[7] The proposed rules are not intended to apply to or affect the manner in which member firms settle transactions with traditional retail customers. However, the rule will apply to transactions with retail customers if the transaction is designated as one that will settle on a DVP or RVP basis.

the proposed rule changes will become effective sixty days after Commission approval.

II. Discussion

The Commission believes that the proposed rule changes are consistent with section 6(b)(5) of the Act.[8] Section 6(b)(5), among other things, requires that the rules of a national securities exchange be designed 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. Further, the Commission believes the proposals promote the purposes of section 17A of the Act.[9] In section 17A, Congress called for the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. In section 17A(e),[10] Congress directed the Commission to use its authority to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities.

Book-entry settlement of securities transactions has been a goal since Congress enacted the Securities Acts Amendments of 1975 ("1975 Amendments").[11] The 1975 Amendments were enacted in response to the "paperwork crisis" in the late 1960s which resulted from trading volumes that rose faster than the industry's ability to process transactions.[12] AT that time, securities processing was characterized by inefficient, duplicative, and manual broker-to-broker transaction processing.[13]

Since 1975, substantial progress has been made in reducing the flow of physical certificates for settlement of securities transactions.[14] The market breaks of October 1987 and 1989 again brought the physical transfer of certificates under close scrutiny. Recently, studies of the U.S. clearance and settlement system have recommended automating securities transfers to help reduce settlement time in the U.S. from five days to three days.[15] The proposed rule changes are designed to facilitate a move to T+3 by reducing the number of transactions in depository-eligible securities for which settlement is effected by the delivery of physical securities.[16] The Commission recently published for comment a proposed rule that, if adopted, would require most securities transactions to settle in three days.[17]

The proposal was developed through the efforts of the Legal and Regulatory Subgroup of the U.S. Working Committee, which included representatives of the Amex, MSE, NASD, NYSE, Phlx, DTC, the National Securities Clearing Corporation, the Municipal Securities Rulemaking Board, and the Commission's Division of Market Regulation. The Commission believes the proposed rule changes represent a significant step in removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The book-entry settlement requirement reduces cost, risk, and delays associated with the physical delivery of securities certificates. In addition, settlement of transactions by book-entry eliminates many of the labor intensive functions associated with physical delivery.[18]

The proposal reduces the potential cost to investors resulting from lost or misdirected certificates.[19] Furthermore, by requiring that transactions between member firms and transactions between member firms and institutional clients that settle on a DVP or RVP basis occur in a book-entry environment, the rule changes increase the efficiency of the U.S. clearance and settlement system and reduce the potential for systemic risk. Finally, the proposed rules reduce exception processing and the delay associated with certificate processing and physical delivery against payment. Thus, the proposed rules are consistent with the objectives of section 17A.

With respect to the exceptions contained in sections (g)(i) and (g)(ii) of the proposed rules[20] for transactions for sameday settlement, the NASD's form of the proposed rule will require such transactions to be settled by book-entry except when "* * * the deliverer *is unable to* deposit the securities in a securities depository prior to the cut-off time established by the depository for same-day crediting of deposited securities," or when "[t]he deliverer *is unable to* deposit the securities in a depository prior to a cut-off date established by the depository for that issue of securities." (emphasis added) The other SRO rules contain similar exceptions where the deliverer cannot *by reasonable efforts* deposit the securities prior to the cut-off time established by the depository. By excepting only those deliveries where the deliverer "*is unable to*" deposit securities in a securities depository, the

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] 15 U.S.C. 78q–1 (1988).

[10] 15 U.S.C. 78q–1(e) (1990).

[11] Public Law No. 94–29, 89 Stat. 97 (1975) (codified at 15 U.S.C. 77–80h (1982)). The 1975 Amendments included the adoption of section 17A. 15 U.S.C. 78q–1 (1988).

[12] Division of Market Regulation, Commission, Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems (1985).

[13] *Id.*

[14] See Securities Exchange Act Release Nos. 20221 (September 23, 1983), 48 FR 45167 (order granting full registration to nine clearing agencies ["Full Registration Order"]); 19698 (April 15, 1983), 48 FR 17604 (order implementing The Depository Trust Company's ("DTC") Fast Automated Securities Transfer program); 30283 (January 23, 1992), 57 FR 3658 (order implementing DTC's Deposit/Withdrawal at Custodian program); and 30505 (March 20, 1992), 57 FR 10683 (order eliminating DTC's Certificate on Demand service for most corporate issues). The Commission also recently approved a proposed rule change that requires most interdealer transactions in depository-eligible municipal securities to be settled by book-entry through the facilities of a securities depository. Securities Exchange Act Release No. 31645 (December 23, 1992), 57 FR 62407.

[15] The proposal serves as a key element in the implementation in the U.S. of the recommendation of the Group of Thirty regarding settlement on the third business day following the trade date ("T+3"). See Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets (March 1989). The Group of Thirty is an independent, non-partisan, non-profit organization established in 1978. In their March 1989 report, the Group of Thirty made nine recommendations for harmonizing clearance and settlement practices worldwide. A working committee, comprised of representatives from brokerage firms, banks, other financial intermediaries, and major industry organizations ("Working Committee"), was formed in the U.S. to study the existing U.S. clearance and settlement system and to recommend reforms consistent with the Group of Thirty recommendations. The Working Committee, after reviewing the nine Group of Thirty recommendations, concluded that the U.S. substantially complied with all but two of those recommendations—T+3 settlement and same-day funds settlement. In order to achieve T+3 settlement, the Working Committee recommended requiring book-entry settlement between financial intermediaries and between financial intermediaries and their institutional clients and depository eligibility for all new issuances. See Working Committee, Implementing the Group of Thirty Recommendations in the United States (November 1990). The Working Committee's recommendations were supported strongly by the report of the Bachmann Task Force. *See* Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets, Report Submitted to the Chairman of the Securities and Exchange Commission (May 1992).

[16] While the proposed rule changes will significantly reduce the number of transactions in depository-eligible securities for which settlement is effected by the delivery of physical certificates, the proposed rule changes will not eliminate the ability to obtain physical certificates after settlement of the transaction. Investors who wish to obtain physical certificates after settlement of the transaction may continue to do so.

[17] Securities and Exchange Commission Release Nos. 33–6976; 34–31904; IC–19282 (February 23, 1993), 58 FR 11806.

[18] For example, for affected transactions, it will not be necessary to determine whether certificates are in the proper denominations and in good deliverable form.

[19] *See* Ralph C. Ferrara and Konrad S. Alt, Immobilization of the Security Certificate: The U.S. Experience, Securities Regulation Law Journal, Vol. 15, No. 3 (1987).

[20] Securities Exchange Act Release No. 32039 (March 23, 1993), 58 FR 16893 (Exhibit A).

NASD intends to convey more clearly that the exception is available only in unusual circumstances. The Commission believes the NASD's version of this exception is consistent with the spirit of the exception in the other SRO book-entry settlement requirements. In both cases, the exception is intended to address corporate reorganizations and other extraordinary activities where a deliverer cannot meet a depository's established delivery cut-off time. The NASD's book-entry settlement rule will address such transactions while requiring transactions between member firms and transactions between member firms and institutional clients that settle on a DVP or RVP basis to occur, with rare exceptions, in a book-entry environment.

The Commission recognizes that some broker-dealers may need to make operational and procedural changes to settle their transactions by book-entry. In order to have a uniform commencement date and to allow broker-dealers time to make internal systems and operational changes, the proposal is to become effective sixty days following Commission approval. The deferred effectiveness should allow affected parties sufficient time to make the necessary changes to comply with the rule.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule changes are consistent with Sections 6 and 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule changes be, and hereby are, approved. The proposed rule changes will take effect sixty days following Commission approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1991).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34–32457; File No. SR–MSE–93–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the Midwest Stock Exchange, Inc. Relating to an Extension of the Pilot Program for Stopped Orders in Minimum Variation Markets

June 11, 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 June 1, 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, II and III below, which Items have been prepared by the self-regulatory organization. The MSE has requested accelerated approval of the proposal. 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 the pilot program for stopped orders in minimum variation markets through March 21, 1994.[3] This is the second requested extension of the pilot, originally approved in File No. SR–MSE–92–10 on January 14, 1992.[4] The first requested extension of the pilot was approved in File No. SR–MSE–93–04 by the Commission on March 10, 1993.[5] The pilot program was scheduled to expire on June 10, 1993.

The Exchange also requests permanent approval of this proposal based upon reports submitted to the Commission during the pilot program. The Exchange requests that the Commission consider this request for permanent approval during the pendency of the pilot program extension requested herein of the pilot procedures.

The Exchange requests accelerated effectiveness of this rule proposal in order to allow the pilot program to continue on an uninterrupted basis, and to allow the Commission adequate time to consider the Exchange's request for permanent approval of the pilot procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

1. Purpose

The purpose of the proposed rule change is to extend the MSE pilot program through March 21, 1994. The pilot program established a procedure regarding the execution of "stopped" market orders in minimum variation markets (usually an ⅛th point spread market). Exchange rules now require specialists to grant stops if an out-of-range execution would result,[6] regardless of the spread.[7] The Exchange also has an existing policy regarding the execution of stopped market orders generally.[8] However, the Exchange believes it is necessary to establish a separate policy for executing stopped

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] As originally filed with the Commission, the present proposal requested an extension of the pilot procedures for an additional three months. However, the MSE and the Commission have agreed to extend the pilot procedures through March 21, 1994. Telephone conversation between Dan Liberti, Associate Counsel, MSE, and Betsy Prout, Staff Attorney, Commission, on June 8, 1993.

[4] *See* Securities Exchange Act Release No. 30189 (January 14, 1992), 57 FR 2621 (January 22, 1992) (order approving MSE pilot program for stopped orders in minimum variation markets) ("January 1992 Approval Order").

[5] *See* Securities Exchange Act Release No. 31975 (March 10, 1993), 58 FR 14230 (March 16, 1993) (order granting accelerated approval of extension of pilot program for stopped orders in minimum variation markets) ("March 1993 Approval Order").

[6] The term "out-of-range" means either higher or lower than the price range in which the security traded on the primary market during a particular trading day.

[7] The Exchange's Rules require specialists to grant stops if an out-of-range execution would result, regardless of the spread. These rules were in effect prior to the commencement of the pilot program procedures, and currently work in concert with the pilot program procedures. *See* Exchange Rule 37 (Article XX).

[8] The policy is contained in the MSE "Blue Book Rules" Paragraph 13, which is found in the MSE Trading Floor Handbook (July, 1992).

market orders when there is a minimum variation market.

The Exchange's current policy regarding the execution of stopped orders is to execute them after the next primary market sale on a "next or no better" basis.[9] In a minimum variation market, this policy frequently causes the anomalous result of requiring the execution of all pre-existing orders even if those orders are not otherwise entitled to be filled.[10]

The Exchange's pilot program procedures will prevent unintended results by requiring the execution of stopped market orders in minimum variation markets after a transaction takes place in the primary market at the stopped price or higher, or after the applicable MSE share volume is exhausted. In no event will a stopped order be executed at a price inferior to the stopped price.[11]

The proposed pilot program procedures will continue to benefit customers because they might receive a better price than the stop price, yet it also protects MSE specialists by eliminating their exposure to executing potentially large amounts of bids or offers when such executions would otherwise not be required under Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden 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 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 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 MSE. All submissions should refer to File No. SR–MSE–93–14 and should be submitted by July 9, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the MSE proposal to extend the pilot program for stopped orders in minimum variation markets, through March 21, 1994, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5)[12] and section 11(b)[13] of the Act. Section 6(b)(5) requires, among other things, that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Section 11(b) permits a specialist to effect only market or limited price transactions on the exchange as broker. The Commission believes that approving the proposal to extend, through March 21, 1994, the pilot program which amends MSE Article XX, Rule 37, should further the objectives of section 6(b)(5) and section 11(b) through the use of procedures designed to provide for the execution of stopped orders, in minimum variation markets, while still providing the possibility of price improvement to customers whose orders are granted a stop.

As discussed in the January 1992 Approval Order which initially approved the pilot procedures, and in the March 1993 Approval Order extending the pilot procedures through June 10, 1993, the Commission has been concerned about the practice of stopping stock for a number of years. Specifically, the Commission has voiced concern that the practice of stopping orders may cause customer limit orders on the book to be bypassed by the stopped orders, thereby compromising the specialist's fiduciary obligation to orders on the book.[14] Nevertheless, the Commission has allowed the practice of stopping stock in markets where the spread is twice the minimum variation because the possible harm to orders on the book would be offset by the possibility of price improvement to the stopped order when the spread between the bid and offer is reduced.[15] The Commission also has approved on-going New York Stock Exchange, Inc. ("NYSE") and American Stock Exchange, Inc. ("Amex") pilot programs which permit NYSE and Amex specialists, respectively, to stop stock in minimum variation markets under certain limited circumstances where there is an imbalance on the opposite side from the order being stopped, and the imbalance is of sufficient size, given the characteristics of the security, to

[9] "Next or no better" means that a customer who requests a stop at a specific price will not do any worse than that price and could do better.

[10] For example, assume the market in ABC stock is 20–20⅛; 50 x 50 (*i.e.* 5000 shares are bid at a price of 20 and 5000 shares are offered at a price of 20⅛). A transaction at 20⅛ would be out-of-range, and would therefore create a transaction at a price higher than any effected on the primary market that day. A customer places an order with the MSE specialist to buy 100 shares of ABC at the market. The specialist stops the order at 20⅛ (effectively guaranteeing that the customer bought the 100 shares at 20⅛ or at a better price to be determined) and the MSE specialist includes the order in his quote by bidding the 100 shares at 20. If the next sale on the primary exchange is for 100 shares at 20, MSE policy prior to the initiation of the pilot procedures requires the specialist to execute the stopped market order at 20. However, because the stopped market order does not have time or price priority, its execution would have triggered the requirement for the MSE specialist to execute all pre-existing bids (in this case 5,000 shares) based on the Exchange's rules of priority and precedence. This would have been so, even though the pre-existing bids were not otherwise entitled to be filled.

In the above example, Exchange Rule 37 (Article XX) would have required the MSE specialist to fill limit orders at the limit price only if such orders would have been filled had they been transmitted to the primary market. Therefore, the 100 share print at 20 in the primary market would have caused at most 100 of the 5,000 share limit order to be filled on the MSE. However, because the MSE's policy, prior to the initiation of the pilot procedures, regarding stopped orders would have required the 100 share stopped market order to be filled, all pre-existing bids at the same price would have been filled in accordance with Exchange Rule 16 (Article XX).

[11] Exchange Rule 28 (Article XX) states: An agreement by a member or member organization to "stop" securities at a specified price shall constitute a guarantee of the purchase or sale by him or it of the securities at the price or its equivalent in the amount specified.

If an order is executed at a less favorable price than that agreed upon, the member or member organization which agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] 15 U.S.C. 78k(b) (1988).

[14] See notes 4 and 5, *supra*. See also SEC, Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. 95, 88th Cong., 1st Sess., Pt. 2 (1963).

[15] See New York Stock Exchange, Inc., Rule 116.30; American Stock Exchange, Inc., Rule 109(c).

suggest the likelihood of price improvement.[16]

The MSE has had a policy for the execution of orders in minimum variation markets. MSE Rule 37, Article XX, requires that a specialist grant a stop if requested by an MSE member firm if the execution would occur outside of the primary market range for the day. Thus, this rule generally operates to ensure that MSE customers receive executions on the MSE that are no worse than if executed on the primary market. While the pilot program adds new procedures for stopping stock, the MSE has limited this practice to situations where the specialist stopping orders would not violate his or her fiduciary obligation to orders on the book. As discussed above, the pilot procedures provide that the stopped stock will only be executed if the primary market trades at the stopped price (thus, creating a new range for the day in the primary market which includes the stopped price), or if all of the displayed bid (in the case of stopped orders to buy) or offer (in the case of stopped orders to sell) has been exhausted on the MSE.

The Commission believes that the proposal is consistent with section 11(b) of the Act. Section 11(b) was designed, in part, to address potential conflicts of interest which may arise as a result of the specialist's dual role as agent and principal in executing transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist's book and their handling of discretionary agency orders.[17] The Commission has stated that, pursuant to section 11(b), all orders other than market or limit orders are discretionary and therefore cannot be accepted by specialists.[18] In our order approving the initiation of the MSE pilot program for stopping orders in minimum variation markets, the Commission stated its belief that, under the pilot, a specialist's treatment of stopped orders as equivalent to limit orders is appropriate, and consistent with section 11(b) of the Act because the orders would be automatically executed after a transaction takes place on the primary market at the stopped price. The Commission, therefore, believes that the requirements imposed on the specialist for granting stops in minimum variation markets under the MSE pilot procedures provide sufficient guidelines to ensure that the specialist implements the procedures in a manner consistent with his or her Section 11(b) market making obligations.

The Commission believes that the proposal is consistent with Rule 11b–1(a)(2)(ii) of the Act.[19] Rule 11b–1(a)(2)(ii) requires that a specialist engage in a course of dealings for his or her account that assists in the maintenance, so far as practicable, of a fair and orderly market. The Commission believes that the proposal should further the objectives with Rule 11b–1(a)(2)(ii), because the procedures should help the specialist to provide an opportunity for price improvement to the customer whose order is granted a stop, without requiring execution of pre-existing bids or offers when such executions otherwise would not be required under Exchange rules.

The Commission believes that it is appropriate to extend the pilot program procedures through March 21, 1994, in order to provide both the Commission and the Exchange an opportunity to study the effects of the revised procedures. At the same time, the pilot program should provide a benefit to investors through the possibility of price improvement to customers whose orders are granted stops in minimum variation markets. In our March 1993 Approval Order, the Commission specifically requested that the MSE monitor the operation of the pilot procedures during the pilot program and report its findings to the Commission. The Commission stated that the report should include, among other things, the MSE's findings with respect to the percentage of stopped orders that are executed at the stop price and the percentage of such orders that receive a price that is better than the stop price. The Commission stated that the report also should contain an analysis of the impact on orders on the book resulting from the execution of stopped orders at a price that is better than the stopped price to determine if orders are being bypassed.

The MSE submitted its report to the Commission on June 1, 1993 ("June 1993 Report").[20] This report indicates that orders stopped in minimum variation markets continue to be improved at a 90% rate, the same rate as it experienced during the initial pilot period.[21] The MSE also indicates that, 52% of the time, when stopped orders received an improved price, there was an contra-side order at the stopped price that was not executed when the stop was granted. The March 1993 Report found that 26% of the time contra-side orders were not executed at the stop price.[22] The Exchange maintains that this increase in unexecuted orders is offset by the significant number of stopped orders that received price improvement. The MSE states that a significant number of these orders subsequently were executed when their limit price was in range.

The Commission is approving the use of the pilot procedures through March 21, 1994, to allow the Commission an opportunity to review further the MSE's data and to allow the Commission an opportunity to request any additional information from the MSE concerning the pilot program. During the pilot extension, the Commission expects that the MSE will continue to monitor the operation of the pilot program procedures, using the criteria described above. Although the Commission believes that the MSE's report provides certain useful information concerning the pilot program, the MSE must provide more substantial data before the Commission can fairly and comprehensively evaluate the MSE's use of the pilot procedures.

First, the June 1993 Report indicates that 90% of orders stopped in minimum variation markets received price improvement. The Commission, therefore, believes that the pilot procedures provide a benefit to investors by offering the possibility of price improvement to customers whose orders are granted stops in minimum variation markets. The Commission requests that the MSE continue to

[16] See Securities Exchange Act Release Nos. 28999 (March 21, 1991), 56 FR 12964 (March 28, 1991) (order granting temporary accelerated approval to NYSE pilot program for stopping stock, File No. SR–NYSE–90–48); 30482 (March 16, 1992), 57 FR 10198 (March 24, 1992) (order extending for one year NYSE pilot program for stopping stock, File No. SR–NYSE–92–02); and 32031 (March 22, 1993) 58 FR 16563 (March 29, 1993) (order extending for one year NYSE pilot program for stopping stock). The NYSE pilot program for stopping stock is scheduled to expire on March 21, 1994. See also Securities Exchange Act Release Nos. 32185 (April 21, 1993), 58 FR 25681 (April 27, 1993) (order extending for one year Amex pilot procedures for stopping stock, File No. SR–Amex–93–10); and 30603 (April 17, 1992), 57 FR 15340 (April 27, 1992) (order temporarily approving Amex procedures for stopping stock, File No. SR–Amex–91–05). The Amex procedures for stopping stock are scheduled to expire on July 20, 1993.

[17] See H.R. No. 1383, 73rd Cong., 2d Sess. 22, S. Rep. 792, 73rd Cong., 2d Sess. 18 (1934).

[18] See note 14, *supra*

[19] 17 CFR 240.11b–1(a)(2)(ii) (1990).

[20] See letter from Roger D. Hendrick, Vice President, Corporate Marketing, MSE, to Diana Luka-Hopson, Branch Chief, Commission, dated May 28, 1993.

[21] *Id.* See also March 1993 Approval Order, *supra* note 5 for a description of the MSE's previous pilot report ("March 1993 Report"). The MSE June 1993 Report states that, during the week of May 17th through May 21st, approximately 975 market orders were stopped by MAX, the Exchange's automated order routing system. According to the MSE, 90% of those orders received improved execution prices, and the remaining orders received the price they would have received if the order had not been stopped.

[22] See March 1993 Approval Order, *supra* note 5, for a description of the MSE's March 1993 Report.

monitor the percentage of stopped orders executed at the stop price, as compared to the percentage of such orders receiving a better price. In order to determine whether small customer orders or larger orders receive the benefit of price improvement, the MSE should also calculate the percentage of stopped orders which are for 2,000 shares or less.

In terms of how the pilot program affected customer limit orders existing on the specialist's book, the MSE June 1993 Report only reports on one week of trading activity, and indicates that, 52% of the time, when stopped orders received an improved price, there was a contra-side order at the stopped price that was not executed when the stop was granted. Thereafter, the June 1993 Report merely states that a "significant number" of the unexecuted contra-side orders were subsequently executed when their limit price was in range.

As discussed above, the Commission historically has been concerned that book orders may get bypassed when stock is stopped. To reassure the Commission that the pilot program procedures do not harm public customers with orders on the specialist's book, the MSE should provide detailed facts supporting its conclusion, particularly with regard to orders on the book that are bypassed due to the procedures, that the MSE "experience has clearly demonstrated that the process has indeed improved execution prices for customers," as the MSE states in its June 1993 Report.

Specifically, the Commission requests that the MSE conduct a more rigorous review of this issue. The MSE should attempt to measure how often limit orders on the opposite side of the market from a stopped order are entitled to, but do not receive, immediate execution. At a minimum, the MSE should determine how often such limit orders are executed by the close of the day's trading, and the MSE should examine at least one full month's trading data, rather than one week. Finally, the MSE should conduct a one-day review of all book orders in the five stocks receiving the greatest number of stops, and should submit to the Commission both raw trade data for and a description of the final disposition of each such order.

The Commission notes that the pilot program procedures at hand primarily are designed to affect executions of orders on the same side of the market as the stopped order. However, the MSE has not provided the Commission with any data concerning the effect that the pilot program procedures has had on orders on the same side of the market as the stopped order. The Commission requests that the MSE include in its report a detailed analysis of the number of orders on the same side of the market as the stopped order, with all the orders' respective share volume, that would have been executed if the pilot procedures had not been in place. The Commission requests that this portion of the report examine at least one month's trading experience.

The Commission also requests that the MSE evaluate and report to the Commission on orders, if any, that are stopped by any specialists in a minimum variation market, but not through MAX. The Commission expects the MSE to monitor closely specialist compliance with the pilot procedures. Finally, the report should discuss whether, during the entire course of the pilot program, there have been any market surveillance investigations or customer complaints regarding the procedures, and if any, how those investigations or complaints have been resolved.

The Commission requests that the MSE report its finding on these matters by November 30, 1993. If the MSE determines to request an extension of the pilot program, the Commission requests that the MSE also submit a proposed rule change by November 30, 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**. This will permit the pilot program to continue on an uninterrupted basis. Further, the substance of the proposal has been noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it.[23]

It is therefore ordered, pursuant to section 19(b)(2) of the Act[24] that the proposed rule change is hereby approved for a pilot period expiring on March 21, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14417 Filed 6–17–93; 8:45 am]

BILLING CODE 8010–01–M

[23] See Securities Exchange Act Release No. 29958 (November 18, 1991), 56 FR 59309 (November 25, 1991) (notice of proposed rule change by MSE to initiate pilot procedures for stopping stock in minimum variation markets, File No. SR–MSE–91–10). No comments were received on the proposal.

[24] 15 U.S.C. 78s(b)(2) (1988).

[25] 17 CFR 200.30–3(a)(12) (1991).

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

June 14, 1993.

On June 9, 1993, the Midwest Stock Exchange, Inc. ("MSE") submitted an application for unlisted trading privileges ("UTP") Pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–10849	ZONE	Discovery Zone Inc., Common Stock, $.01 par value

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7–10850	CGNE	Calgene Inc., Common Stock, $.001 par value

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before July 6, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the

development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14416 Filed 6–17–93; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–914]

Application and Opportunity for Hearing: Beverage Group Acquisition Corporation; Seven-Up/RC Bottling Company of Southern California, Inc.

June 14, 1993.

Notice is hereby given that Beverage Group Acquisition Corporation ("Beverage Group") and Seven-Up/RC Bottling Company of Southern California, Inc. ("Seven-Up/RC") have filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Beverage Group from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than July 14, 1993, may submit to the Commission in writing his or her views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interests of the person submitting such information or requesting the hearing, the reasoning for such request, and the issues of fact or law raised by the application which he or she desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14374 Filed 6–17–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2648]

Oklahoma; Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated May 26, June 3, and June 7, 1993 to include the counties of Adair, Alfalfa, Atoka, Blaine, Caddo, Cotton, Craig, Creek, Custer, Dewey, Grant, Haskell, Jefferson, Kiowa, Lincoln, Love, Major, Marshall, McClain, Noble, Nowata, Okfuskee, Okmulgee, Pawnee, Pushmataha, Sequoyah, Wagoner, Washita, Woods, and Woodward in the State of Oklahoma as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding. This Declaration is further amended to establish the incident period as beginning on May 8 and continuing through May 26, 1993.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Beckham, Cherokee, Coal, Delaware, Ellis, Greer, Harper, Hughes, Jackson, Latimer, Le Flore, Mayes, McCurtain, McIntosh, Muskogee, Ottawa, Pittsburg, Roger Mills, and Tillman Counties in Oklahoma; Benton, Crawford, Sebastian, and Washington Counties in Arkansas; Barber, Cherokee, Comanche, Harper, and Labette Counties in Kansas; and Clay, Cooke, Lamar, Montague, and Wichita Counties in Texas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The economic injury number assigned to Arkansas is 791300.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 12, 1993 and for economic injury the deadline is February 14, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 10, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–14936 Filed 6–17–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2649]

TEXAS; Declaration of Disaster Loan Area

Collin County and the contiguous counties of Dallas, Denton, Fannin, Grayson, Hunt and Rockwall in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms and tornadoes which occurred on May 9, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 9, 1993, and for economic injury until the close of business on March 10, 1994, at the address listed below: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Business and non-profit organizations without credit available elsehere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 264912 and for economic injury the number is 791400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 10, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–14397 Filed 6–17–93; 8:45 am]

BILLING CODE 8025–01–M

[License #06/10–0096]

Walnut Street Capital Co.; Notice of License Surrender

Notice is hereby given that Walnut Street Capital Company ("Walnut Street"), a Louisiana limited partnership, has surrendered its license to operate as a small business

investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Walnut Street was licensed by the Small Business Administration on February 1, 1962.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on March 25, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

[Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies]

Dated: June 11, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–14398 Filed 7–17–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 11, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48851.

Date filed: June 8, 1993.

Parties: Members of the International Air Transport Association.

Subject: Comp Telex Reso 024f, Local Currency Fare Change—Portugal.

Proposed Effective Date: July 1, 1993.

Docket Number: 48856.

Date filed: June 10, 1993.

Parties: Members of the International Air Transport Association.

Subject: Telex TC31 South Pacific revalidation.

Proposed Effective Date: October 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–14378 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 11, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48854.

Date filed: June 9, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 7, 1993.

Description: Application of Voyageur Airways Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations, for a Foreign Air Carrier Permit to engage in Non-Scheduled Air Transportation of persons, property and mail between the United States and Canada.

Phyllis, T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–14377 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement: Honolulu, HI

AGENCY: Federal Highway Administration (FHWA), Dot.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: William R. Lake, Division Administrator, Federal Highway Administration, Office Address: 300 Ala Moana Boulevard, rm. ι3202, Honolulu, Hawaii 96813; Mailing Address: P.O. Box 50206, Honolulu, Hawaii 96950. Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Hawaii Department of Transportation, Highways Division will prepare an environmental impact statement (EIS) on a proposal to improve Nimitz Highway from Keehi Interchange to Pacific Street, a distance of approximately two miles. The project would improve the level of service in the presently heavily congested section of Nimitz Highway between Sand Island Access Road and Waiakamilo Road, and improve access to and from downtown Honolulu.

The need to improve traffic flow along Nimitz Highway is considered necessary to provide for the existing and projected traffic demand, since congestion already exists at peak times and future development projects are further likely to adversely affect the corridor. Alternatives under consideration include: (1) Taking no action; (2) Constructing a two-lane reversible viaduct, supported by single or double columns; (3) Widening the at-grade highway from its present 6 lanes to 8 lanes; and (4) Constructing two-grade separated interchanges, one at Sand Island Access Road and one at Waiakamilo Road.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State,and local agencies, and to private organizations and citizens who have appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of general public information meetings will be scheduled. In addition, a public hearing will be held after publication of the draft EIS. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments of questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 10, 1993.

William R. Lake,

Division Administrator Hawaii.

[FR Doc. 93–14356 Filed 6–17–93; 8:45 am]

BILLING CODE 14356–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 11, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this

information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0124
Form Number: None
Type of Review: Extension
Title: Disclosure of Information on Inward and Outward Vessel Manifest
Description: The information is used to grant a domestic importer's, consignee's and exporter' request for confidentiality of its identity from public disclosure.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 578
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion and annually
Estimated Total Reporting Burden: 289 hours
Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–14376 Filed 6–17–93; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Object Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit "Joan Miro," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at the Museum of Modern Art in New York, New York, from on or about October 13, 1993, to January 11, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–14283 Filed 6–17–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 116
Friday, June 18, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 23, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14575 Filed 6–16–93; 12:45 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 23, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposal under the Board's Payments System Risk Reduction Policy regarding daylight overdraft penalty fee for bankers' banks, Edge corporations, and limited purpose trust companies. (Proposed earlier for public comment; Docket No. R–0693).
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14576 Filed 6–16–93; 12:45 pm]

BILLING CODE 6210–01–P

POSTAL RATE COMMISSION

Change in Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 33144; June 15, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 P.M., June 23, 1993.

CHANGES IN THE MEETING: Additional item to be added to meeting: Issues in Docket No. A93-13.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW, Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93–14490 Filed 6–15–93; 4:22 pm]

BILLING CODE 7710–FW–P

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m., June 25, 1993.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. MC93–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93–14491 Filed 6–15–93; 4:22 pm]

BILLING CODE 7710–FW–P–M

federal register

Friday
June 18, 1993

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Ch. I and Part 101
Dietary Supplements; General Requirements for Nutrition Labeling; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 93N–0178]

RIN 0905–AD90

Regulation of Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is reviewing the manner in which it regulates dietary supplements, including products containing vitamins, minerals, amino acids, herbs, and other similar nutritional substances. FDA is requesting public comment on approaches, consistent with the requirements of the Federal Food, Drug, and Cosmetic Act (the act), for assuring the safety of such products offered as dietary supplements. FDA is announcing the agency's intention to bring amino acid-containing dietary supplement products into compliance with the law and requests manufacturers of these products to submit any additional information that may be available on the safety and use of individual amino acids or combinations of amino acids as ingredients in dietary supplements. FDA is also announcing the availability of a report entitled "Task Force on Dietary Supplements Final Report" and requests comment on the recommendations made in this report. This action is being taken in response to the Dietary Supplement Act of 1992 (the DS act), recent developments and events in the marketplace, and the report of an outside expert body on the safety of amino acid supplements.

DATES: Written comments by August 17, 1993.

ADDRESSES: Submit written requests for single copies of "Task Force on Dietary Supplements Final Report," to the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The "Task Force on Dietary Supplements Final Report," and comments received in response to this document are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judith S. Kraus, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5233.

SUPPLEMENTARY INFORMATION:

I. Background

A. Description of Dietary Supplements

Dietary supplements constitute a large and diverse class of products consumed in capsule, tablet, liquid, or powder form by a substantial portion of the American public. These supplements encompass a wide array of products that include vitamins, essential minerals, protein, amino acids, herbs, animal and plant extracts (e.g., garlic extracts and inert glandulars), fats and lipid substances (e.g., fish oils, sterols, and essential fatty acids), dietary fibers, and chemical compounds that may have biological activity but that are generally not recognized as nutrients under the traditional definition of that term (e.g., bioflavonoids, enzymes, nucleic acids, para-aminobenzoic acid, and rutin).

Many of the ingredients in dietary supplements are concentrated substances that occur naturally in plant and animal products that have a history of safe use as food. When these substances are prepared for incorporation into dietary supplements in tablet, capsule, or bulk powder form, significant differences from their conventional food forms may result. For example, a substance may be added to a supplement at a much higher concentration than naturally found in foods, making it easy to ingest the target substance in an amount that greatly exceeds the intake that is likely or possible from food in conventional food form. What is safe at low levels in foods may not necessarily be safe at higher levels or in more concentrated forms. The chemical form of the substance in dietary supplements may also differ from that commonly consumed in foods in conventional food form.

Supplement products are frequently sold in containers that look like, and that have label information resembling, drugs (e.g., expiration dates, lot numbers, cotton fillers, tamper proof caps). Product information leaflets bearing claims are often available on store shelves and at the point of purchase. Products or particular ingredients in products may also be promoted by sales person at health food and specialty nutrition stores.

B. Recent Developments Suggesting Need for a Review

Significant changes in the dietary supplement market and in consumers' use of supplements have occurred in recent years. Public interest in the potential effect of vitamins (e.g., vitamin E and other antioxidant vitamins) in lowering the risk of chronic disease, a wider marketing and promotion of amino acids (e.g., for body building), and a general growth in the herbal market have contributed to this changing market. Consumers have reported the use of dietary supplements for various reasons: Cultural and ethnic practices, perceived health and nutritive effects including emotional and psychological needs, and perceived insurance against dietary insufficiency (Refs. 1 and 2). There is wide variation in the use of these products according to age, lifestyles, socioeconomic status, and geographic location.

Dietary supplements are now readily obtainable at grocery stores, drug stores, health food stores, and specialty nutrition stores, as well as by mail order. These products are also widely advertised in health promotion or body building magazines. A recent survey of dietary supplement advertisements showed that 12 health and body building magazines contain advertisements for 311 dietary supplement products from 89 different companies (Ref. 4).

At the same time that dietary supplement use is growing, there have been at least two recent significant outbreaks of public health problems associated with dietary supplements. In 1989, at least 1,500 cases of eosinophilia myalgia syndrome (EMS), including 38 deaths, were associated with the use of L-tryptophan-containing dietary supplements. Within the last year, there also have been a number of reports of serious illnesses associated with certain herbal and other botanical supplements. These developments have raised significant public health concerns.

Another significant factor that has compelled FDA to review current regulatory policies is enactment by Congress of the DS Act (Pub. L. 102–571). This legislation imposed a 1-year moratorium on FDA implementation of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments (Pub. L. 101–535)) with respect to dietary supplements not in conventional food form, called for studies by the General Accounting Office and the Office of Technology Assessment of FDA's regulatory program for dietary

supplements, and ordered FDA to complete a new round of rulemaking by the end of 1993 implementing the 1990 amendments for dietary supplements.

In addition to rulemaking, FDA is developing a strategy to evaluate solutions to achieve its public health goals in keeping with the intent of the DS Act that contemplates a review of FDA's policies and actions with respect to dietary supplements.

C. FDA's Public Health Mission

FDA's public health mission includes assisting Americans in capitalizing on the scientific advances over the last 30 years that have expanded the understanding of the relationship between health and diet and of the role that diet can play in improving the health of Americans. FDA encourages positive changes in dietary habits and recognizes that access by consumers to adequate nutrition and health information is an important part of this process. The agency is committed to ensuring, consistent with applicable law, that consumers have access to information on nutrition and health. This goal was given particular prominence and importance by the passage of the 1990 amendments.

To fulfill its public health mission with regard to dietary supplements FDA must also ensure that these products are safe, and that claims made for their use are scientifically supported, truthful, not misleading, and otherwise in accord with applicable legal standards. Indeed, ensuring safety and proper labeling is FDA's most basic and traditional responsibility and will remain the agency's first priority with respect to dietary supplements.

D. Recent FDA Activities to Address the Issues

FDA is addressing the safety and labeling issues regarding dietary supplements. An agency task force on dietary supplements has produced a report that sets out its conclusions and recommendations. In addition, the agency has received a report on the availability of data to evaluate the safety of amino acids, which was prepared under an agency contract with the Life Sciences Research Office, Federation of American Societies of Experimental Biology (LSRO/FASEB). The conclusions and recommendations of both of these reports are discussed in detail in this document.

In response to the 1990 amendments and the DS act, FDA has prepared proposed regulations on nutrition labeling, nutrient content claims, and health claims for dietary supplements. These documents appear elsewhere in this issue of the **Federal Register**. In addition to these projects, FDA has established a dialogue with industry, public health, and consumer group representatives through a series of meetings on safety and labeling issues for dietary supplements.

E. Task Force on Dietary Supplements

In May 1991, following the EMS outbreak associated with consumption of L-tryptophan-containing dietary supplements, the Commissioner of Food and Drugs (the Commissioner) established an internal FDA task force to review the agency's regulatory program for dietary supplements and to recommend improvements. Known as the Dietary Supplement Task Force (the Task Force), it was composed of agency staff with experience and expertise in regulatory, nutritional, legal, and medical issues related to supplements. The Commissioner asked the Task Force to examine a number of issues, including whether safety concerns exist regarding dietary supplements and, if so, to recommend a regulatory framework to distinguish supplements that raise safety concerns from those that do not.

The Task Force attempted to balance the agency's statutory mandate to protect the public health with some accommodation of the desire of a substantial segment of the public to obtain dietary supplements, including ones with possibly little or no documented nutritive value. The Task Force focused on products sold in capsule, tablet, liquid, and powder form. To facilitate its deliberations, the Task Force divided supplements into three categories: (1) Vitamin- and mineral-containing products; (2) amino acid-containing products; and (3) products containing all other ingredients, a category that included herbs without a history of documented traditional food use, plant and animal extracts, and certain other substances.

The Task Force completed its work in May 1992 when it submitted a report with recommendations to the Commissioner (Ref. 2). The Task Force identified the safety of ingredients in dietary supplements as the overriding concern for FDA as it develops a regulatory framework to distinguish among dietary supplement products. Details of the Task Force report with respect to specific types of substances are discussed elsewhere in this document under the appropriate category headings.

FDA is making this report available and requests comments on the recommendations in this report, including comments about which recommendations should be considered for adoption by FDA.

F. LSRO/FASEB Report on Amino Acids

In 1990, in the aftermath of the L-tryptophan-associated EMS outbreaks, FDA sought an objective and accurate scientific assessment by LSRO/FASEB on the safety of amino acids. FDA sought this report to provide scientific information on the safety of amino acids. This information is needed by FDA in exercising its enforcement discretion with respect to supplements that contain these substances.

LSRO/FASEB reviewed the available scientific literature on the safety of each of the amino acids. The review gave special emphasis to metabolism, genetic influences on metabolism, and population groups at potentially higher risk for adverse health effects from use of amino acids in supplements.

The LSRO/FASEB report "Safety of Amino Acids Used as Dietary Supplements" was submitted to FDA in July 1992, and its availability was announced in the **Federal Register** of December 2, 1992 (57 FR 57067). LSRO/FASEB reached several conclusions:

1. It was not able to identify a safe level of intake in dietary supplements for any of the amino acids in the report.

2. There was particular concern about the use of dietary supplements containing amino acids by several subgroups of the general healthy population (e.g., women of childbearing age, especially if pregnant or lactating; infants, children and adolescents; the elderly; individuals homozygous or heterozygous for inherited disorders of amino acid metabolism; individuals who smoke; and persons with low dietary protein intakes) and by patients with certain diseases who were considered to be at higher risk for possible adverse effects. The report concluded that use of dietary supplements containing amino acids by these special groups requires responsible medical advice and supervision.

3. The use of D-amino acids in dietary supplements is inappropriate because they have not been shown to have nutritional function in humans.

4. There is an immediate need to label dietary supplements containing amino acids currently in the marketplace to provide accurate information on the chemical composition and purity of ingredients, isomeric identity, shelf life, suggested doses, and contraindications for use.

5. There is a need for additional information on consumption of dietary supplements that contain amino acids, and

6. Based on an evaluation of the limited data on patterns of amino acid use and adverse health effects, LSRO/FASEB concluded that the safety of unrestricted use of particular amino acids in dietary supplements cannot be assumed.

LSRO/FASEB recommended a systematic evaluation of certain effects of these substances, given the scarcity of safety data for the amino acids in dietary supplements. Specific details of the LSRO/FASEB report findings are discussed in the amino acids section elsewhere in this document.

G. Current Legal Framework for Dietary Supplements Under the Act

FDA's authority to regulate the safety and labeling of dietary supplements derives from both the food and the drug provisions of the act. A product is legally a food or a drug based on its intended use. Products primarily consumed for their taste, aroma, or nutritive value are foods under section 201(f) of the act (21 U.S.C. 321(f)) (*Nutrilab. Inc.* v. *Schweiker*, 713 F.2d 335 (7th Cir. 1983)). While many dietary supplements are foods under this definition, other products, although marketed as dietary supplements, fall within the drug definition (section 201(g) of the act) because they are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or to affect the structure or a function of the body. The intended use of a product may be determined from labeling, advertising, or other sources.

Because dietary supplements are subject to regulation as foods, drugs, or both, there are a variety of statutory provisions that come into play in the regulation of these products. These provisions include the adulteration provisions for food and drugs (sections 402 and 501 of the act (21 U.S.C. 342 and 351)), the misbranding provisions (sections 403 and 502 of the act (21 U.S.C. 343 and 352)), as well as the provisions on food additives (section 409 of the act (21 U.S.C. 348)), prescription drugs (section 503 of the act (21 U.S.C..353)), and new drug approvals (section 505 of the act (21 U.S.C. 355)).

Fundamental to how the agency ensures the safety of foods, including dietary supplements, are the food additive provisions of the act (sections 201(s), 402(a)(2)(C), and 409). Before 1958, a manufacturer could use an ingredient in food, and FDA had the burden of proving, subsequent to marketing, that the ingredient was harmful at some level. The 1958 Food Additives Amendment reflected a determination by Congress that marketers of processed foods should bear the burden of establishing the safety of the ingredients they use before exposing the public to them.

A food additive is broadly defined in section 201(s) of the act as any substance, the intended use of which results, or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food.[1] Thus, ingredients incorporated into dietary supplements (vitamins, minerals, amino acids, herbs, and other similar nutritional substances that are processed in tablet, capsule, powder, or liquid form) are food additives unless they are generally recognized as safe (GRAS), or prior-sanctioned.[2]

Section 409(b)(1) of the act requires the manufacturer to submit a petition to establish the safety of use of a food additive, which must include, among other information, data that establish that the additive will accomplish its intended physical or technical effect in the food. FDA is precluded under section 409(c)(4)(B) of the act (21 U.S.C. 348(a)) from issuing a food additive tolerance and under its regulation (21 CFR 184.1(b)) from affirming the GRAS status of a substance for which a technical effect has not been demonstrated.

Some food ingredients are marketed based on the manufacturers' independent determination that they are GRAS. Such manufacturers do so at the risk that the agency will disagree and bring a regulatory action against the product.

H. FDA's Regulatory Concerns

The broad spectrum of dietary supplement products present a range of safety and labeling issues. Most of the ingredients in dietary supplements, especially vitamins and essential minerals taken in moderate potencies, present few safety concerns. A smaller number of ingredients of dietary supplement products and of dietary supplement products themselves, however, do pose direct and indirect hazards.

Direct hazards are those adverse health effects directly attributable to the components of dietary supplement products. They may be the result of effects of one or more of the ingredients (be it the desired ingredient or a binder or filler), an interactive effect of components of the product, or an effect of a contaminant in one or more of the ingredients of the dietary supplement.

The agency is concerned about potential direct hazards of some dietary supplements because information on the safety or the nature of many of the ingredients used in dietary supplements is not available. For example, there is considerable natural variability in the constituents of herbs and other botanicals and of glandular ingredients, and methods to characterize many of these products and their constituents do not exist (e.g., to determine the identity and bioavailability of active ingredients or to measure the levels of heavy metals, pesticides, or microbial contaminants). Furthermore, there apparently are no generally accepted current good manufacturing practices (CGMP's) that address how supplement products are to be manufactured to ensure that they have the claimed potency, appropriate purity, and other quality and performance attributes that help to ensure safety.

Indirect hazards may occur if the use of a supplement product delays the diagnosis or treatment of a health disorder. This is a particular concern when exaggerated or unfounded claims are made regarding the benefits of a product in treating or preventing serious diseases, such as cancer and AIDS. These indirect hazards are ordinarily dealt with through FDA's health fraud program.

To facilitate a more detailed examination of these concerns the agency has divided this document into the following sections: "II. Vitamins and Minerals," "III. Amino Acids," "IV. Herbs," and "V. Other Components of Dietary Supplements".

II. Vitamins and Minerals

A. Use of Vitamin and Mineral Supplements

Vitamins and essential minerals are nutrients. They are essential for life and must be obtained from dietary sources because they cannot be synthesized by the body or are not present in the body in amounts adequate to maintain health. Vitamin and mineral dietary supplements have a long history of use at levels at the Recommended Dietary Allowances (RDA's), below the RDA's, or at low multiples of the RDA's, and are generally considered safe at these levels for the general population. Intakes above RDA levels, however, vary widely in their potential for adverse effects. For some nutrients, such as the mineral selenium, there is a small

[1] Recently, two courts of appeal have held that the named ingredient in a gelatin capsule that consists only of that ingredient, and the ingredients necessary to form the capsule, is not a food additive. FDA is considering seeking further review of these decisions.

[2] A substance is considered prior-sanctioned if its specific use in food was authorized by FDA or the Department of Agriculture prior to September 6, 1958.

difference between intake levels that are safe and levels that can be harmful. Other nutrients such as vitamin C and thiamin have considerably larger ranges of safe intake.

Sales of dietary supplements containing vitamins and minerals have increased dramatically during the past two decades (Ref. 3). In 1990, sales totaled $2.9 billion. In a 1990 survey of the dietary supplement market, multivitamins and minerals accounted for 42 percent of the market share in dollars, vitamin C and calcium accounted for 12 percent and 8 percent, respectively, and vitamin B complex and vitamin E each accounted for 9 percent (Ref. 5).

One of the most comprehensive surveys on the use of vitamin- and mineral-containing supplements by individuals was the National Health Interview Survey (NHIS) conducted in 1986 (Ref. 6). This survey covered 11,775 adults (18 years of age or older) and 1,877 children (2 to 6 years of age). A total of about 5,600 respondents reported using more than 3,400 different vitamin or mineral-containing supplement products (Ref. 7). The more than 3,400 products in this survey were manufactured or distributed by about 600 different companies. About 90 percent of these products were manufactured or distributed by national companies. The remaining 10 percent of the products were manufactured or distributed by a large number of local companies, which accounted for about half of the total number of companies identified in this survey. This survey also showed that the labeled potencies of vitamin and mineral-containing supplements varied widely. However, potencies of nutrients contained in children's and prenatal products fell within a narrow range, generally at or below 100 percent of the U. S. Recommended Daily Allowance (U.S. RDA) per dosage unit (Ref. 7).

Potencies of single-nutrient products (i.e., products intended for supplementing one specific nutrient) and general multinutrient products (i.e., products intended for supplementing two or more nutrients that were not targeted for use by children, or pregnant or lactating women) varied greatly. For example, potencies of single-nutrient supplements ranged from 34 percent to 12,500 percent of the U.S. RDA per tablet for vitamin D; from 67 percent to 33,333 percent for thiamin (vitamin B_1); from 69 percent to 50,000 percent for vitamin B_6; from 17 percent to 33,333 percent for vitamin B_{12}; and from 100 percent to 5,000 percent for niacin. Potencies of general multi-nutrient supplements ranged from less than 0.5 percent to 55,333 percent of the U.S. RDA per tablet for vitamin B_1; from less than 0.5 percent to 15,000 percent for vitamin B_6; from 1 percent to 16,667 percent for vitamin B_{12}; and from less than 0.5 percent to 5,000 percent for pantothenic acid. As seen in the range of values, some of these products are extremely high potency, containing 5,000 to about 55,000 percent of the U.S. RDA of one or more nutrients per tablet (Ref. 7).

The 1986 NHIS data base also provided information on how supplement use varied among respondents that took supplements. About 5 percent of all self-prescribed adult users of vitamin or mineral-containing supplements, which represents about 3 million persons in the United States, reported using at least 5 different vitamin or mineral-containing products (Ref. 6).[3] For most vitamins, the median average daily intake of all users of these products was between 100 percent and 200 percent of the 1980 RDA's). However, 10 percent of adult users consumed amounts of several vitamins (thiamin, riboflavin, vitamins C, E, B_6, and B_{12}) ranging from 1,666 percent to 3,333 percent of the RDA or more from the supplements alone (Ref. 6). Maximum average daily intakes of thiamin, riboflavin, and vitamin B_6 were as high as about 78,600 percent, 68,700 percent, and 51,000 percent of the RDA, respectively (Ref. 8).

B. Regulatory History of Dietary Supplements of Vitamins and Minerals

The regulatory history of dietary supplements of vitamins and minerals goes back over 50 years. Details of this regulatory history are contained in the **Federal Register** of November 27, 1991 (56 FR 60366 at 60381). A brief discussion of its history follows.

In 1941, after passage of the act, FDA issued regulations for vitamin and mineral dietary supplements expressed as minimum daily requirements. By the early 1960's, however, the agency felt that these regulations were outdated. The agency's concerns focused on high potency vitamins and on whether the potencies of vitamins and mineral supplements should be limited to nutritionally rational levels when these products were marketed as foods.

In 1973, FDA adopted new regulations to govern the labeling and composition of dietary supplements and other foods that purported to be, or were represented for, special dietary use because of their vitamin or mineral properties. The 1973 regulations set forth definitions, standards of identity, and labeling statements for vitamin and mineral dietary supplements. The standards permitted only five basic types of preparations; prescribed the vitamin, mineral, and other ingredient composition of multinutrient supplements; and specified maximum and minimum potencies for vitamins and mineral ingredients. A lawsuit was filed challenging this action, and the reviewing court remanded the regulations to FDA. In 1975, FDA held an administrative hearing on the regulations.

While FDA was in the process of completing the hearing and revising the vitamin and mineral regulations pursuant to the instructions of the court, Congress enacted legislation (Pub. L. 94–278, Title V, April 22, 1976) that became section 411 of the act (21 U.S.C. 350) (known as the "Proxmire Amendment"). This amendment prevents the agency from using the food standards or misbranding provisions of the act to place maximum limits on the potency of vitamins or minerals in foods. It also prevents the agency from classifying any vitamin or mineral as a drug solely because it exceeds a potency level that is deemed to have a nutritionally sound rationale.

In the **Federal Register** of October 19, 1976 (41 FR 46156), the agency issued a final regulation that amended the 1973 regulations to comply with the court's 1974 remand instructions and with the Proxmire Amendment. Another lawsuit was filed, and in February 1978, the court remanded the case to FDA. In the **Federal Register** of March 16, 1979 (44 FR 16005), FDA revoked the 1976 regulations and reinstated certain portions of the 1973 regulations. The agency has not taken any further action on the 1976 regulations.

C. Current Regulatory Status of Vitamins and Minerals

Some vitamins and minerals that are intended for use as dietary supplements are listed as GRAS under part 182, subpart F (21 CFR part 182, subpart F). In most cases, the only limitation placed on the conditions of their use is CGMP as defined in § 182.1. Some vitamins and minerals are also listed for other intended uses, such as special dietary or nutritional additives (part 172, subpart D (21 CFR part 172, subpart D)), or as nutrients in processed foods (part 182, subpart I). In addition, several vitamins and minerals have been affirmed as GRAS under part 184 (21 CFR part 184) for uses other than as dietary supplements.

[3] "Self-prescribed users" refers to those who use supplements without a doctor's recommendation, excluding pregnant or lactating females.

D. Issues of Concern

FDA has identified certain public health issues related to dietary supplements of vitamins and minerals. These issues include: (1) The need for a comprehensive science-based evaluation of the potential toxicity of vitamins and minerals at various intake levels; and (2) in light of that review, the need to establish the levels of intake of vitamins and essential minerals that are safe.

Certain vitamins and minerals are safe when consumed at low levels but may have adverse effects when consumed daily at higher levels. For example, consumption of as little as 25,000 international units (IU's) per day of preformed vitamin A (U.S. RDA is 5,000 IU's) for periods of several months or more can produce multiple adverse effects, including hepatic cirrhosis, increased intracranial pressure, and possibly birth defects (Refs 9 and 10). Especially vulnerable groups include children, pregnant women, and persons with liver pathology caused by a variety of factors including alcohol, viral hepatitis, and severe protein-energy malnutrition (Ref. 9).

The preponderance of reports of adverse effects from excess vitamin B_6 (pyridoxine) supplementation have involved intakes above 200 milligrams per day (mg/day) and have been associated with symptoms of a sensory neuropathy. However, as little as 50 mg/day supplemental vitamin B_6 (U.S. RDA is 2 mg) has caused resumption of symptoms in an individual previously injured by higher intakes (Refs. 11 and 12).

Daily doses of 500 mg of niacin from a slow-release formulation and 750 mg from an unmodified niacin product have been associated with severe adverse effects. U.S. RDA is 20 mg. These severe side effects include gastrointestinal distress (burning pain, nausea, vomiting, bloating, cramping, and diarrhea) and mild to severe liver damage (Refs. 13, 14, and 15). Several reports have suggested that time-release formulations of niacin carry a higher risk of side effects than do unmodified niacin products (Ref. 13).

Ingestion of excess selenium can cause tissue damage, especially in tissues or organs that concentrate the element. The toxicity of selenium depends upon the chemical form of the ingested element. Human intoxications have occurred with high intakes after a period of a few weeks (Ref. 16).

Related topics on the safety of vitamin and mineral supplements have been addressed in three LSRO/FASEB reports published since 1980. The first report, entitled "Guidelines for Safety Evaluation of Nutrients" (Ref. 17), evaluated the types of scientific evidence needed to establish the safety of vitamin and essential mineral ingredients in supplements. This report stated that the comprehensive systems to evaluate the safety of food additives, food colors, and ingredients classified as GRAS have limited application to decisions on the safety of essential nutrients. For example, eliminating from the food supply substances that pose a potential health hazard to the public is not a feasible option for essential nutrients. Although the margin of safety between current levels of ingestion and toxic levels may be narrow for some nutrients, the report pointed out that the highest no-adverse-effect level for most nutrients is ill-defined. Accordingly, the report concluded that a system is needed to evaluate and compare data on essentiality and toxicity of nutrients at various levels of intake. This report further concluded that, in the absence of toxicological testing, nutrients cannot be assumed to be free of adverse effects even at intake levels possible from normal diets.

A second report, entitled "Feasibility of Identifying Adverse Effects of Vitamins and Essential Minerals in Man" (Ref. 18), concluded that studies with nonrandomized, self-selected treatment groups cannot be sufficiently definitive to establish a causal relationship between nutrient excess and subtle, long-term adverse effects. Furthermore, according to the report, data collected in national surveys on the normal consumption of vitamins and essential minerals by the general U.S. population, either as dietary components or as nutrient supplements, are of limited value for the design of clinical protocols. The report stated, however, that prospective clinical investigations of certain vitamins or essential minerals can help to provide a reliable and extensive data base that would be required for evaluating the competing risks of nutrient deficiency and toxicity. A prime objective of a clinical protocol would be the identification of early and sensitive indicators of toxicity associated with chronic ingestion of nutrient excesses. The report concluded that the study of potential adverse effects of vitamins and essential minerals would enhance the protection of public health.

The usefulness of a national nutrition survey data base for monitoring nutrient safety of the U.S. population was evaluated through a contract study entitled "Suggested Measures of Nutritional Status and Health Conditions for the Third National Health and Nutrition Examination Survey" (Ref. 19). This study's primary objective was to identify physiological measures useful to FDA for monitoring both the safety and adequacy of the food supply, for inclusion in the third National Health and Nutrition Examination Survey (NHANES III). The report identified specific clinical indices useful in a survey to identify the prevalence within population subgroups of adverse health effects related to excessive dietary intake of selected nutrients. Measures of the safety of vitamins A, D, and B6 and the minerals iron and selenium were suggested. Measures of the safety of other nutrients were not available or not considered useful for this survey.

E. FDA's Task Force Discussion on Vitamin and Mineral Supplements

The Task Force recognized that most vitamins and minerals are generally safe when their intake is limited to small multiples of the RDA's. However, the Task Force identified certain health risks at higher levels of intake.

The Task Force recommended that FDA use notice and comment rulemaking to establish safe levels of use for vitamins and essential minerals in dietary supplements. The Task Force recommended that these levels be the maximum daily safe supplemental intake for a given vitamin or essential mineral, called a "dietary supplement limit" (DSL). The Task Force discussed the consequences of regulating supplement products containing ingredients that are not GRAS. It stated that the agency generally has not been willing to pursue enforcement actions unless it could demonstrate some degree of toxicity or potential toxicity. The Task Force stated that FDA has declined to set safe levels for nutrients in dietary supplements because the industry has shown that setting such levels provides it with a cutoff point just below which FDA will not take action, even though such levels are high. Such levels then become the industry marketing norm. Nevertheless, the Task Force stated that setting such levels is appropriate to ensure safety. The Task Force recommended that to ensure the safety of products containing vitamins and minerals, the agency adopt a DSL for each vitamin and essential mineral.

The Task Force said that the agency should initiate rulemaking to establish these safe levels of use. Alternatively, it suggested that the agency could call for the submission of food additive or GRAS affirmation petitions on the use of vitamins or essential minerals in dietary supplements. One approach, the Task

Force suggested, would be for the agency to propose to affirm as GRAS (with certain specific exceptions) the highest RDA levels listed by the National Academy of Sciences. The Task Force stated that the burden would then shift to those commenting to submit evidence that would justify a higher level that represents safe use. Such an approach, the Task Force pointed out, would facilitate the prompt publication of a proposals and focus the work of agency scientists on preparing the final rules based on the evidence submitted.

The Task Force recommended such actions because it believed that it is appropriate for the agency to distinguish between those vitamin and essential mineral potencies in dietary supplements whose use is safe, and those whose use create public health concern.

F. Request for Public Comment on the Safety of Vitamin and Mineral Supplements

FDA requests comment on the appropriate procedures, both scientific and administrative, and types of data for establishing the safety of vitamins and essential minerals intended for consumption in dietary supplements in quantities significantly in excess of the amounts necessary to meet the known nutrient needs of practically all healthy people. As stated previously, the Task Force recommended one approach to a scientifically based determination of the upper levels of safe use of vitamin and essential mineral ingredients. FDA is soliciting comments on this recommendation as well as recommendations on other approaches.

In addition, FDA requests comments on the following questions concerning evaluation of the safety of vitamins and minerals, which may also be appropriate for the other ingredient categories:

1. How should the requirement under section 409 of the act that the tolerance limitation not be set higher than the level necessary to accomplish the additive's intended physical or other technical effect be satisfied?
2. If current safety evaluation procedures are followed, what safety factor or margin of safety is appropriate?
3. If safety factors or margins of safety are to be applied, how should adverse effects be identified against which these factors or margins will be applied?
4. Under what circumstances and how can data from nonexperimental adverse reaction reports and other sources be utilized?
5. Is it necessary to establish specifications and good manufacturing practices to assure the safety of vitamin and essential mineral products?

As a secondary issue, the agency does not know what assumptions and expectations consumers and health professionals have relative to the safety of ingredients of dietary supplements. FDA requests comments on what assumptions consumers make about the safety of ingredients in dietary supplement products, and on what information consumers should have on the label or in labeling to make informed choices about the safety of these products.

III. Amino Acids

A. Current Use of Amino Acid Supplements

Amino acids are available in the marketplace as single compounds, in mixtures (containing two or more amino acids), as components of protein powders, as chelated single compounds, or in chelated mixtures. These products are marketed for a variety of uses. LSRO/FASEB found that amino acids in dietary supplements are primarily used for nonnutritional purposes, i.e., for specific therapeutic effects (Ref. 10). Amino acids were reported to be the most frequently mentioned component on ingredient lists for dietary supplements advertised in a survey of body building magazines (Ref. 4).

LSRO/FASEB estimated the quantities of individual amino acids available for sale by members of a major trade association in the United States from 1987 to 1989 (Ref. 20). L-lysine and L-tryptophan (for 1987 to 1988) were available in the highest amounts, i.e., greater than 1,000,000 pounds per year for each. L-methionine had the next highest availability rate at more than 20,000 pounds per year. Data on the ingestion of amino acids by individuals have not been collected, but product labels recommended daily intakes (RDI's) ranging from 0.25 to 4.5 grams (g) for single amino acids, from about 1 to 15 g for partially digested protein blends (Ref. 20), and from 0.35 to 40.0 g for unspecified amino acids (Ref. 4).

B. Information on the Role of Amino Acids in Human Nutrition

Amino acids are the individual structural units of proteins and are precursors for, or may function as, biologically active molecules such as some neurotransmitters and hormones. Nine amino acids, histidine, isoleucine, leucine, lysine, methionine, phenylalanine, threonine, tryptophan, and valine, must be supplied in the diet because they are not synthesized by humans or synthesized only in amounts inadequate for normal growth or maintenance and are thus considered essential (Ref. 3). Other amino acids are nonessential because they are synthesized endogenously in amounts sufficient to support growth and nitrogen balance and are, therefore, not specifically required in the diet.

Most amino acids are supplied in the normal diet as constituents of protein, not as free amino acids. Consumption of foods containing intact proteins ordinarily provides sufficient amounts of amino acids for growth and development of children and maintenance of health of adults in the general U.S. population. Safety in these forms is generally not a concern.

Some amino acids, such as L-tryptophan and L-arginine, have been promoted and used for their claimed pharmacologic effects. The use of dietary supplements containing these free amino acids appears to be a common practice among individuals interested in increasing muscle mass and strength (Refs. 2, 4, and 20).

C. Regulatory History of Amino Acid Supplements

In 1945, FDA issued a Trade Correspondence stating that a food to which an amino acid is added would ordinarily be regarded as a food for special dietary use and must be so labeled, but may also in some cases be subject to the drug provisions of the act (Ref. 21). Subsequently, the 1958 Food Additives Amendment required the premarket approval of any substance whose intended use could reasonably be expected to result in its becoming a component of food, unless the use of the substance were GRAS or subject to a prior sanction. In 1960 (25 FR 880, February 2, 1960, and 25 FR 7332, August 4, 1960), FDA proposed to list a number of amino acids as GRAS for their intended use as "nutrients and/or dietary supplements" with no limitations codified at that time under 21 CFR 121.101(d)(5). This proposal was finalized in 1961 (26 FR 1444, February 18, 1961).

In the **Federal Register** of April 6, 1972 (37 FR 6938), FDA proposed to revoke the GRAS status of all amino acids for use as nutrients in foods and for use in dietary supplements because of safety concerns based on studies showing that excessive intakes of certain amino acids produced adverse effects in animals. FDA concluded that the available information was insufficient to support the GRAS status of amino acids. At the same time, FDA proposed conditions for the safe use of amino acids as food additives.

In the same issue of the Federal Register, FDA also proposed a food additive regulation to provide for the use of amino acids as nutrient fortificants for addition to intact protein-containing foods to improve the protein quality of these foods (37 FR 6938). To prevent the random addition of amino acids to foods, the agency proposed to limit the use of amino acids to foods that contain naturally occurring, primarily intact, protein that are considered significant dietary sources of protein. The agency also addressed the use of amino acids in special formulations for nutritional use in medical conditions.

In the Federal Register of July 26, 1973 (38 FR 20036), FDA published a final rule that revoked the GRAS status of amino acids for nutritive and dietary supplement purposes. FDA promulgated a food additive regulation that restricted the addition of amino acids as nutrients to foods only when needed to significantly improve the biological quality of the total protein in a food containing naturally occurring, primarily intact protein that is considered a significant dietary protein source. In addition, the agency stated that no action would be taken to alter the GRAS status of amino acids or their derivatives with recognized nonnutritive uses (e.g., as flavor enhancers or dough conditioners).

From 1974 through 1976, several amino acids were listed in 21 CFR 121.1002 as food additives. However, because of an editorial error in recodifying FDA's regulations, amino acids were listed as GRAS for use as "nutrients and/or dietary supplements" in the March 15, 1977, edition of title 21 of the Code of Federal Regulations. This error was corrected by a Federal Register notice dated October 28, 1977 (42 FR 56278 at 56279). In early 1977, prior to the correction, FDA brought a seizure action against L-tryptophan tablets on the grounds that the tablets contained an unapproved food additive. The court found that, despite the fact that FDA's error had been inadvertent, the manufacturer was entitled to rely on the GRAS regulations as published. In another seizure initiated in 1977 against L-tryptophan as a dietary supplement, FDA agreed to dismissal with prejudice on September 14, 1982.

D. Current Regulatory Status of Amino Acid Supplements

Amino acids, except L-cysteine and its hydrochloride salt, may only be used as ingredients of food in accordance with § 172.320 (21 CFR 172.320). L-cysteine and its hydrochloride salt (§§ 184.1271 and 184.1272) are affirmed as GRAS for use as dough strengtheners. Under § 170.50 (21 CFR 170.50), FDA has determined that the use of glycine and its salts for certain technical effects in human food is not GRAS. FDA considers all other uses of amino acids in food to represent unapproved, and therefore unlawful, uses of food additives.

E. Issues of Concern

Products containing amino acids warrant special attention by the agency because of several recent events, including: (1) The recent epidemic of EMS, a serious disease associated with consumption of L-tryptophan supplement products, (2) a recent report by an independent organization that concluded that data showing safety of amino acids in dietary supplements are lacking (Ref. 20), and (3) the task force report, which discussed amino acids and presented various options for regulating dietary supplements that contain amino acids.

1. EMS Outbreak from L-Tryptophan

The outbreak of EMS from the use of L-tryptophan-containing dietary supplements has prompted FDA to reexamine its enforcement posture regarding amino acid containing supplements. EMS is a systemic connective tissue disease characterized by eosinophilia (an increase in one type of the white blood cells), myalgia (severe muscle pain), and cutaneous (skin) and neuromuscular manifestations. This illness, which occurred in epidemic fashion in the United States in the summer and fall of 1989, is associated with the use of dietary supplements containing L-tryptophan (Ref. 39). To date, more than 1,500 cases, including 38 deaths, have met the Centers for Disease Control (CDC) case surveillance definition of the disease, although the true incidence of the disorder is thought to be much higher.

FDA first learned about problems with L-tryptophan in 1989, following a report from New Mexico about four cases of an illness manifested by myalgia and eosinophilia, in which the common denominator appeared to be the use of L-tryptophan. FDA subsequently issued a strong public warning on November 11, 1989 (Ref. 22), to discontinue the use of L-tryptophan. On November 17, 1989, in conjunction with CDC, FDA requested a nationwide recall of all over-the-counter dietary supplements containing 100 mg or more of L-tryptophan (Ref. 23). The agency also issued an Import Alert to detain all foreign shipments of L-tryptophan (Refs. 24 and 25). On March 22, 1990, the recall was extended to all marketed products containing added manufactured L-tryptophan because of a case of EMS in a patient consuming less than 100 mg daily (Ref. 26). (Products containing added L-tryptophan permitted by § 172.320 were excluded from this recall.) The net effect of the recall and import alert was a ban on the oral supplement forms of L-tryptophan because virtually all of the raw material used to formulate U.S. products was imported.

Despite recent intense research, the exact cause of EMS and an understanding of how it develops have not been established. Initial epidemiological studies implicated the L-tryptophan produced by a single Japanese manufacturer, Showa Denko K. K., and further noted that certain impurities were identifiable in batches of case-associated L-tryptophan. These findings suggested that some impurity or other component in these batches of L-tryptophan may have been responsible for EMS. However, both initial and subsequent epidemiological studies on the EMS epidemic have identified cases of EMS, and another related disease, eosinophilic fascitis, that occurred before the 1989 epidemic and that appear to be related to other batches or sources of L-tryptophan (Refs. 27, 40 and 41).

EMS and other related disorders are also reported to be associated with exposure to L–5-hydroxytryptophan, a related compound that is not manufactured using the biofermentation process that was used for production of L-tryptophan and is, therefore, not associated with the same impurities or contaminants. There is also some evidence for predisposing factors in some EMS patients. These data, as well as data from animal experiments (Ref. 28), indicate that L-tryptophan, either alone or in combination with some other component in the supplement products, may be responsible for some of the pathological features in EMS. Taken together, these findings support previous suggestions that the L-tryptophan-associated EMS was caused by several factors and is not necessarily related to a contaminant in a single source of L-tryptophan.

2. Summary of LSRO/FASEB (1992) Report on Amino Acids

As discussed earlier, LSRO/FASEB reviewed the available safety data for the following amino acids: branched-chain amino acids (leucine, isoleucine, and valine), histidine, lysine, methionine, L-phenylalanine, D-phenylalanine, threonine, L-tryptophan, D-tryptophan, alanine, arginine,

ornithine and citrulline, asparagine, aspartic acid, cysteine and cystine, glutamine, glutamic acid, glycine, proline and hydroxyproline, serine, and tyrosine.

For each of the amino acids, LSRO/FASEB reviewed the scientific literature from studies with experimental animals and humans. Special emphasis in the review was given to metabolism, genetic influences on metabolism, and groups with potentially higher risk for adverse health effects resulting from use of amino acids in supplements.

LSRO/FASEB reached several conclusions:

1. A safe level of intake for the amino acid-containing dietary supplements in the report could not be identified.

2. There is a basis for particular concern about the use of dietary supplements containing amino acids by several subgroups of the general healthy population (e.g., women of childbearing age, especially if pregnant or lactating; infants, children, and adolescents; the elderly; individuals homozygous or heterozygous for inherited disorders of amino acid metabolism; individuals who smoke; and persons with low dietary protein intakes) and by patients with certain diseases who were considered to be at higher risk for possible adverse effects. The report concluded that use by these special groups of dietary supplements containing amino acids requires responsible medical advice and supervision.

3. The use of D-amino acids in dietary supplements is inappropriate because they have not been shown to have nutritional function in humans.

4. There is an immediate need to label dietary supplements containing amino acids to provide accurate information on chemical composition and purity of ingredients, isomeric identity, shelf life, suggested doses, and contraindications for use. LSRO/FASEB also noted the need for additional information on consumption of dietary supplements containing amino acids.

5. Based on an evaluation of the limited data on patterns of amino acid use and adverse health effects, LSRO/FASEB concluded that the safety of unrestricted use of particular amino acids in dietary supplements cannot be assumed. LSRO/FASEB recommended a systematic evaluation of certain effects of these substances, given the paucity of safety data on the amino acids in dietary supplements.

FDA has reviewed the LSRO/FASEB report and notes that it is consistent with the agency's previous determination that amino acids for nutritive purposes are not GRAS. FDA solicits comments on the report and submission of data that was not included in the report.

F. FDA's Task Force Discussion on Amino Acids

As discussed earlier, amino acids were one category of ingredients of dietary supplements considered by the Task Force. The Task Force suggested several options for the agency to consider in the regulation of amino acid-containing dietary supplements. One option is to regulate single amino acids and mixtures of amino acids as drugs when marketed for any use other than those specified in the GRAS and food additive regulations.

A second regulatory option identified in the report is to regulate amino acids in supplements as food additives or GRAS substances with a DSL low enough to ensure safety, unless drug claims are made, in which case the products would be drugs. The Task Force recognized that if the latter option were adopted by the agency, a DSL for each amino acid would have to be established.

The Task Force recommended that amino acid-containing dietary supplements be regulated as drugs. This recommendation was based, in part, on information presented indicating that the primary intended use of these products is for therapeutic rather than nutritional purposes. The Task Force pointed to the wide marketing of amino acids for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure of the body through such claims as "Nature's Tranquilizer," " * * * stimulates the immune system * * *," " * * * reduce craving for alcohol and sweets * * *," " * * * used in the treatment of alcoholism, * * * " and "used in the treatment of schizophrenia and senility."

G. Request for Public Comment on Regulatory Approach to Amino Acid Dietary Supplement Products

Based on the foregoing, it is clear that many amino acid products are being marketed in violation of the act because they are unapproved food additives, and adequate scientific evidence to ensure their safe use does not exist, or because they are being marketed for therapeutic uses, and the drug requirements of the act have not been satisfied for these uses.

FDA intends to bring amino acid-containing supplements into compliance with the law. As part of this effort, FDA is providing, with the publication of this document, an opportunity for interested persons to submit data and information on the safety and intended uses of amino acids, as well as support for claims being made for them.

Amino acid-containing supplements that are marketed for use as drugs must comply with the drug provisions of the act. In this regard, FDA will consider whether the drug uses of particular amino acids are so well established and widespread as to justify rulemaking to establish as a matter of law that these products are drugs.

For those amino acid supplements intended for food (nutritional) use, interested parties should provide FDA with data or other information that provide a basis upon which these products can be legally marketed under the food provisions of the act. Issues for consideration include how to satisfy the requirement under section 409 of the act "that intended effects be demonstrated," whether amino acids in dietary supplements have a nutritional purpose, and on what evidence the agency can determine that the use of amino acids in dietary supplements is safe.

FDA will consider any data and comments submitted in response to this document in forming its regulatory and enforcement strategy with respect to amino acid-containing products. However, FDA notes that while it will review the comments that it receives, the agency will continue to take regulatory action as appropriate to address safety or other consumer protection concerns.

IV. Herbs

A. Use of Herbal Dietary Supplements

Herbal and other botanical ingredients of dietary supplements include processed or unprocessed plant parts (bark, leaves, flowers, fruits, and stems) as well as extracts of essential oils. They are available in a variety of forms, such as teas, powders, tablets, capsules, and elixirs. Botanicals are marketed either as single substances or in combination with other materials, including vitamins and minerals, amino acids, and nonnutrient ingredients. They are marketed for children and adults. Data on the availability of, and consumer use of, botanical products are very limited.

B. Regulatory History and Current Regulatory Status of Herbs

Many herbs and other botanical ingredients have been used in foods as flavoring agents. However, there are also many herbs that have no known history of food use and, even without drug claims, are used for medical purposes. Many of these herbs have a history of

use as traditional medicines in many countries outside of the United States.

The GRAS and food additive regulations list a number of herbs and herbal products and vegetable gums. However, the data that were used to form the basis for most of these regulations were related to such intended uses as flavoring agent, stabilizer, thickener, formulation aid, emulsifier, or firming agent and did not necessarily reflect the levels at which, or forms in which, they have been used in dietary supplements.

Food-use herbs are subject to the food additive provisions of the act (sections 201(s) and 409 of the act). Because the act does not explicitly restrict marketing to substances whose safety has been determined by FDA, many of these substances are marketed without any safety review by the agency, based, presumably, on a GRAS determination by the marketer.

C. Issues of Concern

While many ingredients in herbal dietary supplements have not been associated with specific health concerns, some components contained in these products have been associated with reports of adverse health effects or toxicities in animals and humans. For example, recently, at least six documented cases of toxic hepatitis have been associated with the consumption of chaparral (*Larrea tridentata*) (Refs. 29, 30, 34, and 35). There have been several cases of adverse reactions associated with the consumption of dietary supplements containing *Lobelia inflata* (lobelia, Indian tobacco) (Ref. 36). Germander (genus *Teucrium*) has been recently implicated in at least seven cases of acute nonviral hepatitis in France (Ref. 32). Chronic renal failure has been reported to have occurred as the result of consumption of herbal powders containing *Stephania tetrandra* and *Magnolia officinalis* (Ref. 43).

The use of yohimbe (*Pausinystalia yohimbe*) in dietary supplements such as body building products appears to be increasing. The known pharmacologically active components of yohimbe are yohimbine and related alkaloids. Yohimbine causes vasodilation, thereby lowering blood pressure. Other actions of yohimbine include antagonism of neurotransmitters and their precursors. Its use is contraindicated for certain medical conditions or with concurrent use of drugs or foods that exhibit monamine oxidase activity because of increased potential for adverse effects.

Human toxicity, including fatalities, have been associated with consumption of the *Symphytum* (comfrey and Russian comfrey) *Heliotropium* and *Senecio* species (Ref. 33). The scientific literature documents the toxicity of these and other pyrrolizidine alkaloid (PA)-containing plants (Refs. 43 and 44). Some of these plant materials are taken as teas or in capsules for a variety of suggested medical effects or simply as beverages. There are reports that PA causes liver injury and failure secondary to veno-occlusive disease (i.e., blocking the veins that remove blood from the liver). There have been sporadic cases reported, as well as reported epidemics, involving many thousand of people, of serious liver injury from consumption of flours contaminated with pyrrolizidine alkaloid (Refs. 45 and 46). Toxicity associated with PA-containing plants can occur, and has occurred, after relatively short use (a few weeks and at relatively low doses). Liver failure, cirrhosis, and death (approximately 25 percent of 7,500 affected individuals in an outbreak in Afghanistan) can result. PA toxicity can even occur in newborns whose mothers have ingested PA-containing plant materials. Infants appear to be particularly sensitive to the effects of PA's, and fatal hepatic disease has been reported in a newborn infant whose mother consumed PA-containing products during pregnancy (Ref. 47). Several animal studies have demonstrated that the toxicity of PA's and PA-containing plants, including comfrey, can cause cancer in test animals (Refs. 48, 49, and 50).

D. Request for Public Comment

FDA requests data and information from marketers of herbal products and other interested parties that will assist the agency in evaluating the safety of particular herbal products and herbal products as a category. FDA intends to explore approaches to regulations that will enable it to ensure the safety of herbal products in an effective and efficient manner.

FDA's immediate goal with respect to herbal products is to ensure their safety and to remove hazardous products from the market. FDA is aware that many herbal products are marketed for drug uses without having complied with the drug approval requirements. When appropriate, FDA will take regulatory action against these products on a case-by-case basis in accordance with the priorities established in FDA's health fraud program.

FDA requests comments on the following questions:

1. How should the requirement under section 409 of the act that the tolerance limitation not be set higher than the level necessary to accomplish the additive's intended physical or other technical effect be satisfied?

2. Should FDA consider another approach to regulating the safety of herbs? If so, what should it be? What should the standard be for determining when the use of the herb is safe?

3. What types of data are necessary for establishing safe levels of use for herbs (e.g., no effect levels, clinical studies, reports of adverse effects)?

4. What information should be included on the label to assure safe use of herbal products?

5. It is necessary to establish specifications and good manufacturing practices to assure the safety of herbal products?

V. Other Components of Dietary Supplements

A. Use of "Other" Category Supplements

This category includes a broad array of substances that are offered for sale as components of dietary supplements, including fish and plant oils, fatty acids, fibers and vegetable gums, and carnitine. Some of the ingredients in this broad category are concentrated substances that occur naturally in plant and animal products. In addition, many of these substances have no recognized nutritive value or technical effects.

Fish and plant oil fatty acids and other lipids are available as ingredients in capsules or as oils. They include the ingredients menhaden oil, flax seed oil, black currant oil, oil of evening primrose, fish oils and omega-3-fatty acids, essential fatty acids, phytosterols, and others. A recent dietary supplement advertising survey (Ref. 4) found that lipid ingredients accounted for about 4 percent of the ingredients in products advertised in health magazines.

Dietary fiber is available in products either singly or as mixtures. Major types of fiber include cellulose, hemicellulose, pectins, mucilages, gums, algal polysaccharides, and lignins. Common sources of some of these substances are wheat bran, psyllium, guar gum, and apple pectin. Products containing dietary fiber have been offered for nonfood uses, e.g., as an appetite suppressant.

Data and information on the current marketing and use of these "other" dietary supplement products are sparse. The following discussion reflects the information that is available.

B. Regulatory History and Current Status of "Other" Category Supplements

The agency has considered these products to be subject to the food provisions of the act, except when

therapeutic, disease prevention, or structure/function claims not related to nutritive value are made about the products. As food ingredients, these substances are subject to the food additive provisions of the act (sections 201(s) and 409 of the act). However, because, as stated previously, the act does not restrict marketing to substances whose safety has been determined by FDA, many of these substances have been marketed without any safety review by the agency, although they are subject to regulatory action by the agency.

The GRAS regulations list a number of vegetable gums, but the data that were used as the basis for most of these regulations were related to intended uses such as stabilizer, thickener, formulation aid, emulsifier, or firming agent and did not necessarily reflect the amounts or forms in which they are used as sources of fiber in dietary supplements. For many of these ingredients, there are no GRAS or food additive regulations in effect, and FDA has no basis on which to determine if the ingredient is GRAS.

C. Issues of Concern

Products in this "other" category are readily available in the marketplace, even though generally very little is known about their safety. Although many of these products contain ingredients that are known to be present in the human body, these ingredients may be part of the normal diet. Some of these compounds have been associated with serious toxicity. For example, the compound gamma hydroxy butyrate (GHB) is ubiquitous in the human body, although its function is unknown. In the recent past, use of GHB in dietary supplements became popular as a sleep aid and also as a weightlifting aid. However, reports of serious adverse reactions observed in association with GHB became common throughout the country. These reports included respiratory depression, coma, seizures, and other serious reactions. As a result of these reports, FDA issued a consumer alert on this product.

Toxicity from chronic use of germanium supplements includes nephrotoxicity that has resulted in death. In surviving patients, renal function has improved after discontinuation of germanium supplementation. However, in no case has recovery been complete (Ref. 38).

D. Task Force Report on "Other Components"

The Task Force's description of the "all other substances" category included nonessential chemical compounds, herbs without a history of documented traditional food use, and plant and animal extracts. Dietary fiber and certain fatty acids were not considered in the Task Force report. The Task Force recommended that the agency find an effective means of ensuring safe use of this "other" category of ingredients. Among the possible options suggested by the Task Force were to continue regulating these ingredients as food additives, to require a description of the nutrient value on the label of foods containing these ingredients, and to bring actions against these substances when they are represented as drugs.

E. Request for Public Comment

FDA requests comment on the following:

1. How should the requirement under section 409 of the act that the tolerance limitation not be set higher than the level necessary to accomplish the additive's intended physical or other technical effect be satisfied?

2. If current procedures are followed, what safety factor or margin of safety is appropriate?

3. Should FDA consider another approach to regulating safety? If so, what should it be? What should the standard be for determining when the use of the substance is safe?

4. What types of data are necessary for establishing safe levels of use for these substances (e.g., no effect levels, clinical studies, reports of adverse effects)?

5. What information should be included on the label to assure safe use of these substances?

6. Is it necessary to establish specifications and good manufacturing practices to assure the safety of these substances?

FDA is also soliciting comments on the availability, sources, ranges, and current uses of "other" ingredients, as well as information/comments on changing patterns of use of these substances over the last 20 to 30 years. Additionally, FDA is seeking suggestions to further define this category of ingredients.

VI. Possible Future Actions

The agency will review the data and information that it receives in response to this document and will develop appropriate steps to assure the safety and proper labeling of dietary supplements. The agency will consider the array of options presented in this document and suggested in comments received to plan next steps. These next steps may include rulemaking, enforcement action, or other appropriate activities.

VII. References

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

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19. LSRO/FASEB, "Suggested Measures of Nutritional Status and Health Conditions for the Third National Health and Nutrition Examination Survey," Bethesda, MD, November 1985.

20. LSRO/FASEB, "Safety of Amino Acids Used as Dietary Supplements," Bethesda, MD, July 1992.

21. FDC Act Trade Correspondence, TC–387, June 23, 1942.

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VIII. Comments

Interested persons may, on or before August 17, 1993, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This document is issued under sections 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 355, 371); and the Dietary Supplement Act (Pub. L. 102–571).

Dated: June 9, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–14271 Filed 6–15–93; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 85N–061D]

RIN 0905–AD96

Food Labeling; General Requirements for Health Claims for Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its food labeling regulations to make dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances subject to the general requirements that apply to all other types of food with respect to the use of health claims that characterize the relationship of a substance to a disease or health-related condition on the label and in labeling, and the content of petitions for obtaining approval of such health claims. These rules are being proposed in response to provisions of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and the Dietary Supplement Act of 1992 (the DS act) that bear on health claims.

DATES: Written comments by August 17, 1993. The agency is proposing that any final rule that may issue based upon this proposal become effective 6 months following its publication.

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

FOR FURTHER INFORMATION CONTACT: James R. Taylor, Jr., Center for Food Safety and Applied Nutrition (HFF–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5229.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the President signed into law the 1990 amendments (Pub. L. 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the notable aspects of the 1990 amendments is their confirmation of FDA's authority to regulate health claims on food labels and in food labeling. The new provisions amend the act by adding a provision, section 403(r)(1)(B) of the act

(21 U.S.C. 343(r)(1)(B)), that provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with sections 403(r)(3) of the act (which pertains to foods in conventional form) or 403(r)(5)(D) (which pertains to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances (subsequently referred to in this preamble as "dietary supplements")).

Congress enacted the health claims provisions of the 1990 amendments to help U.S. consumers maintain healthy dietary practices and to protect these consumers from unfounded health claims. The House Report of June 13, 1990 states, "Health claims supported by a significant scientific agreement can reinforce the Surgeon General's recommendations and help Americans to maintain a balanced and healthful diet" (Ref. 1). In addition, the statement of the House Floor Managers noted that "There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims" (Ref. 2). The House Report characterized the need for regulation of health claims as "compelling" (Ref. 1).

FDA's first step in support of the health claims goals of the 1990 amendments appeared in the form of a November 27, 1991, proposed health claims regulation (56 FR 60537) (hereinafter referred to as "the health claims proposal"). That document proposed to establish general requirements pertaining to the use of health claims that characterize the relationship of a substance to a disease or health-related condition on the labels and in labeling of both conventional foods and dietary supplements. The health claims proposal contained definitions to clarify the meaning of specific terms used in the regulations, preliminary requirements that a component of food must meet to be eligible to be the subject of a health claim, a scientific standard for assessing the validity of claims, general labeling requirements for health claims that are permitted by regulation, and prohibitions for certain types of health claims. The proposal also contained provisions pertaining to the required content of petitions for health claims.

In response to the health claims proposal, FDA received over 6,000 letters, each containing one or more comments, from consumers, health care professionals, universities, State and local governments, foreign governments, trade organizations, consumer advocacy organizations, research institutes, industry, and professional organizations. Many of the comments pertained to dietary supplements. The agency summarized and addressed the issues raised in the comments in the final rule on health claims that published in the **Federal Register** of January 6, 1993 (58 FR 2478) (hereinafter referred to as "the health claims final rule"). The health claims final rule became effective on May 8, 1993.

Although the health claims proposal pertained to dietary supplements as well as conventional food, the final rule applied only to foods in conventional food form. In October of 1992, Congress passed the DS act (Pub. L. 102–571), which imposed a moratorium on FDA implementation of the 1990 amendments with respect to dietary supplements not in conventional food form until December 15, 1993. The DS act provides that by June 15, 1993, FDA is to issue proposed rules to implement the 1990 amendments with respect to such dietary supplements, and that the agency is to issue final rules based on these proposals by December 31, 1993. The DS act also amended the 1990 amendments to state that if the agency does not meet the established timeframe for issuance of final rules with respect to health claims for dietary supplements, the proposed regulations are to be considered final regulations.

According to the managers' statements on the DS act (Ref. 3), the moratorium is intended to provide FDA with an opportunity to carefully consider how best to regulate dietary supplements. The Senate statement says that the agency is expected to develop a comprehensive approach for reforming the regulation of dietary supplements. That statement stresses the policy goal of the DS act:

> * * * [T]he American public must be assured that the dietary supplements they choose to consume are safe, made to quality standards, bear informative labeling, and that health or disease-related claims are properly supported.

(138 Congressional Record S 17240 (October 6, 1992).) FDA has considered how best to regulate health claims on dietary supplements in developing this proposal.

Implementation of the 1990 amendments with respect to dietary supplements occurs under section 403(r)(1)(B) and (r)(5)(D) of the act. The latter provision states that health claims made with respect to dietary supplements are not subject to section 403(r)(3) of the act, the general provision that applies to such claims, but instead are subject to a standard and procedure respecting the validity of such claims established by regulation by the Secretary of Health and Human Services (the Secretary) (and FDA, by delegation). As is explained fully in the preambles of the health claims proposal (56 FR 60537 at 60539 through 60540) and of the health claims final rule (58 FR 2478 at 2507), the absence of a specific standard or procedure in section 403(r)(5)(D) of the act gives the agency broad discretion in deciding what the appropriate standard and procedure should be. The purpose of this proposal is to set out the agency's tentative conclusions, and the basis for those tentative conclusions, as to how this fundamental issue with respect to health claims on dietary supplements not in conventional food form should be resolved.

This proposal does not pertain to any other products. FDA's determinations about the implementation of the 1990 amendments with respect to food in conventional form, as set forth in the health claims final rule (58 FR 2478), are not open to any reconsideration or revision in the rulemaking initiated by this proposal.

The 1990 amendments also require that the agency evaluate 10 specific nutrient/disease relationships. In the **Federal Register** of January 6, 1993 (58 FR 2537 through 2849), the agency issued regulations announcing its decisions on each of these 10 relationships with respect to foods in conventional food form. However, under section 202(a)(1) and (b) of the DS act, while dietary supplements could bear health claims that the agency authorized for conventional foods that applied to them, the agency could not act to deny claims on any of the 10 relationships for dietary supplements.

The agency is not at this time proposing to authorize specific health claims for dietary supplements. In the case of the nutrient/disease relationships for calcium and osteoporosis, sodium and hypertension, dietary fat and cancer, and dietary saturated fat and cholesterol and coronary heart disease, no further rulemaking is needed for dietary supplements because FDA has authorized health claims for these relationships for conventional food and, as mentioned above, section 202(b) of the DS act provides for such claims appearing on dietary supplements. FDA does, however contemplate further proceedings in the **Federal Register** where the nutrient/disease relationships have not been resolved with respect to dietary supplements (i.e., for dietary fiber and cardiovascular disease, dietary

fiber and cancer, folic acid and neural tube defects, zinc and immune function in the elderly, omega-3 fatty acids and coronary heart disease, and antioxidant vitamins and cancer). FDA intends to make additional efforts to ensure that the proposals that it issues are consistent with all available science. For example, to this end, the agency has initiated a review by its subcommittee of the Food Advisory Committee to assess the relationship of folic acid and neural tube defects.

II. Regulatory Approach

A. General Approach

In deciding how best to regulate health claims on dietary supplements the agency used as its starting point the legislative history of the 1990 amendments. The agency tried to identify those characteristics of health claims that Congress considered most significant in providing for their use. FDA found that these characteristics fall within three broad areas of concern—consumer protection from fraud, sound scientific principles, and public health.

1. Legislative History

a. *Consumer fraud.* Concern about misleading health claims is directly addressed in the legislative history of the 1990 amendments. House Report 101–538 (Ref. 1) states:

> The need for legislation regarding health claims on foods is equally compelling. While content claims about the amounts of nutrients in foods have been made for many years, very few, if any, disease claims were made prior to 1984. Until that time, the FDA took the position that the statement that a food could prevent a disease was tantamount to a claim that the food was a drug as defined in section 201(g)(1) of the FFDC Act, and therefore that its sale was prohibited until a new drug application had been approved pursuant to section 505 of the Act. 21 U.S.C. 321(g)(1), 355; 21 CFR 101.9(i).
>
> However, during the mid-1980's, companies began making health claims on foods, even though the FDA had not approved the claims through the drug approval process. These statements claimed that the food was valuable in the prevention or treatment of various diseases. Subsequently, the FDA published proposed regulations that sanctioned this practice by permitting manufacturers to make disease-specific claims that had not met the FFDC Act's requirements applicable to drugs. 52 Fed. Reg. 28,843 (August 4, 1987).
>
> In the meantime, health claims that the FDA had previously prohibited began appearing with increasing frequency, and the FDA brought virtually no enforcement actions.
>
> In a speech given to the National Food Policy Conference (March 7, 1990), Secretary Sullivan acknowledged that "unfounded health claims are being made in the marketplace * * *."

Mr. Waxman, one of the primary authors of the bill that ultimately became the 1990 amendments (H.R. 12953), stated:

> Health claims were not permitted on foods until the 1980's. But when the FDA relaxed enforcement of regulations during the early years of the Reagan administration, it lost control of the marketplace, and many unfounded claims began being used on foods. This bill will recognize the marketplace so that only truthful claims may be made on foods.

Moreover, in a statement shortly before final House passage of the 1990 amendments, the House Floor Managers noted that "There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims" (Ref. 2). Similarly, one of the main sponsors of the legislation in the Senate, Senator Metzenbaum, listed consumer fraud as one of the primary concerns of any system to evaluate the validity of health claims (Ref. 5).

Thus, concern that health claims not be used to defraud or mislead consumers was a primary factor in Congress's decision that health claims should be regulated.

b. *Public health.* The debates in both the Senate and the House of Representatives that preceded passage of the 1990 amendments contain repeated references to the congressional goal of improvement of the public health through use of valid and understandable claims in food labeling. In the July 30, 1990, Congressional Record H 5843 (Ref. 4), Mr. Madigan, one of the primary authors of the bill that ultimately became the 1990 amendments (H.R. 3562), stated:

> In the past few years, important scientific evidence has been repeatedly reported that clearly links dietary habits to good health. For this reason, the need to provide consumers with better information about the foods they eat is important.

House Report 101–538 (Ref. 1), which addresses H.R. 3562, states:

> Health claims supported by significant scientific agreement can reinforce the Surgeon General['s] recommendations and help Americans to maintain a balanced and healthful diet. Similarly, statements regarding the level of these nutrients in foods will assist Americans in following the Surgeon General's guidelines. Therefore, legislation with respect to health claims is also both desirable and necessary.

In the October 24, 1990, Congressional Record at S 16608 (Ref. 5), Mr. Metzenbaum, one of the primary authors of the Senate amendments that were incorporated into the 1990 amendments, characterized this legislation as "a major step forward in enabling consumers to select foods to protect and improve their health." In this same Congressional Record at S 16610 (Ref. 5), Mr. Hatch, the other primary author of the Senate amendments stated:

> Heart disease, cancer, and stroke—our Nos. 1, 2, and 3 causes of death—still take an incredible toll in our society. In 1986, they took an estimated 1.6 million lives and cost $137 billion in medical care and lost productivity. Diet has been implicated as a factor in all three of these diseases as well as large number of others.

c. *Sound science.* Congress recognized that if health claims are to protect consumers from fraud and to help improve the public health, they must be based on sound science. Congressman Waxman stated:

> What we have sought to do is to permit health claims but only health claims based on scientifically valid information, and we hope by having that scientifically valid information upon which a health claim can by made, that health claims in the future will be healthful and not misleading.

(136 Congressional Record H 5844 (July 30, 1990).)

Senator Metzenbaum also listed sound scientific principles among the basic factors that must underlie any system for health claims (Ref. 5).

2. The Standard for Food in Conventional Food Form

In the case of food in conventional food form, Congress provided specific direction about the essential elements necessary to ensure that health claims are scientifically valid. Congress enacted a scientific standard in section 403(r)(3)(B)(i) of the act for these foods that provides that the Secretary (and FDA, by delegation) shall promulgate regulations authorizing nutrient health claims only if the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles) supports the claim, and there is significant scientific agreement among qualified experts that the claim is supported by such evidence.

In addition, where health claims can be justified for food in conventional food form, Congress enacted provisions about the manner in which the claims must be presented in labeling to ensure that they will be understandable. Section 403(r)(3)(B)(ii) of the act requires that a regulation authorizing a health claim describe the relationship between the nutrient and the disease or health-related condition and describe the significance of the nutrient in affecting the disease or health-related

condition. Section 403(r)(3)(B)(iii) of the act requires that the claim be

> * * * stated in a manner so that the claim is an accurate representation of the matters set out in subclause (ii) and so that the claim enables the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet.

Further, Congress added section 403(r)(3)(A)(ii) to the act to provide that health claims may only be made on foods that do not contain nutrients in an amount that increases "to persons in the general population the risk of a disease or health-related condition which is diet related, taking into account the significance of the food in the total daily diet * * *." However, this provision goes on to say that the Secretary may by regulation permit such a claim if he or she finds that such a claim would assist consumers in maintaining healthy dietary practices, and he or she provides for disclosure of the presence of the nutrient in conjunction with the claim. (An in-depth discussion of these statutory provisions appears in the health claims proposal (56 FR 60537 at 60539) and in the health claims final rule (see agency response to comments about general labeling requirements and prohibited health claims (58 FR 2478 at 2509 through 2522)).)

3. Treatment of Dietary Supplements

In the case of dietary supplements, however, Congress did not include a specific standard or specific elements as to how the claims are to be presented. Instead, Congress provided that the standard and procedure for such claims would be established by the Secretary (and FDA, by delegation) (section 403(r)(5)(D) of the act). The legislative history pertaining to this provision reveals that Congress thereby conveyed to FDA the flexibility to adopt the standard and procedure for dietary supplements that appears appropriate to the agency. The House Floor Managers statement on the 1990 amendments (Ref. 2), which was prepared by Mr. Waxman and Mr. Madigan, addresses section 403(r)(5)(D) of the act by stating, in part:

> The Senate version of the bill, which we are voting on today, retains this standard for all foods except vitamins, minerals, herbs, and other similar nutritional substances (referred to below as "vitamins"). The bill requires that vitamins that include claims defined under section 403(r)(1)(B) shall be subject to a "procedure and standard" defined by the Secretary in regulations that require an evaluation of the validity of the claim. The FDA is given the discretion to define both the procedure and the standard because the principals in the Senate could not agree on the appropriate procedure or the appropriate standard.
>
> It is obvious from the language that the agency could adopt the same procedure and standard that Congress has adopted for disease claims on food other than vitamins; it is also obvious that it could adopt a stronger standard for vitamins, minerals, herbs, and other similar nutritional substances.

In addition, the Metzenbaum-Hatch managers' statement in the Senate (Ref. 5) addresses section 403(r)(1)(B) of the act by stating, in part:

> The purpose for the different handling of conventional food products and dietary supplements is to provide the Secretary flexibility in the development of the procedure and standard for health claims for dietary supplements.

Thus, the Senate and the House of Representatives agreed that FDA has the flexibility to adopt the standard and procedure for dietary supplements that appears appropriate to the agency. Senator Hatch left no question about his position that FDA should use this flexibility to adopt a more lenient standard (Ref. 5):

> By the very nature, the dietary supplements must be marketed so that the consumer is informed of the health or disease-prevention benefits that may be conferred. Greater flexibility is thus required to permit communication of these benefits. This increased regulatory flexibility is also mandated by the very rapid pace of scientific advances here and abroad linking the prevention of long-term disease to improved nutritional supplementation. For these reasons, a more lenient standard for dietary supplement[s] is envisioned.

However, other members of Congress were equally clear about their position that FDA should not adopt a more lenient standard. In the October 24, 1990 Congressional Record at S 16608 (Ref. 5), Senator Metzenbaum, the other primary author of the Senate amendments, stated:

> * * * It is my view that there is no reason to do anything other than utilize the same procedure and standard for dietary supplements.
>
> Whatever approach the Secretary takes, he must establish a system that evaluates the validity of health claims for dietary supplements. The system must be based on the same considerations that guide other agency decisions: public health, sound scientific principles and consumer fraud.

Further, the House of Representatives clearly did not support a more lenient standard for dietary supplements. The statement of House Floor Managers that appears in the October, 26, 1990 Congressional Record at H 12953 (Ref. 2) states:

> * * * Whatever approach the agency takes, it must adopt a system that evaluates the validity of any disease claims made with respect to these substances. Its system must be based on considerations of public health and consumer fraud. As in every similar decision made by the agency today, we fully expect that the agency's evaluation of disease claims made with respect to vitamins will be based on sound scientific principles.
>
> There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims. The potential is just as great for vitamins as it is for other products. In our view, vitamins and other substances covered by this provision should be subject to at least as strong a standard as is applicable to other foods that contain claims that the food will treat a disease or health condition.

Nothing in the DS act or its legislative history indicates in any way that Congress changed its position about its goals of the 1990 amendments with respect to prohibiting misleading health claims and improvement of the public health through use of valid and understandable claims in food labeling (Ref. 3).

4. Results of FDA's Review of the 1990 Amendments

Based on its review of the legislative history of the 1990 amendments, the agency has identified the following features that it believes should guide its choice of a standard and procedure for health claims for dietary supplements:

- The regulations are to deal only with the procedure and standard for health claims for the substances in dietary supplements. They are to have no bearing on the availability of any dietary supplements.
- The regulations must prohibit the use of health claims that are not authorized under their provisions.
- The regulations must ensure that any health claims that appear in labeling are scientifically valid.
- The regulations must ensure that any health claims that appear in labeling are understandable.
- The regulations should be such that all segments of the food industry are treated fairly and in a consistent manner, unless there is an appropriate basis on which to draw a distinction. This factor embodies a principle of equity implicitly in the act.

B. Alternative Approaches

A variety of approaches have come to FDA's attention about how health claims on dietary supplements would best be regulated under the 1990 amendments. These approaches have come to the agency's attention by various means, including the comments on the health claims proposal that addressed the most appropriate method for regulating dietary supplements,

testimony before Congress about implementation of the 1990 amendments with respect to dietary supplements, as well as other submissions to the agency.

FDA has carefully evaluated each of these approaches to determine how they compare with the factors that FDA has listed above.

1. Use of a Committee on Herb Petitions

One approach that has been suggested is that the agency should adopt a separate mechanism for evaluating the validity of claims for herbs. Under the suggested mechanism, an oversight committee would appoint an expert panel that would consist of a director and at least four scientists with training and experience related to herbal and botanical products. FDA would participate as a nonvoting member of the expert panel. The oversight committee, which would be charged with the responsibility of reviewing all health claims petitions pertaining to herb or botanical components, would relieve FDA of all responsibility for initial review of these petitions. The expert panel would conduct an evaluation of scientific data pertaining to the requested claim, subject the evaluation to peer review, and prepare a final recommendation about the claim. The recommendation and all supporting documents would then be forwarded to FDA, and the agency would be permitted 120 days to approve, disapprove, or modify the report. Under draft regulations prepared and submitted for FDA adoption by one comment that FDA has received, there would be a codified presumption in favor of the committee recommendation.

The comment that suggested this approach asserted that it would not involve a transfer of the agency's authority and obligation to enforce the act because the final authority for decisions would rest with FDA. Further, the comment asserted that there is precedent for the requested mechanism in FDA's past use of reviews of food and cosmetic ingredients that have been prepared by the Federation of American Societies for Experimental Biology (FASEB) and the Cosmetic Ingredient Review (CIR).

The agency advises that it has tentatively decided not to adopt the requested mechanism for evaluating the validity of claims for herbs and botanicals. The mechanism would involve a significant transfer of agency authority for health claims, and there is no basis under the act for such a transfer. Although the comment asserted that such a transfer would not take place because FDA would retain final authority for any decisions, the assertion is not correct. Because the codified provision would create a presumption in favor of the committee recommendation, the agency would be obligated to prove that the committee was wrong, or else it would be required to follow the committee's recommendation. In such circumstances, FDA could be forced to propose to authorize health claims that it was not satisfied were scientifically valid. Thus, there would, in fact, be a significant transfer of authority under the requested mechanism.

FDA's use of FASEB reviews of food ingredients does not provide a precedent for use of the requested mechanism. The FASEB review did not create a presumption in favor of the review recommendation. FDA contracted for these reviews as part of its GRAS Review in the early 1970's and then once to update information on sulfiting agents. FASEB only submitted a recommendation as to whether, and what, uses of a substance were GRAS. FDA conducted its own review of the evidence and was free to elect to use the FASEB review as it saw fit.

The CIR also do not provide a precedent for the use of the requested mechanism. These reviews are used primarily by industry to make self-determinations of cosmetic ingredient safety. The agency may, or may not, comment on any CIR. Even where FDA comments on a CIR, there would be little likelihood that agency rulemaking would result. In situations where such a review does serve as a stimulus for a rulemaking proceeding, the review would not be the sole reason for the proceeding.

Moreover, the committee suggested by the comment would be subject to the Federal Advisory Committee Act (5 U.S.C. app. 2). The burdens imposed on an agency by this statute are extremely heavy. FDA has limited resources for advisory committees, and it believes that it would be an inappropriate expenditure of those limited resources to commit them to the committee suggested by the comment. While FDA may use advisory committees in the future to review petitioned-for health claims, as it is currently doing with folic acid, the agency would expect such committees to be broader in scope than simply herbs. FDA does not have the resources to establish multiple committees based on the type of substance that is the subject of the claim.

Thus, FDA is not proposing to adopt the procedure suggested in this comment. The herb industry, as any other industry, may, if it desires, work through committees in preparing well-supported petitions for submission to FDA. FDA will cooperate with such committees at a scientific level by explaining the agency's requirements to them and sharing publicly available information. However, the agency sees no reason to require firms to use such committees. Moreover, FDA has the ultimate obligation to determine whether the petitioned-for claim is scientifically valid.

To clarify that the agency will consider all recommendations by such committees, FDA revised § 101.70(b) (21 CFR 101.70(b)) which describes the content of petitions for health claims, to provide that information that is submitted with petitions may include any findings, along with the basis of the findings, of an outside panel with expertise in the subject area at issue. While FDA will consider any findings of a committee included in a petition, the agency is not obligated to utilize those findings in making its decision.

2. Establishment of an Approach Based on a More Lenient Standard, a More Strict Standard, or the Same Standard

Many comments asserted that the best approach to the regulations of health claims for dietary supplements would involve the adoption of a more lenient standard. Some of these comments argued that such an approach is mandated by Congress and cited the statement of Senator Hatch, set forth above that "a more lenient standard for dietary supplement[s] is envisioned" (Ref. 5). A number of comments asserted that using the same standard and procedure for dietary supplements as for foods in conventional food form is counter to the intent of the 1990 amendments because Congress intended to make more, rather than less, information about the health benefits of foods available to consumers. Some comments asserted that, by not adopting an approach based on a more lenient standard, FDA would restrict the amount of health information available to consumers and stated that such information is important to consumers in deciding which products to buy.

Comments argued that restriction of this information will deny millions of Americans the dietary information that they need to improve their health and to help prevent deadly afflictions such as heart disease and cancer. The comments asserted that such restriction will cost the nation millions of dollars in health care expenditures that could have been saved through disease prevention. Comments suggested that FDA should place more weight on the potential benefits of the health

information than on eliminating all possibilities of consumer misunderstandings. A few of these comments advised that a more lenient standard would be appropriate for dietary supplements because they are being sold to educated consumers rather than to the general population. A number of comments asserted that use of the same standard and procedure for dietary supplements as for foods in conventional food form effectively renders section 403(r)(5)(D) of the act superfluous.

Some of the comments maintained that an approach based on a more lenient standard and procedure is needed because FDA is being unduly restrictive in its validity evaluations under the current standard for conventional food. Comments argued that these evaluations are being done in a manner that makes it more difficult for a food to get an approved health claim than to get a new drug claim approved.

Although not all comments provided specific suggestions about the way in which a more lenient approach could be implemented, a number of the comments did provide specific suggestions. Some comments argued that the approach should be sufficiently lenient to permit marketing of dietary supplements without any labeling restrictions. Some of these comments argued that dietary supplements needed no stringent requirements because dietary supplements could be adequately regulated under the requirement in section 403(a)(1) of the act that the labeling of a food must be truthful and not misleading.

Some comments provided an alternative standard and procedure to that in the statute for health claims on food in conventional food form. Under this alternative, claims for which there is substantial scientific evidence but not yet significant scientific agreement would be subject to a certification and notification procedure rather than rulemaking proceedings. Claims could be made for dietary supplements so long as: (1) The claim expressly discloses the absence of scientific agreement as to the relationship, (2) the manufacturer provides FDA with a fully documented certification by a panel of at least three qualified experts that there is substantial scientific evidence supporting the claim, and (3) FDA does not disapprove the claim within 90 days of receipt of the certification. (When additional information is needed, the 90 day period could be extended an additional 45 days.) Under the alternative, FDA would have an opportunity to participate in the selection of the expert panel.

The agency has also, however received other comments that argued that FDA should use an approach based on the same scientific standard and procedure for dietary supplements that the act provides for conventional foods. One comment noted that it is especially important to place dietary supplements under the same standard because they are marketed mainly on the basis of their purported health benefits. Another pointed out that use of the stand for food in conventional food form will facilitate purchasing decisions for consumers by reducing fraudulent labeling claims.

A few comments contended that FDA should establish a more stringent standard for substances in dietary supplements. One comment asserted that FDA has adequate authority to do so and asserted that the legislative history of the 1990 amendments supports a more stringent standard. The comment stated that FDA recognized, when it argued against allowing health claims for omega-3 fatty acids in a document that published in the **Federal Register** of January 6, 1993 (58 FR 2683), that it does make a difference whether one receives nutriment from food or from pills. In that docket, the comment maintained, FDA asserted that benefits have been shown for a food (fish) but not for substances (omega-3 fatty acids).

FDA knows of no standard and procedure for dietary supplements that would both be more lenient than the standard and procedure for foods in conventional food form and yet still have the characteristics that FDA considers necessary under the 1990 amendments and their legislative history. A standard for health claims for dietary supplements that is based only on section 403(a)(1) of the act, or that allows health claims based on the existence of substantial scientific evidence even though significant scientific agreement about the validity of the claim does not exist, would be inconsistent with Congress' desire to ensure that health claims that are made on dietary supplements, or on any other food, are scientifically valid. The absence of agreement would likely reflect inadequacies in the evidence supporting the claim or a substantial amount of conflicting evidence. In such circumstances, a significant possibility would exist that the claim would ultimately be found not to be valid. If FDA were to allow claims in the marketplace as to which there is not significant scientific agreement about their validity, it would undercut the credibility of those health claims as to which there is such agreement. Consumers would be left little better off, and no less confused, than they were, before the passage of the 1990 amendments. Although some comments asserted that claims not based on significant scientific agreement would not be confusing because consumers of dietary supplements are more knowledgeable than the general population, FDA points out that there is nothing that limits the purchasers of dietary supplements to "knowledgeable consumers."

The agency disagrees with arguments that use of the same approach for dietary supplements as for foods in conventional food form would deny millions of Americans dietary information that they need to improve their health and thereby cost the nation millions of dollars in health care expenditures that could have been avoided. In the absence of adequate data to establish that health claims are valid, assertions about costs associated with the lack of information in food labeling and about the benefits of consumption of substances in dietary supplements are highly speculative and highly questionable. FDA does not agree that it should place more weight on the potential benefits of the health information than on eliminating the possibility of consumer misunderstanding. FDA must weigh the public health impact of permitting a multitude of preliminary claims against the possibility that a significant portion of those claims will be determined to be not scientifically valid. The latter result would likely produce a perception among many consumers that food labels and health claims, even those that are valid, are not reliable. To the extent that, as a result, consumers do not change their dietary patterns to reduce their risk of disease, they will be less healthy, and there will be more needless deaths from disease and more costs to the national economy, rather than less. Thus, FDA disagrees with comments that asserted that claims without significant scientific agreement would be in the best interests of consumers.

Further, as is explained fully in response to the comment concerning a separate mechanism for approval of health claims for herbs, there are no provisions under the act to transfer agency authority for the control of health claims to organizations outside of FDA. The alternative suggested for dietary supplements that would not require rulemaking clearly involves a significant transfer of authority for the evaluation of the validity of health claims. Moreover, the approach suggested by this comment presents the same Federal Advisory Committee Act

problems that are discussed above. Finally, the system suggested would not be fair to consumers, who would be exposed to claims whose validity had not been evaluated by FDA, or to the manufacturers of foods in conventional food form, who would be subject to the much higher statutorily mandated standard. As a result, a more lenient standard for dietary supplements would also be contrary to the principle of fairness that is implicit in the act.

FDA also disagrees with assertions that it is conducting validity assessments for health claims in an unduly restrictive manner, and that health claims are more difficult to get approved than to get a new drug claim approved. To the contrary, as discussed in the health claims final rule (58 FR 2478 at 2506), the scientific standard for health claims is less stringent than the requirements for approval of a new drug. In the case of a new drug, section 505(d)(5) of the act (21 U.S.C. 355(d)(5)) states that the Secretary shall refuse to approve an application for approval of such a drug where there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof. Section 505(d) of the act provides further that the term "substantial evidence" means evidence consisting of adequate and well-controlled investigations, including clinical investigations (human studies conducted in a controlled clinical setting), by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved. (The statutory term "substantial evidence" should not be confused with the same term used by some comments to refer to "more than a scintilla and less than a preponderance" of evidence.) Based on this statutory direction, the agency has identified a number of characteristics that are present in "adequate and well-controlled" studies in § 314.126 (21 CFR 314.126).

Section 403(r) of the act does not mandate requirements as stringent as those for drugs in section 505(d)(5) of the act. Section 403(r) of the act contains no mention of "substantial evidence," "adequate and well-controlled investigations," or of "clinical investigations." To the contrary, section 403(r) of the act contains far more flexibility than the drug provisions of the act because it provides FDA with authority to authorize claims based on "scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence "(section 403(r)(3)(B)(i) of the act).

Consistent with this flexibility, FDA did not prescribe a specific set, type, or number of studies as being sufficient to support a health claim in the January 6, 1993, health claims final rule. In that rule, the agency advised that it would consider all relevant data on a topic, including clinical studies, epidemiological data, and animal studies.

In addition, the 1990 amendments directed FDA to consider 10 nutrient-disease relationships. In the January 6, 1993, final rules, FDA authorized claims with respect to 7 of those 10 relationships (see 58 FR 2537, 2552, 2622, 2665, 2739, 2787, and 2820). An eighth, even though denied (58 FR 2606) remains under active consideration by the agency. Thus, FDA is not conducting validity assessments for health claims in an unduly restrictive manner.

The agency did not conclude in the omega-3 fatty acids and heart disease final rule (57 FR 2682) that it makes a difference whether one receives nutriment from food or from pills, as the comment suggested. While FDA did state in the summary of that docket that there is not adequate evidence to support a relationship between reduced risk of coronary heart disease and increased consumption of omega-3 fatty acids, and that there is some evidence that the benefit may be gained through the consumption of fish, the agency noted that benefits attributed to fish could not necessarily be ascribed to the presence of omega-3 fatty acids. The example, therefore, reflects the available science base, that there is a relationship between a dietary pattern and risk of heart disease, but the science is insufficient to identify a specific nutrient that is responsible in that relationship. This does not in any way imply that a substance is any more beneficial when it is in a conventional food than it is when it is not in a conventional food.

In light of the foregoing, FDA is proposing to subject dietary supplements to the same standard that applies to food in conventional food form. This approach strikes the appropriate balance between the congressional concern for consumer protection food fraud, public health, and sound science, on the one hand, and the desire to provide the consumer with information on the other. If FDA adopts this standard for dietary supplements, all foods will be regulated under the same standard.

Further, under the same procedure that applies with respect to claims for substances in food in conventional form, there is a premarket review that ensures the safety of the substances as well as the scientific validity of the claim. A claim linking a nutrient to a disease is typically intended to increase intake of that nutrient. Thus, it is important to ensure that such increased intake will not have adverse health consequences that would moot the significance of the health claim. Therefore, FDA is proposing to adopt the same procedure for health claims for dietary supplements as for foods in conventional food form.

Making dietary supplements subject to the same scientific standard and procedure as for foods in conventional food form does not render section 403(r)(5)(D) of the act superfluous. Section 403(r)(5)(D) requires that the agency consider what procedures and standard respecting the validity of claims is most appropriate. This the agency has done. The fact that the agency has tentatively found that, on balance, that the standard and procedure established for conventional foods are also the most appropriate for dietary supplements does not render the agency's efforts invalid or the underlying provision superfluous. The agency was charged with exercising its expertise and discretion, and that is what it is doing.

III. The Proposed Regulation

FDA is proposing to adopt the same regulatory approach to dietary supplements that it has adopted for foods in conventional food form. Thus, the agency is proposing to revise §§ 101.14 and 101.70 (21 CFR 101.14 and 101.70) to include dietary supplements.

A. Definitions

In the health claims proposal, FDA proposed definitions for "health claim," "substance," "nutritive value," and "dietary supplement" to serve as tools for clearly establishing the scope of the types of claims that would be subject to the regulations promulgated under section 403(r)(1)(B) of the act. In addition, the agency proposed a definition for "disqualifying nutrient levels" to establish limits on the amounts of certain nutrients that are known to increase the risk of a disease or health-related condition. Thus, if one of these nutrients is present in a food above the defined level that food would

be disqualified from bearing a health claim in its labeling (see section 403(r)(3)(A)(ii) of the act).

In the health claims final rule the agency adopted definitions for the terms "health claim," "substance," "nutritive value," and "disqualifying nutrient levels." However, as explained in the health claims final rule, these definitions were revised either in response to comments on the proposed definitions or in response to the DS act. Because of the DS act, the agency reserved the question as to whether these definitions would apply to dietary supplements. Moreover, the agency did not include a definition of "dietary supplement" in the final rule because of the moratorium imposed by the DS act. In addition, in the health claims final rule, FDA established a definition for the term "disease or health-related condition" (see § 101.14(a)(1), (a)(2), (a)(3), (a)(5), and (a)(6) in 58 FR 2478 at 2533).

In this document, FDA is proposing to apply the same regulatory approach to dietary supplements that it has established for foods in conventional food form. To reflect this tentative decision, the agency is proposing to revise the definitions established in § 101.14(a), as appropriate, to include coverage of dietary supplements. Specifically, FDA is proposing to revise the definition of "substance" and to establish a definition of "dietary supplement."

1. Substance

To clarify that all provisions of § 101.14 will apply to dietary supplements as well as foods in conventional food form, FDA is proposing to revise the definition of the term "substance" to mean a specific food or component of food, regardless of whether the food is in conventional food form or a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances.

Reference in the definition to "a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances" incorporates the statutory language from section 403(r)(5)(D) of the act, which directs the agency to establish a procedure and standard for health claims for dietary supplements.

2. Dietary Supplement

FDA is proposing in § 101.14(a)(4) to define the term "dietary supplement" as a food, not in conventional food form, that supplies a component to supplement the diet by increasing the total dietary intake of that component.

In the past, FDA has taken a position that the term "dietary supplement" applied only to supplements composed of essential nutrients. However, FDA is not proposing to limit the definition in § 101.14(a) in this way because section 403(r)(5)(D) of the act includes dietary supplements of herbs and other similar nutritional substances. Herbs generally contain few essential nutrients, and those that are present are seldom present in significant amounts on a per serving basis. Herbs have been considered foods because they have generally been used for flavor or aroma. In addition, the legislative history indicates that the term "other similar nutritional substances" could include a number of substances that have not been shown to be essential (Ref. 5), especially since the term "other similar nutritional substances" does not include vitamins and minerals.

FDA has limited this definition to foods not in conventional food form to reflect the approach taken by Congress in the DS act. The manager's statements for the DS act from the Senate and the House (Ref. 3) clearly state that the moratorium on the implementation of the 1990 amendments applies only to dietary supplements "not in the form of conventional food." FDA has traditionally felt that there could be dietary supplements in conventional food form (e.g. breakfast cereals). However, because these products were not covered by the DS act moratorium, the health claims regulations already apply to them. Consequently, FDA has tentatively concluded that it will reduce confusion if the agency limits the coverage of the term "dietary supplement" to foods not in conventional food form. Foods that are formulated to supplement the dietary intake of nutrients but that are in conventional food form will be considered to be in the category of foods that they resemble (e.g. cereals), although they will be free to reflect their characteristics in their common or usual name (e.g., vitamin and mineral supplement cereal).

In the November 1991 health claims proposal, FDA said as part of the definition of "dietary supplement" that the supplement supplies a component "with nutritive value." FDA received comments that protested that such a restriction would infringe on consumers' freedom of choice.

The purpose of this proposal is to ensure that health claims are valid and properly made, not to restrict freedom of choice. Dietary supplements are foods, and foods are consumed primarily for their taste, aroma, or nutritive value. *Nutilab, Inc.* v. *Schweiker*, 713 F.2d 335, 338 (7th Cir. 1983). Moreover, as explained below, FDA is proposing to make dietary supplements subject to § 101.14(b)(3)(i), which requires that, to be eligible to be the subject of a health claim, substances that are to be consumed at other than decreased dietary levels must contribute taste, aroma, or nutritive value to the food and retain that attribute when consumed at levels that are necessary to justify a claim. Therefore, FDA tentatively finds that it is not necessary to include the words "with nutritive value" in the definition of "dietary supplement."

A number of comments on the November 1991 health claims proposal suggested that the proposed definition for "dietary supplement" in § 101.14(a)(4) (56 FR 60537) should be revised to include foods as well as components in foods (e.g., herbs as well as components in herbs).

FDA advises that the proposed definition of "dietary supplement" covers foods. Therefore, the suggested revision is not necessary. Reference to a "component" is to the specific portion of the food, that is, of the dietary supplement, of which the consumers wishes to increase his or her total dietary intake.

B. Preliminary Requirements for a Claim

In the health claims proposal, FDA proposed several criteria in § 101.14(b) that must be met before a substance will qualify to be the subject of a health claim. The criteria provide that the substance must: (1) Be associated with a disease or health-related condition for which the general U.S. population is at risk (alternatively, the relevance of the claim may be explained within the context of the daily diet); (2) be a food; and (3) be safe and lawful under applicable food safety provisions of the act. These criteria reflect not only the requirements of section 403(r) of the act but also the fact that FDA is charged with ensuring that the food supply is safe, and that the food label is not misleading. Given that agency evaluations of the validity of a health claim will be resource intensive, FDA proposed not to make such an evaluation unless a petition for a health claim demonstrates that the preliminary requirements are met. While FDA proposed that these preliminary requirements cover substances in conventional food form as well as in dietary supplements, the provisions of the DS act precluded the agency from applying these preliminary requirements to substances in dietary supplements. Thus, the preliminary requirements established in the health

claims final rule apply only to substances in conventional food form.

The agency is proposing in this document to subject dietary supplements and their components to the same preliminary requirements in § 101.14(b) that apply to any other substance that is proposed as the subject of a health claim. Specific reference to dietary supplements in § 101.14 (b)(1) and (b)(2) is not necessary because the requirements in these paragraphs apply generally to any "substance," and FDA's proposed revision of the definition of "substance" in § 101.14(a)(2) will include dietary supplements and their components within the coverage of this term. FDA tentatively finds, however, that it is appropriate to add a specific reference to dietary supplements to § 101.14(b)(3)(i) to clarify that food can be in the form of a dietary supplement. The agency tentatively concludes that this action is appropriate because information available to the agency suggests that there is concern among some in the general public that dietary supplements are not included in the definition of "food" as provided in section 201(f) of the act (21 U.S.C. 321a(f)). Specifically, FDA proposes to add the phrase "regardless of whether the food is in conventional food form or dietary supplement form" to § 101.14(b)(3)(i).

1. Components of Food Within the Context of a Daily Diet

The preliminary requirement that a substance that is to be the subject of a health claim be a food appears in § 101.14(b)(2) and (b)(3)(i). If the substance is present at decreased dietary levels, as stated above under § 101.14(b)(2), it must be a nutrient that is required to be included in nutrition labeling (e.g., cholesterol, total fat). If the substance is present at other than decreased dietary levels, as stated above, under § 101.14(b)(3)(i), it must contribute taste, aroma, or nutritive value, or any other technical effect listed in § 170.3(o) (21 CFR 170.3(o)), to the food and must retain that attribute when consumed at levels that are necessary to justify a claim. This requirement is necessary to ensure that health claims are made for substances that are in fact foods. For example, some vitamins have therapeutic effects when consumed at levels far above those that are normally characteristic of food. When the vitamins are intended to be consumed at those levels to have those therapeutic effects, they are drugs and not foods. Also, other types of dietary supplements present similar concerns. When herbs are consumed primarily for their taste, aroma, or nutritive value, they are foods. If the herbs are intended to be consumed for their medicinal effects, however, they are drugs.

Numerous comments on the health claims proposal from producers and consumers of dietary supplements expressed concern that the proposed provisions requiring that a substance be a food represents an attack by the agency against dietary supplements. Some comments maintained that FDA lacks the legal authority to restrict approved health claims on dietary supplements that contain nutrients that are beyond daily diet limits. Other comments asserted that FDA intends to use regulations based on the proposal to ban health claims on dietary supplements wherever the dietary supplements contain a substance at a level above that normally present within the context of an ordinary daily diet.

Other comments stated that the agency would ban the dietary supplements themselves by making them available only by prescription or by limiting the potency of the dietary supplements. They strongly protested that any limits on potency would be in conflict with section 411 of the act (21 U.S.C. 350), which is sometimes referred to as the "Proxmire Amendment," and the 1990 amendments.

FDA disagrees with the comments' characterization of its actions. It does not agree that any conflict with section 411 of the act is presented by a requirement that, to be the subject of a health claim, the substance must be a food, that is, consumed primarily for its taste, aroma, or nutritive value. There is nothing in the health claims final rule or in the regulations proposed below that will affect in any way the availability of dietary supplements or the consumer's freedom to choose to purchase them. Rather, the regulations that FDA is proposing are intended to ensure that any claims that may be made for dietary supplements are scientifically valid. This is exactly what section 403(r)(5)(D) of the act directs FDA to do.

Nothing in these proposed regulations would necessarily prevent a supplement from bearing a health claim when it contains a level of a substance that exceeds the level achievable in the context of the daily diet. To the contrary, the final rule concerning calcium and osteoporosis, for example, which was published in the **Federal Register** of January 6, 1993 (58 FR 2665 at 2677), permits a calcium health claim for dietary supplements and requires only that the supplement labeling advise consumers that there is no known benefit from consuming more than 200 percent of the recommended daily intake for calcium.

Section 411 of the act does not authorize health claims for dietary supplements or in any way affect FDA's authority under section 403(r)(5)(D) of the act to regulate such claims. Under section 411(a)(1)(B) of the act, FDA may not classify a dietary supplement as a drug solely because it contains vitamins or minerals at levels that exceed the level of potency that the agency determines is nutritionally rational or useful. Nothing in these proposed regulations would do so. Absent a claim, FDA will not consider a dietary supplement to be a drug simply because it contains vitamins or minerals at levels above those normally found in food. However, a claim on a product is an indication of the product's intended use. If a claim reveals that the product is intended for a use other than for its taste, aroma, or nutritive value, then nothing in section 411 of the act would require that it be treated as a food.

The key to the assessment of any proposed health claim for a substance in a dietary supplement or in other food is a determination as to whether the claimed effect derives from the nutritive value of that substance. The term "nutritive value" is defined broadly in § 101.14(a)(3); however, it is not unlimited in its application. Under that regulation, "nutritive value" means a value in sustaining human existence by such processes as promoting growth, replacing essential nutrients, or providing energy. The preambles of the proposed and final rules on the general requirements for health claims (see 56 FR 60537, November 27, 1991; and 58 FR 2478, January 6, 1993, respectively) state that the codified definition is based on common definitions that include sustenance with food or nutriment by supplying that which is necessary for life, health, and growth. The agency structured the definition to be sufficiently flexible so that it does not become an unintentional barrier to the approval of legitimate health claims.

If the relationship between a substance and a disease that is the subject of a claim is based on the nutritive value of the substance, the claim is a health claim. However, if the relationship between a substance and a disease is based on some type of physiological process other than nutritive value, the claim about the relationship is likely not a claim about a food and thus not subject to the health claim provisions. The type of case-by-case analysis of exactly what is being asserted in a claim that describes the effect of a substance on a disease, and whether that effect is a function of the

substance's nutritive value, is illustrated by niacin.

Niacin has a well-established physiological function as an obligatory cofactor in metabolic processes which constitutes the basis on which it is a vitamin in the human dietary. However, there is also ample scientific evidence that this substance can act to reduce elevated blood cholesterol levels. Because high blood cholesterol levels are directly associated with an increased risk of cardiovascular disease, the question arises as to whether the effect of lowering elevated blood cholesterol provides the basis for a health claim for niacin.

Such a claim is not a health claim because a claim about niacin's effect on blood cholesterol levels is not a claim about how a nutrient affects a disease through normal dietary processes. Rather, it is a claim about how this substance, when consumed at very high levels, can be used to treat an abnormal condition, elevated blood cholesterol levels. The levels of niacin that are necessary to have this treatment effect are far in excess of those at which there is tissue saturation for niacin's vitamin function. Niacin consumed at the levels in question causes liver damage, an effect that in no way can be characterized as nutritive. Thus, consumption of niacin at these levels is not appropriate for most consumers. In view of the safety problems, a determination must be made before niacin is consumed at these levels as to whether the risks of treatment outweigh the benefits of the potential response to the treatment. Such determinations are not appropriate for a food. Thus, a claim for niacin's effect on lowering blood cholesterol levels is not a health claim.

Another comment asked for assurance that approved health claims appearing on dietary supplements will not automatically be considered drug claims. The comment noted that section 201(g)(1)(B) of the act exempts approved health claims on foods from consideration as drug claims and stated that dietary supplements should be afforded the same exemption under FDA regulations.

FDA agrees with the comment. As provided in section 201(g)(1)(B) of the act, any food, including dietary supplements, for which an authorized health claim is made in accordance with the requirements of section 403(r) of the act and of the regulations that FDA has adopted to implement that section of the act is not a drug under section 201(g)(1)(B) of the act solely because its label or labeling bears the claim. FDA considers this provision to provide the same type of assurance as that in sections 406, 408, and 409 of the act (21 U.S.C. 346, 346a, and 348) that foods containing substances used in accordance with regulations issued under those sections of the act are not subject to regulatory action under section 402(a)(1) of the act (21 U.S.C. 342). This provision does not create an exception to the "drug" definition, however. A product whose intended use is as a drug will continue to be subject to regulation as a drug.

Some comments asserted that FDA should permit the use of health claims on herbs whose only known use is for medicinal effects. A few of these comments objected that the herbs that FDA cited in the preamble of the proposal also have food uses.

As FDA explained fully in the preamble of the November 1991 health claims proposal (56 FR 60554), Congress clearly intended that the health claim provisions of the 1990 amendments apply only to foods. Whether a product is a food or a drug depends largely on its intended use. A product that is intended for medicinal effects, that is, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, is a drug. Thus, there is no basis under the act for FDA to permit health claims for herbs whose intended known use is for medicinal effects.

Where an herb has use both as a food and a drug, the available information on the intended use of the product will determine whether FDA regulates the herb as a food, as a drug, or as both a food and a drug.

In this regard, the agency points out that the relationship of a food or a food component to a disease is quite different from that of a drug to a disease. The Surgeon General's Report on Nutrition and Health (Ref. 6) points out that, apart from classic disorders resulting from dietary deficiencies of essential nutrients (e.g., pellagra and niacin), it has proved difficult to demonstrate causal associations between specific dietary factors and chronic or other diseases (e.g., dietary fiber and cancer). The report goes on to state:

> Development of the major chronic disease conditions—coronary heart disease, stroke, diabetes, or cancer—is affected by multiple genetic, environmental, and behavioral factors among which diet is only one—albeit an important—component. These other factors interact with diet in ways that are not completely understood. In addition, foods themselves are complex; they may contain some factors that promote disease as well as others that are protective.

Thus, a claim that a substance can be used in the prevention, diagnosis, cure, mitigation, or treatment of a disease or symptom is inappropriate on a food (see § 101.9(k)(1) (21 CFR 101.9(k)(1))). Congress has said that these effects are the effects of a drug (section 201(g)(1)(B) of the act).[1] Claims that a substance will have any of these effects assert that the substance will have a direct effect on the disease. In contrast, as explained above, the effect of diet on disease is much more complex and must be described in different terms that reflect the multifactorial nature of the development of disease and the fact that diet may not address all the relevant factors.

2. Safety

Section 101.14(b)(3)(ii) provides that, to justify a claim for a substance that is to be consumed at other than decreased levels, the substance must be a food or a food ingredient or a component of a food ingredient whose use at the levels necessary to justify a claim has been demonstrated by the proponent of the claim, to FDA's satisfaction, to be safe and lawful under the applicable food safety provisions of the act.

The preamble of the November 1991 health claims proposal explained:

> * * * This showing can be based on: (1) A demonstration that the substance is generally recognized as safe (GRAS) within the meaning of § 170.30; (2) a listing of the substance as GRAS in 21 CFR part 182 or as affirmed as GRAS in 21 CFR part 184; (3) a food additive regulation; or (4) a sanction or approval granted by FDA or the United States Department of Agriculture prior to September 6, 1958. If the safety and lawfulness of the substance is not expressly recognized in an FDA regulation, the burden will rest on the claim's proponent, as a prerequisite to FDA's evaluation of the health claim, to submit all the scientific data and other relevant information required to demonstrate safety and lawfulness in accordance with applicable petition requirements. FDA will withhold review of the health claim until it is satisfied on these points.

(56 FR 60537 at 60546.) FDA reiterated this position in the health claims final rule (58 FR 2487,2502).

Many comments from the dietary supplement industry objected to the safety provisions as proposed. Many of these comments disagreed with the application of FDA's preliminary safety requirement to the ingredients of dietary supplements. Some of these comments asserted that the 1990 amendments do not require a separate showing of safety for substances that are the subjects of disease-related claim petitions, and that FDA should not add such a requirement to its regulation. The comments pointed out that many herbs and other

[1] Note that nothing in this document is intended to address the circumstances in which a substance may be a drug under section 201(g)(1)(C) of the act.

ingredients of dietary supplements have been used for thousands of years with no known ill effects. Requiring further evidence of safety for these products, the comments contended, would be superfluous and expensive. However, other comments agreed with FDA that it would be inappropriate to allow a health claim on a product that contains a substance that is not GRAS, is not the subject of a food additive regulation, or has not received a prior sanction.

FDA tentatively concludes that this preliminary requirement should apply to substances in dietary supplements. Sections of the act enacted by the 1990 amendments cannot be implemented independently of the remaining portions of the act (see section 9 of the 1990 amendments). The act must be considered as a whole, and FDA's responsibility for ensuring the safety of foods is explicitly provided for in other sections of the act (see sections 201(s), 402(a)(1) and (a)(2), and 409 of the act).

This fact is particularly significant because the agency will be specifically authorizing the health claims that will be made. In view of this affirmative action, FDA authorization of a health claim places the agency's imprimatur on the claim. It would be a violation of the agency's responsibility under the act to authorize a health claim about a substance, whether it be in dietary supplement or conventional food form, without being satisfied that the use of the substance is safe. Safety considerations are of particular importance with respect to health claims because such claims may well change the dietary patterns of many Americans.

The fact that some herbs and other ingredients of dietary supplements have been used for thousands of years does not necessarily justify a conclusion by FDA that their use is safe. While the proponents of claims for such substances are free to demonstrate that the use of those substances is generally recognized as safe based on their common use in food prior to 1958, the agency notes that much of the use of many of these substances has been as a drug, tonic, or folk remedy, rather than as food (see 53 FR 16545, May 10, 1988). As drugs, the levels and frequency of use of these substances may have been significantly different than the levels and frequency of use that will result from their use as foods. Thus, FDA needs to review data on the identity of the substance, the safety of the substance, the use of the substance in food, the cultural context of its use, and the dietary habits in the country where use of the substance occurred (see 50 FR 27295, July 2, 1985).

Even though there is no explicit provision in the 1990 amendments requiring a separate showing of safety, it must be kept in mind that the act "* * * is designed to ensure the safety of the food we eat * * *." (See *Les* v. *Reilly*, 968 F.2d 985 (9th Cir. 1992).) The requirement that a substance that is the subject of a health claim be safe is implicit in the 1990 amendments. Section 403(r)(3)(A)(ii) of the act states that a health claim may be made only for a food that does not contain any nutrient in an amount that increases the risk of a disease or health-related condition that is diet related to persons in the general population, taking into account the significance of the food in the total daily diet. FDA believes that, in addition to requiring establishment of disqualifying levels for total fat, saturated fat, cholesterol, and sodium in § 101.14(a)(5) (see 58 FR 2488 through 2498), this provision evidences a concern by Congress that a substance that is the subject of a health claim be used in a manner that is safe. This concern was reflected in the statements of the sponsors in both the House and the Senate (Refs. 2 and 5).

Further, section 9 of the 1990 amendments states that the amendments "shall not be construed to alter the authority of the Secretary of Health and Human Services * * * under the Federal Food, Drug, and Cosmetic Act * * *." Thus, FDA's responsibility for ensuring the safety of foods has in no way been diminished by the passage of the 1990 amendments. Thus, for all the foregoing reasons, FDA is proposing to make health claims for substances in dietary supplements, like claims for any other food, subject to § 101.14(b)(3)(ii).

In responding in the health claims final rule to concerns raised by comments suggesting that FDA recognize manufacturers' private GRAS determinations, the agency stated about § 101.14(b)(3)(ii):

> FDA acknowledges that the GRAS affirmation and food additive listing process can be lengthy. Thus, FDA designed § 101.14(b)(3)(ii) to provide flexibility with respect to the type of showing of safety that is necessary to make a substance eligible to be the subject of a health claim. GRAS affirmation and food additive listing are but two of the procedures by which a substance may meet this preliminary requirement.
>
> FDA intends to consider the basis of manufacturers' independent GRAS determinations where such determinations are submitted with petitions for health claims and may use its discretion to accept, without formal affirmation, the independent determination of GRAS where FDA believes that such action would be appropriate. As FDA pointed out in the previous comment, however, the agency would not be fulfilling its responsibilities under the act if it were to permit a substance to be the subject of a health claim without satisfying itself that the use of that substance is safe.
>
> Although FDA will consider all manufacturers' independent GRAS determinations where the basis for such determinations are submitted with petitions for health claims, the agency advises that it will generally not be possible for FDA to judge whether GRAS determinations based on complex scientific evidence are valid within the short timeframes mandated under the 1990 amendments for health claims petitions. Instead, agency agreement with an independent determination that a substance is GRAS will be most likely where the substance is an ingredient, or a component of a food ingredient, that was in common use in food prior to January 1, 1958, in a similar context. However, where such agreement occurs, the agreement does not constitute GRAS affirmation. Instead, the history of common use in food, coupled with the fact that FDA knows of no reason to question the safety of the food ingredient, means that the substance will be treated as if it is an unlisted GRAS substance (as provided for in §§ 170.30(d) and 182.1(a) (21 CFR 170.30(d) and 182.1(a))) in the manner provided for in the food ingredient list in 21 CFR part 182.
>
> (58 FR 2478 at 2502 through 2503)

Under this proposal, this statement would be fully applicable to substances in dietary supplements.

C. Scientific Standard

For reasons fully discussed previously in this preamble, FDA is proposing the same scientific standard for dietary supplements that has been established for conventional food. The scientific standard for health claims in § 101.14(c) states that FDA will promulgate regulations authorizing a health claim only when it determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.

Specific reference to dietary supplements in § 101.14(c) is not necessary because FDA's proposed revision in § 101.14(a)(2) of the term "substance" to include dietary supplements will link dietary supplements to the term "health claim," and § 101.14(c) sets forth the circumstances under which FDA will promulgate regulations authorizing such a claim.

Some comments urged FDA to consider with fairness any proposed health claim that relies on data derived from non-Western cultures.

The agency advises that it will consider the evidence submitted in support of a claim on its scientific merits and in the context of the totality of available evidence. It will not underrate any evidence on the basis of its cultural or geographic origin. Of course, however, FDA must consider the significance in the U.S. population of the effects of the disease or health-related condition and the relevance of studies done in other populations to the U.S. population.

D. General Labeling Requirements

In the health claims final rule, FDA established a number of general requirements for health claims for food in conventional food form in § 101.4(d) to ensure that consumers are provided with valid and reliable information about the value that ingestion (or reduced ingestion) of the particular substance, as part of a total dietary pattern, may have in affecting certain diseases or health-related conditions.

The agency is proposing in this document that dietary supplements be subject to the same general requirements that it has established for conventional food in § 101.14(d). Specific references to dietary supplements in § 101.14(d) are not necessary because FDA's proposed revision in § 101.14(a)(2) of the term "substance" to include dietary supplements will link dietary supplements to the term "health claim" for which § 101.14(d) prescribes general requirements.

1. FDA Commitments for Valid Claims

Section 101.14(d)(1) provides that when FDA determines that a health claim is valid, the agency will propose a regulation in subpart E of part 101 to authorize the use of the claim. Further, the provision states that if the claim pertains to a substance not provided for in § 101.9, FDA will propose amending those regulations to include declaration of the substance. To ensure that the provisions established in § 101.4(d)(1) apply to dietary supplements, the agency is proposing to revise § 101.14(d)(1) to reference, in addition to § 101.9, the provisions of proposed § 101.36 (21 CFR 101.36), that appear elsewhere in this issue of the **Federal Register**, which establish requirements for the nutrition labeling of dietary supplements of vitamins or minerals subject to section 411 of the act.

Several comments argued that FDA should not permit firms to place any health claims on the labels and in labeling of dietary supplements.

Through enactment of section 403(r) of the act, Congress has mandated that firms be permitted to place health claims on food labels and in their labeling when FDA finds that the claims are valid and establishes regulations authorizing their use. So long as a dietary supplement is a food, it is subject to section 403(r) of the act. Although the comments cited a wide variety of reasons to support their objections, FDA is not addressing these reasons because the 1990 amendments settled this issue. The agency is, therefore, not proposing any general limits on the use of health claims in dietary supplements in response to these comments.

2. General Requirements

Section 101.14(d)(2) requires that health claims on food: (1) Be consistent with the specific authorizing regulation for the claim; (2) be limited to describing the value that ingestion (or reduced ingestion) of the substance, as part of a total dietary pattern, may have on a particular disease or health-related condition; (3) be complete, truthful, and not misleading; (4) contain all required information for that claim in one place without other intervening material (except that the principal display panel of the label or labeling may bear a reference statement such as "See attached pamphlet for information about calcium and osteoporosis," with the entire claim appearing elsewhere on the other labeling); and (5) enable the public to comprehend the information provided and to understand the relative significance of such information in the context of a total daily diet. If the claim is about the effects of consuming the substance at decreased dietary levels, the level of the substance in the food must be sufficiently low to justify the claim (e.g., if a definition for use of the term "low" has been established for that substance, the substance must be present at a level that meets the requirements for use of that term, unless a specific alternative level has been established for the substance in the authorizing regulation). If the claim is about the effects of consuming the substance at other than decreased dietary levels, the level of the substance in the food must be sufficiently high and in an appropriate form to justify the claim (e.g., if a definition for use of the term "high" for that substance has been established, the substance must be present at a level that meets the requirements for use of that term, unless a specific alternative level has been established for the substance in the authorizing regulation). (See § 101.14(d)(2)(vii)(A) for additional requirements where the food meets the "high" or "low" requirements based on its reference amount customarily consumed and the labeled serving size differs from that amount. See § 101.14(d)(2)(vii)(B) for guidance about how a food can meet the "high" and "low" requirements where the food is sold in a restaurant).

FDA is proposing that dietary supplements be subject to these requirements to ensure that consumers are provided with scientifically valid, nonmisleading, and reliable information about the value that ingestion of the particular substance in the dietary supplement may have in affecting a disease or health-related condition. A specific reference to dietary supplements in § 101.14(d)(2) is not necessary because FDA's proposed revision in § 101.14(a)(2) of the term "substance" to include dietary supplements will bring dietary supplements within the coverage of § 101.14(d)(2).

3. Nutrition Labeling

Section 101.14(d)(3) requires that health claims on conventional food bear nutrition labeling in accordance with §§ 101.9 and 101.10 (21 CFR 101.10). The agency is proposing to revise § 101.14(d) to reference, in addition to §§ 101.9 and 101.10, the provisions of proposed § 101.36 that appear elsewhere in this issue of the **Federal Register**. In response to section 403(q)(5)(E) of the act, FDA is proposing in § 101.36 to establish requirements for the nutrition labeling of dietary supplements of vitamins or minerals subject to section 411 of the act. Elsewhere in this issue of the **Federal Register**, the agency is proposing to require that dietary supplements of herbs and of other similar nutritional substances bear nutrition labeling in accordance with § 101.9 because these products are not covered by section 411 of the act and therefore are not subject to section 403(q)(5)(E) of the act.

E. Prohibited Health Claims

In § 101.14(e) of the health claims final rule, FDA established a number of situations where health claims are prohibited. In that paragraph, FDA prohibits health claims unless: (1) The claim is specifically provided for in an authorizing regulations in subpart E of part 101; (2) the claim conforms to all general provisions of § 101.14 as well as to all specific provisions in the authorizing regulation; (3) none of the disqualifying levels identified in § 101.14(a)(5) is exceeded in the food, unless specific alternative levels have been established for the substance in the authorizing regulation, and the labeling bears a statement that complies with § 101.13(h) highlighting the nutrient

that exceeds the disqualifying level; (4) no substance for which a disqualifying nutrient level has not been established is present at an inappropriate level as determined in the specific provision authorizing the claim in subpart E of part 101; (5) the label does not represent or purport that the food is for infants and toddlers less than 2 years of age except if the claim is specifically provided for in subpart E of part 101; and (6) except for dietary supplements not in conventional food form, the food contains 10 percent or more of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) for vitamin A, vitamin C, iron, calcium, protein, or fiber prior to any nutrient addition.

In this document, the agency is proposing that dietary supplements be subject to the general prohibitions that have been established for conventional food in § 101.14(e). The agency tentatively concludes that this action is appropriate because these prohibitions: (1) Reflect the statutory restriction in section 403(r)(1)(B) of the act that requires that health claims be made in accordance with the provisions of section 403(r)(5)(D) of the act for dietary supplements; (2) ensure that inappropriate, unsubstantiated, and fraudulent health claims are not made; and (3) reduce the potential for consumer confusion when confronted with a situation in which there would be health claims for substances when they are present in dietary supplements but not when they are present in conventional foods. Specific references to dietary supplements in § 101.14(e) generally are not necessary because FDA's proposed revision in § 101.14(a)(2) of the term "substance" to include dietary supplements will bring dietary supplements within the coverage of § 101.14(e).

FDA does believe, however, that a reference to dietary supplements is appropriate in the introductory sentence of § 101.14(e) to clarify that dietary supplements are considered food by the agency. Specifically, FDA is proposing to add the phrase "regardless of whether the food is in conventional food form or dietary supplement form" into that sentence to make clear that no expressed or implied health claim may be made on the label or in labeling of any food unless the conditions in that paragraph are met.

1. Claims not Authorized by FDA

Section 101.14(e)(1) and (e)(2) prohibit the use on a food label or in labeling of any claim that expressly or by implication characterizes the relationship of any substance to a disease or health-related condition unless: (1) The claim is specifically provided for in subpart E of part 101, and (2) the claim conforms to all general provisions of § 101.14 as well as to all specific provisions in the appropriate section of subpart E of part 101.

Numerous comments voiced support for or opposition to the proposal to prohibit unauthorized health claims.

FDA adopted §§ 101.14(e)(1) and (e)(2) for foods in conventional food form (58 FR 2478 at 2534) as originally proposed because they are explicitly required under section 403(r)(1)(B) and (r)(3) of the act. For dietary supplements, these provisions respond directly to the language in section 403(r)(1)(B) of the act, which provides that a food shall be deemed misbranded if a health claim is made in its label or labeling unless the claim is made in accordance with section 403(r)(5)(D). Section 403(r)(5)(D) of the act provides that such claims are subject to the requirements adopted by the Secretary (and FDA, by delegation) by regulation. In response to the provisions of section 403(r)(5)(D) of the act, FDA is proposing that dietary supplements be fully subject to § 101.14(e)(1) and (e)(2).

Many consumers asserted that dietary supplements, including supplements containing herbs, should be permitted to include all types of nutritional and dietary guidance in their labeling, including information based on folklore and historical use, provided that the claims are made truthfully. These comments maintained that such information is essential to making informed choices of such alternatives to conventional drug therapies.

FDA advises that dietary supplements that bear labeling that expressly or by implication characterizes the relationship of any substance to a disease or health-related condition will be subject to the provisions of section 403(r) of the act. However, if the claim reveals that the product is intended to be used in the diagnosis, cure, mitigation, treatment, or prevention of a disease, as would likely be the situation where the product is presented as an alternative to a conventional drug therapy, the product, like any other product that does so, is a drug under section 201(g)(1)(B) of the act and subject to the requirements for drugs in chapter V of the act.

However, supplement manufacturers, like all other food manufacturers, are welcome to submit health claim petitions that establish the validity of claims that characterize the relationship of a substance to a disease or a health related condition in a manner that is appropriate for a food (see section II.B.1. of this document). Any such petition that shows that the preliminary requirements in § 101.14(b) and the scientific standard for a health claim in § 101.14(c) are met will provide the basis for a proposal to authorize a claim in accordance with section 403(r)(4)(A)(i) of the act.

In addition, FDA advises manufacturers of dietary supplements that where a claim does not include one or both of the basic elements of a health claim, reference to a substance and to a disease or health-related condition, it constitutes dietary guidance that may be provided on the label or in labeling so long as it is presented in a truthful and nonmisleading manner (see 58 FR 2478 at 2487).

2. Additional Limits on Health Claims

Some comments on the November 1991 health claims proposal urged that the agency allow health claims only on foods that are consistent with dietary guidelines.

In the health claims final rule (58 FR 2478 at 2534), FDA adopted new § 101.14(e)(6) to require consistency with dietary guidelines by prohibiting health claims unless the food contains 10 percent or more of the RDI or DRV for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition. (A complete discussion of why these specific criteria were selected appears in the preamble of that document (see 58 FR 2478 at 2521 through 2522.) This provision stresses the importance of selecting foods so that dietary sources of calories are coupled with sources of nutrients. This approach incorporates established levels of significance for nutrients in food and is based on the amounts in foods of certain nutrients required to be listed on the label as part of mandatory nutrition labeling. As such, this approach applies to food in conventional food form.

FDA specifically exempted dietary supplements not in conventional food form from this requirement. Such supplements are intended only to provide nutritive value to the daily diet, and they make no pretense of serving as substitutes for conventional food. (Dietary supplements in conventional food form are, however, intended to serve as substitutes for conventional food.) As a result it would not be logical to hold such products to criteria designed to ensure consistency with dietary guidelines for conventional food. A dietary supplement that meets the qualifying criterion in § 101.14(d)(2)(vii) and that does not contain a nutrient at a disqualifying level specified in § 101.14(a)(5)

possesses nutritive value for a health claim irrespective of whether or not it may also provide calories. Accordingly, FDA is not proposing to make any change in the exemption for dietary supplements not in conventional food form from the provisions of § 101.14(e)(6). For consistency with the proposed definition of the term "dietary supplement," however, FDA is proposing to revise the wording for this exemption to remove the phrase "not in conventional food form" because the proposed definition of "dietary supplement" states that such foods are not in conventional food form.

F. Applicability

In the health claims final rule, FDA established a provision in § 101.14(g) stating that the requirements for health claims in § 101.14 apply to foods intended for human consumption that are offered for sale. FDA is proposing that dietary supplements also be covered by § 101.14(g). Again, FDA believes that additional reference to dietary supplements may be appropriate in § 101.14(g) to clarify that dietary supplements are considered food by the agency. Specifically, FDA proposes to revise § 101.14(g) to state that the requirements of § 101.14 apply to foods intended for human consumption that are offered for sale, regardless of whether the foods are in conventional food form or dietary supplement form.

G. Petitions

Consistent with the proposed approach of regulating dietary supplements in the same manner as foods in conventional food form, FDA tentatively finds that it is appropriate under section 403(r)(5)(D) of the act to make petitions for a regulation authorizing a health claim on the label or in labeling of dietary supplements subject to the procedure that has been established in § 101.70 for petitions for health claims on the label or in labeling of foods in conventional food form. FDA structured § 101.70 to ensure that the agency has the information that it needs to assess the validity of claims for substances in these foods. Thus, subjecting petitions for claims for substances in dietary supplements to the same standard as for petitions for claims of substances in foods in conventional food form will ensure that the former petitions will provide the necessary information.

Because FDA is proposing the same requirements for petitions on substances in dietary supplements as for substances in foods in conventional food form, it is not distinguishing between dietary supplements and foods in conventional food form in § 101.70. However, one conforming revision needs to be made in § 101.70 for dietary supplements. FDA is proposing that § 101.70(f) be revised so that the petitioner will reference section 403(r)(5)(D) of the act as the specific statutory provision under which a petition for a health claim for a dietary supplement is being submitted.

IV. Impact Statements

A. Economic Impact

FDA has examined the economic implications of the proposed rules amending 21 CFR part 101 as required by the Regulatory Flexibility Act and Executive Orders 12291 and 12612. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The agency finds that the proposed rules on dietary supplements, taken together, do not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has explored whether these proposed rules may have a significant impact on small businesses and has tentatively concluded that they do not.

The costs of the proposed regulations on dietary supplements, taken as a whole, are estimated to be $20 million. The benefits are primarily those that result from standardizing the format of nutrition information already provided on vitamin and mineral supplements with that of conventional foods. However, because most vitamin and mineral supplements do not currently make health claims on their labels or labeling, FDA does not believe that this proposed rule will result in any significant change. Accordingly, there would be few benefits to the regulation. The agency has presented a more indepth analysis in the document covering mandatory nutrition labeling requirements for dietary supplements, published elsewhere in this issue of the **Federal Register**.

B. Environmental Impact

The agency has previously considered the environmental effects of this proposed rule when it was part of the proposed rule pertaining to both foods in conventional food form and to dietary supplements (November 27, 1991, **Federal Register** (56 FR 60537 at 60562)). At that time, FDA determined under 21 CFR 25.24(a)(8) and (a)(11) that the proposed action was of a type that does not individually or cumulatively have a significant impact on the human environment. No new information or comments have been received with respect to health claims for dietary supplements that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

C. Paperwork Reduction Act

Section 101.70, which FDA is proposing to extend to cover dietary supplements, contains requirements for submission of petitions to FDA that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0287.

This proposal contains collection of information requirements that are subject to review by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Therefore, in accordance with 5 CFR part 1320, the title, description, and respondent descriptions of the proposed collection of information requirements are shown below with an estimate of the annual collection of information burden. Included in the estimate is the amount of time for reviewing instructions, searching existing data sources, gathering necessary information, and completion and submission of petitions.

Title: 21 CFR 101.70—Food Labeling; General Requirements for Health Claims for Food.

Description: Section 403(r)(4)(A)(i) of the act grants any person the right to petition the agency to issue a regulation authorizing a health claim on a substance-disease relationship. The agency is proposing to extend the coverage of § 101.70 as the general procedural regulation for health claims to include dietary supplements. In § 101.70, paragraphs (a) through (d) address general issues and requirements such as the incorporation of various types of information into the petition and standard FDA requirements pertaining to clinical and nonclinical studies submitted to the agency for review.

Section 101.70(f) sets forth the format for a health claim petition. It specifies the types of data and other requirements that are necessary to provide for an efficient review and to demonstrate that the proposed substance-disease relationship complies with the

requirements established under the 1990 amendments.

Description of Respondents: Persons and businesses, including small businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
101.70	5	1	400	2000
Total				2000

FDA has submitted copies of this proposed rule to OMB for its review of this reporting requirement.

V. Comments

Interested persons may, on or before August 17, 1993, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

As mentioned previously in this preamble, the DS act requires that final rules implementing the 1990 amendments with respect to dietary supplements be issued by December 31, 1993. In order to meet this statutory timeframe, FDA must limit the comment period for this proposal to 60 days. FDA believes that the need to meet this timeframe constitutes good cause under 21 CFR 10.40(b)(2) of its procedural regulations for limiting the comment period. Thus, the agency is announcing that because of the short statutory timeframe, FDA will be unable to grant any extensions to the comment period. In addition, the agency will not consider the content of any comments received at Dockets Management Branch after the close of the 60-day comment period.

VI. References

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

1. House of Representatives, House Report 101–538, "Nutrition Labeling and Education Act of 1990," June 13, 1990.

2. 136 Congressional Record-House, H12951–12955, October 26, 1990.

3. 138 Congressional Record-House H12597, October 8, 1992; 138 Congressional Record-Senate S17236, October 7, 1992.

4. 136 Congressional Record—House, H5836–5845, July 30, 1990.

5. Congressional Record-Senate, S16607–16612, October 24, 1990.

6. U.S. Department of Health and Human Services, Public Health Service, "The Surgeon General's Report on Nutrition and Health," DHHS (PHS) Publication No. 88–50210 (GPO Stock No. 017–001–00465–1, U.S. Government 9Printing Office, Washington, DC), 1988.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 355, 371); sec. 202(a)(2) of the Dietary Supplement Act (Pub. L. 102–571).

2. Section 101.14 is amended by revising paragraphs (a)(2); by adding new paragraph (a)(4); and by revising paragraphs (b)(3)(i), (d)(1), (d)(3), the introductory text of paragraph (e), and paragraphs (e)(6) and (g) to read as follows:

§ 101.14 Health claims: general requirements.

(a) * * *

(2) *Substance* means a specific food or component of food, regardless of whether the food is in conventional food form or a dietary supplement that includes vitamins, minerals, herbs, or other similar nutritional substances.

* * * * *

(4) *Dietary supplement* means a food, not in conventional food form, that supplies a component to supplement the diet by increasing the total dietary intake of that component.

* * * * *

(b) * * *

(3) * * *

(i) The substance must, regardless of whether the food is in conventional food form or dietary supplement form, contribute taste, aroma, or nutritive value, or any other technical effect listed in § 170.3(o) of this chapter, to the food and must retain that attribute when consumed at levels that are necessary to justify a claim; and

* * * * *

(d) * * *

(1) When FDA determines that a health claim meets the validity requirements of paragraph (c) of this section, FDA will propose a regulation in subpart E of this part to authorize the use of that claim. If the claim pertains to a substance not provided for in § 101.9 or § 101.36, FDA will propose amending that regulation to include declaration of the substance.

* * * * *

(3) Nutrition labeling shall be provided in the label or labeling of any food for which a health claim is made in accordance with § 101.9; for restaurant foods, in accordance with § 101.10; or for dietary supplements of vitamins or minerals, in accordance with § 101.36. The requirements of the introductory text of paragraph (d)(3) of this section are effective as of May 8, 1993, except:

(i) [Reserved]

(ii) [Reserved]

(iii) For dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances for which the requirements of paragraph (d)(3) of this section will be effective (insert date

6 months after date of publication of the final rule in the **Federal Register**).

(e) *Prohibited health claims.* No expressed or implied health claim may be made on the label or in labeling for a food, regardless of whether the food is in conventional food form or dietary supplement form, unless:

* * * * *

(6) Except for dietary supplements, the food contains 10 percent or more of the Reference Daily Intake or the Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

* * * * *

(g) *Applicability.* The requirements of this section apply to foods intended for human consumption that are offered for sale, regardless of whether the foods are in conventional food form or dietary supplement form.

3. Section 101.70 is amended in paragraph (f) in the sample petition for a health claim by adding the words "or 403(r)(5)(D)" after "403(r)(3)".

Dated: June 10, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93–14272 Filed 6–15–93; 8:45 am]

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21 CFR Part 101

[Docket No. 90N–135D]

RIN 0905–AD96

Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins, Minerals, Herbs, or Other Similar Nutritional Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish regulations for the nutrition labeling of dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances. The action is in response to certain provisions of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and the Dietary Supplement Act of 1992 (the DS act).

DATES: Written comments by August 17, 1993. The agency is proposing that any final rule that may issue based upon this proposal become effective 6 months following its publication.

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

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–205–5817.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the President signed into law the 1990 amendments (Pub. L. 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the notable aspects of the 1990 amendments is that they added section 403(q) to the act (21 U.S.C. 343(q)). This section requires that most foods bear nutrition labeling.

In response to section 403(q), FDA published a proposal on nutrition labeling in the **Federal Register** of November 27, 1991 (56 FR 60366 at 60393). The document proposed, among other things, a regulation specifically for the nutrition labeling of dietary supplements of vitamins or minerals (proposed § 101.36), and it proposed to make the nutrition labeling of dietary supplements of herbs or other similar nutritional substances subject to § 101.9 (21 CFR 101.9), the general regulation on nutrition labeling. This distinction reflects one that is created by section 403(q)(5)(E) of the act. This section provides that if a food to which section 411 of the act applies (i.e., a dietary supplement of vitamins or minerals—section 411, also known as "The Proxmire Amendment" limits FDA's ability to regulate the level of vitamins or minerals in food) contains one or more of the nutrients required to be listed in nutrition labeling, "the label or labeling of such food shall comply with requirements of subparagraphs (1) and (2) [of section 403(q) of the act] in a manner which is appropriate for such food and which is specified in regulations of the Secretary." Other dietary supplements are not subject to section 403(q)(5)(E) and thus are subject to regulation under section 403(q) as any other food.

In response to the proposed rule of November 27, 1991, on nutrition labeling, FDA received over 45 responses, each containing one or more comments, that pertained to the nutrition labeling of dietary supplements. Responses were received from consumers, health care professionals, universities, State and local governments, foreign governments, trade organizations, consumer advocacy organizations, research institutes, industry, and professional organizations. The agency summarized and discussed the issues in these comments in the preamble of the final rule that it issued on January 6, 1993 (58 FR 2079 at 2167), which was based on the November 27, 1991, proposed rule. The rule finalized the proposed rule on the nutrition labeling of food in conventional food form (§ 101.9) but did not finalize the proposed rule on the nutrition labeling of dietary supplements of vitamins or minerals (§ 101.36), or any provision on how dietary supplements of herbs or other nutritional substances are to be labeled, because of the DS act.

The DS act (Pub. L. 102–571) was signed into law on October 6, 1992. In section 202(a)(1), the DS act established a 1-year moratorium on the implementation of the 1990 amendments with respect to dietary supplements that are not in the form of conventional food. Section 202(a)(2) of the DS act requires the Secretary of Health and Human Services (the Secretary), and by delegation FDA, to issue new proposed regulations that are applicable to dietary supplements no later than June 15, 1993, and final regulations by December 31, 1993. In addition, section 203 of the DS act instructs FDA not to promulgate regulations that require the use of, or that are based upon, recommended daily allowances of vitamins or minerals before November 8, 1993 (other than regulations establishing the U.S. Recommended Daily Allowances (U.S. RDA), specified in § 101.9(c)(7)(iv) as in effect on October 6, 1992). FDA intends to address the issue of the appropriate values for Reference Daily Intakes (RDI's). However, the National Academy of Sciences (NAS) is in the process of reevaluating the basis on which Recommended Dietary Allowance (RDA) values are determined. They are addressing the issue of whether values should be selected to prevent deficiencies or to promote optimal wellness. The agency believes that its action should await completion of the NAS process. FDA is committed to working with NAS to help resolve this issue.

According to the manager's statement for the Senate (Ref. 1), the DS act is intended to provide FDA with an opportunity to carefully consider how best to regulate dietary supplements. The agency is expected to develop a comprehensive approach for reforming the regulation of dietary supplements.

The statement stresses the DS act's policy goal that:

> * * * [T]he American public must be assured that the dietary supplements they choose to consume are safe, made to quality standards, bear informative labeling, and that health or disease-related claims are properly supported.

(138 Congressional Record S 17240 (October 7, 1992))

This proposal satisfies the provision of the DS act that FDA issue new proposed regulations on dietary supplements with respect to nutrition labeling. The agency has arrived at the tentative judgments that are embodied in this proposal after carefully considering how best to provide for nutrition labeling on dietary supplements in the legal context established by the act. FDA is also issuing proposed regulations that address the use of nutrient content claims and health claims on dietary supplements in companion documents published elsewhere is this issue of the **Federal Register**.

II. Provisions of Proposed Regulations

The agency is proposing in § 101.36(a) that a dietary supplement of a vitamin or mineral that has an RDI as established in § 101.9(c)(8)(iv) or a Daily Reference Value (DRV) as established in § 101.9(c)(9) shall bear nutrition labeling in accordance with this section, as illustrated in the sample labels in proposed § 101.36(c)(8). FDA is also providing in proposed § 101.36 that dietary supplements of herbs and of other similar nutritional substances are required to bear nutrition labeling in accordance with § 101.9. (Although the agency previously considered that there could be dietary supplements in conventional food form, FDA is proposing in the document on health claims published elsewhere in this issue of the **Federal Register** to limit the coverage of this term to food not in conventional food form. FDA is reflecting this tentative position in this document. The agency notes that because the DS act did not cover foods in conventional food form, any products in conventional food form that had been considered to be dietary supplements are already covered by § 101.9.)

FDA recognizes that the position that it is taking in this proposal is somewhat different from the one it took in the November 27, 1991, proposed rule (56 FR 60366 at 60381). There the agency interpreted section 403(q)(5)(E) of the act to mean that a vitamin E supplement, for example, would not be subject to the special nutrition labeling provided for by that section because vitamin E, while a substance whose presence in a supplement would subject that supplement to section 411 of the act, was not one of the vitamins or minerals required to be listed in nutrition labeling under section 403 (q)(1) or (q)(2) of the act. Only vitamin A, vitamin C, calcium, and iron were required to be listed.

However, the agency has reconsidered this position in light of the fact that § 101.9(c)(8)(ii), as adopted in the January 6, 1993, final rule, provides that vitamins and minerals (other than vitamin A, vitamin C, calcium, and iron) must be declared when they are added as a nutrient supplement, or when a claim is made about them (58 FR 2079 at 2178). Thus, when vitamin E is added as a nutrient supplement (see § 170.3(o)(20) (21 CFR 170.3(o)(20))) to a food in conventional food form, it would have to be declared. FDA is aware of no reason to treat a dietary supplement of vitamins or minerals any differently. Therefore, all vitamins and minerals for which FDA has established RDI's or DRV's, when they are present in supplements, are "nutrients required to be listed in nutrition labeling" and thus come within section 403(q)(5)(E) of the act.

Furthermore, the agency believes that section 403(q)(5)(E) of the act covers vitamins and minerals for which FDA has established RDI's or DRV's, when they are present in supplements, such as rose hips, that are represented as a source of vitamins or minerals. Therefore, the agency considers a supplement that is represented to be a source of vitamins or minerals to be a food to which section 411 of the act applies and, thus, to be subject to proposed § 101.36. The agency recognizes that, in some cases, the determination of what supplements are covered by section 411 of the act is difficult, and the agency seeks comments on this issue.

Dietary supplements of herbs or other similar nutritional substances are not covered by section 411 of the act and are therefore not covered by section 403(q)(5)(E) of the act. Thus, it was apparently the intent of Congress that dietary supplements of herbs and other similar nutritional substances be fully subject to the requirements of section 403 (q)(1) and (q)(2) of the act. Thus, they are appropriately subject to nutrition labeling under § 101.9. As a result, under this proposal, dietary supplements of herbs and of other similar nutritional substances are subject to the same nutrition labeling rules that apply to foods in conventional food form. Under this proposal, nutrition label of these supplements will present the nutrition information required in § 101.9(c) in the format specified in § 101.9 (d) and (e). The simplified format in § 101.9(f) may be followed when a supplement of herbs or other nutritional substances contains insignificant amounts of 7 or more of the nutrients required to be listed in § 101.9(e). No nutrition label will be required when all of the nutrients required are absent as specified in § 101.9(j)(4).

To reduce consumer confusion and to ensure that it is readily observable and comprehensible to consumers, the agency is proposing that nutrition labeling on vitamin or mineral supplements be presented in a manner that is as similar as possible to the nutrition labeling of other foods (section 2(b)(1)(A) of the 1990 amendments). Thus, the agency is proposing in § 101.36(b) to require that the overall heading of the nutrition label be "Nutrition Facts." It is proposing that, consistent with § 101.9(d), the nutrition information be enclosed in a box by use of lines, be in black or one color type, and be printed on a white or other neutral contrasting background whenever practical.

A. Serving Size Information

The agency is proposing in § 101.36(b)(1) that "Serving Size" be placed under the heading of "Nutrition Facts" and aligned on the left side of the nutrition label of supplements. The agency points out that the 1990 amendments added section 403(q)(1)(A)(i) to the act, which specifies that the "* * * serving size * * * is an amount customarily consumed * * *." In addition, section 403(q)(5)(E) of the act provides that dietary supplements of vitamins or minerals shall comply with the requirements of section 403(q)(1) in a manner "* * * which is appropriate for such food and which is specified in regulations of the Secretary."

In attempting to develop a reference amount customarily consumed for dietary supplements, the agency was restricted by the lack of available data on the amounts of dietary supplements that are customarily consumed per eating occasion and by the wide variety of dietary supplements available to consumers, many of which could be expected to have different amounts customarily consumed. To circumvent this lack of data, FDA is proposing to define in § 101.12(b) (21 CFR 101.12(b)), Table 2, one serving of a dietary supplement of a vitamin or mineral, of an herb, or of other similar nutritional substances as the maximum amount recommended, as appropriate, on the label for consumption per eating

occasion, or, in the absence of recommendations, 1 unit, e.g., tablet, capsule, packet, teaspoonsful, etc. This proposal is based on the agency's belief that consumption of specific dietary supplement products is determined in large part by the amount recommended for consumption by the manufacturer on the label. The agency requests comments on this approach.

Thus, under this proposal, if label instructions recommend one tablet per day, the serving size is one tablet. If there is no amount recommended on the label, the serving size is one unit of the supplement. If one to three tablets are recommended per day, the serving size is one tablet based on the fact that there are three separate eating occasions per day. However, if two tablets are recommended per meal, the serving size is two tablets. If the label instructions recommend a range of consumption per eating occasion (e.g., take two to five tablets 4 times a day), the serving size will be assumed to be the maximum of the range specified (five tablets). If a product comes in a packet containing different tablets or capsules that are to be consumed at one time, the appropriate serving size is one packet (pac, package, or packette). The proposed reference amount in § 101.12(b) will apply to dietary supplements of vitamins or minerals that are proposed to be subject to nutrition labeling regulations in § 101.36 and to dietary supplements of herbs or of other similar nutritional substances that are proposed to be subject to § 101.9. Furthermore, the agency is proposing in § 101.36(b)(1) that for dietary supplements of vitamins or minerals, the procedure in § 101.9(b) be used for converting the reference amount to the label serving size.

In the proposed rule on nutrition labeling of November 27, 1991 (56 FR 60366 at 60382), the agency did not propose to require that serving sizes be declared on dietary supplements. Instead, the agency proposed that "units per day" be disclosed because it was proposing that nutrition information be presented on a "per unit" basis or, when label directions specified that more than one unit be consumed during a day, on the basis of "per day" (i.e., dual declaration).

As discussed in the January 6, 1993, final rule (58 FR 2079 at 2168), the agency received a number of comments opposing the dual declaration of nutrition information on supplements. Comments argued that dual declaration will confuse consumers, overcrowd labels, and discriminate against those supplements that are required to have it. Some of these comments stated that declaration should be only on a "per day" basis because it is the total amount of nutrients that is important. Other comments asserted that the declaration should be on a "per unit" basis because some consumers may deviate from the recommended intake, or the intake may be presented as a range (e.g., one to three tablets per day). Some of these comments pointed out that U.S. Pharmacopeia also favors a "per unit" basis.

In the January 6, 1993, final rule (58 FR 2079 at 2168), the agency agreed that dual declaration of nutrition information may create a readability problem for consumers. It deferred rulemaking because of the DS act but tentatively concluded that declaration on a "per unit" basis is more useful because consumers may not actually consume the amount indicated "per day." Based on that tentative conclusion, FDA questioned the usefulness of serving size information for supplements in the form of discrete units, such as tablets or capsules, concluding that it was sufficient to use the subheading "each unit contains:". The agency did state that it believed that serving size information should be provided for supplements in liquid or powdered form to give the consumer better information about the dosage unit.

The agency has been able to reexamine this issue during the moratorium imposed by the DS act but still believes that requiring dual declaration when more than one unit is to be consumed during a period of 1 day creates readability problems. Although the agency has been persuaded that a "per unit" approach is more useful than a "per day" approach, the agency is concerned that reporting information solely on a "per unit" basis could confuse consumers when more than 1 unit is to be consumed at one time (e.g., two capsules with each meal). If consumers do not notice or do not understand the heading that states "per unit," they might assume that the information is for the amount specified for consumption at one time (i.e, "per serving"), particularly because information for foods in conventional food form will be expressed on a "per serving" basis in accordance with section 403(q)(1) of the act. Also, the agency prefers one consistent method of labeling for the various forms of supplements and points out that "per unit" labeling is not as appropriate for supplements that do not come in discrete units (e.g., liquid or powdered supplements). For these reasons, the agency is proposing that declaration be on a "per serving" basis consistent with § 101.9.

Consequently, the agency tentatively concludes that serving size information must be provided to make it clear to the consumer the basis on which the nutrition information is reported (i.e., how many units are represented by the nutrient values given). Consistent with the November 27, 1991, proposed rule, the agency is proposing in § 101.36(b)(1) to allow the declaration of serving size in terms that are appropriate for the supplement, such as "tablets," "capsules," "packets," or "teaspoonfuls."

In regard to the requirement proposed in November 1991, that "units per day" be declared in the nutrition label of dietary supplements (56 FR 60366 at 60382), the agency received one comment stating that this information is not necessary. As discussed in its January 6, 1993, final rule (58 FR 2079 at 2168), FDA considered this comment and agreed that "units per day" could be confusing. The agency is concerned that if "units per day" is declared in the nutrition label, consumers might assume that the nutrient information is for the total number of units specified for consumption per day. To avoid the possibility for confusion, FDA is not providing for declaration of "units per day" on the nutrition label. If directions concerning the number of units to be consumed per day are to be provided, they should be given outside of the nutrition label.

B. Servings Per Container

FDA is proposing in § 101.36(b)(2) to require the listing of "servings per container" on the left side of the label under the listing of "serving size." This provision is similar to § 101.9(d)(3)(ii), which requires information on servings per container on the label of foods in conventional food form.

The agency proposed to require that "units per container" be declared on dietary supplements of vitamins or minerals in the November 27, 1991, proposed rule (56 FR 60366 at 60382). In response, the agency received a few comments that stated that this information is redundant and unnecessary because it is already required to be listed on the principal display panel of dietary supplements as part of the net quantity of contents declaration. In the January 6, 1993, final rule on nutrition labeling (58 FR 2079 at 2168), the agency agreed that since § 101.105(a) (21 CFR 101.105(a)) requires that the net quantity of contents declaration include a numerical count when appropriate, there is little benefit to be derived from information on the

number of units appearing in two different places on the label. Accordingly, when the serving is one unit, the number of servings per container would duplicate the number of units declared on the principal display panel. To avoid this redundancy, the agency is proposing in § 101.36(b)(2) that information on servings per container need not be provided when the identical information is stated in the net quantity of contents declaration. For the same reason, the agency is proposing to revise § 101.9(d)(3)(ii) to include a similar provision for all foods covered by that regulation, including foods in conventional food form and dietary supplements of herbs and of other similar nutritional substances. Current § 101.9(d)(3)(ii) allows "servings per container" to be omitted on single serving containers because it is redundant with the net quantity of contents declaration. This change provides the same opportunity to all foods when the declaration of "servings per container" would be redundant.

FDA considers that dietary supplements in liquid or powdered form will always have to declare "servings per container." The net quantity of contents information for dietary supplements in liquid or powdered form would be reported in measures, such as fluid ounces or grams, rather than in the measures used to express serving size, such as teaspoonfuls.

C. Nutrient Information

The agency is proposing in § 101.36(b)(3) that any vitamin or mineral listed in § 101.9(c)(8)(iv) or (c)(9), as well as any other nutrient listed in § 101.9(c) that is present in the supplement at more than insignificant amounts, be declared. FDA is proposing to define "insignificant amount" as an amount per serving that allows declaration of zero in nutrition labeling, except that for total carbohydrate, dietary fiber, and protein, an insignificant amount is the amount that allows a declaration of "less than 1 gram." This definition is consistent with that in § 101.9(f)(1) and (j)(4), and the agency is not aware of any basis on which to find that it would be appropriate to define this term differently for dietary supplements than for foods in conventional food form. The term "insignificant amount" was used in section 403(q)(5)(C) of the act in reference to when a food would be exempt from nutrition labeling and to when a food would qualify for the simplified format. Comments on the term are discussed in the final rule on nutrition labeling of January 6, 1993 (58 FR 2079 at 2141).

Thus, nutrients that are present in dietary supplements of vitamins or minerals in insignificant amounts are not required to be declared. This proposed requirement is different from that in § 101.9(f)(2)(i) for foods containing insignificant amounts of 7 or more nutrients required to be included in nutrition labeling in § 101.9(c), which provides that foods in conventional food form have to declare calories, total fat, total carbohydrate, protein, and sodium (i.e., the core nutrients) even when the amounts of these nutrients are insignificant. Because these core nutrients are not generally present in vitamin and mineral supplements, and FDA is not aware of any consumer expectations that they are present, FDA tentatively concludes that it is not necessary to declare them when the amounts are insignificant. The agency points out that it received no comments objecting to this provision when the agency first proposed it on November 27, 1991 (56 FR 60366 at 60382). The agency wishes to clarify that under § 101.9(j)(4) food containing insignificant amounts of all of the nutrients required to be included in nutritional labeling in § 101.9(c) are exempt from nutrition labeling.

By proposing to make dietary supplements of herbs or of other similar nutritional substances subject to § 101.9, the agency is proposing to also make them subject to § 101.9(f)(2)(i). Thus, under this proposal, the core nutrients will have to be declared on these products except when the products are exempt from nutrition labeling under § 101.9(j)(4). The agency recognizes that dietary supplements of herbs or of other similar nutritional substances may contain insignificant amounts of the core nutrients required to be declared under § 101.9(f)(2)(i). However, the agency tentatively concludes that it is appropriate to make these dietary supplements subject to § 101.9 because section 403(q)(5)(E) of the act applies only to foods that are covered by section 411 of the act. The agency does not believe that it has authority to propose requirements for these supplements that are different from those that apply to the other foods that are not subject to section 403(q)(5)(E) of the act. The agency requests comments on this issue.

The agency is also proposing in § 101.36(b)(3) to require that the name of each nutrient listed be immediately followed by the quantitative amount by weight of the nutrient, to be consistent with § 101.9(d)(7)(i). For this reason also, the agency is proposing to require that the information on names and amounts be presented in a column under the heading "Amount Per Serving," which shall be set off by a bar above and underneath it. The agency is proposing to require that the column be aligned on the left side of the nutrition label. The agency points out that the labels of many dietary supplements present the information on quantitative amount in a separate column, rather than immediately next to the name of the nutrient as is required in the new nutrition label for foods in conventional food form. In accordance with section 2(b)(1)(A) of the 1990 amendments, to ensure that the nutrition label on dietary supplements of vitamins or minerals is readily observable, comprehensible, and permits consumers to understand the significance of the information in the context of the total daily diet, FDA is proposing that this information be presented in a form that is as similar as possible to the nutrition information on foods in conventional food form. FDA believes that similarity will enhance the observability, comprehensibility, and understandability of the information. FDA requests comments on this issue.

The agency initially proposed that quantitative amounts by weight be presented for all nutrients in a dietary supplement of a vitamin or mineral in the proposed rule of November 27, 1991, on nutrition labeling (56 FR 60366 at 60393). As discussed in the January 6, 1993, final rule (58 FR 2079 at 2169), the agency received several comments on this issue in response to the November 27, 1991, proposed rule and to the format proposal of July 20, 1992 (57 FR 32058 at 32072). About half of the comments supported FDA's position on declaring amounts. Other comments opposed declaring amounts and argued that only percent of Daily Value should be mandatory, consistent with the labeling of vitamins and minerals on the labels of foods in conventional form. One comment asserted that a requirement for too much information is discriminatory against products with larger numbers of nutrients and might discourage the use of smaller packages that are less expensive to consumers.

The agency has reexamined the issue of whether the quantitative amount by weight of vitamins and minerals should be required. Although the agency is not requiring that the quantitative amount of vitamins and minerals be included in the nutrition label of foods in conventional food form, the agency believes that this information is necessary and useful on the labels of dietary supplements of vitamins or minerals by virtue of the way that such products are formulated, marketed, and used.

Dietary supplements are often formulated and marketed on the basis of offering specific amounts of certain vitamins and minerals to consumers. Some consumers try to maintain a certain quantitative intake of specific nutrients in their diets and use the product to meet this goal. The quantitative goals may be stated in terms of the absolute amount by weight of the nutrient or the percent of Daily Value that the amount represents. In addition, because these are supplements of vitamins or minerals, the quantitative amount of vitamins and minerals is essential to characterize the product. Finally, the agency points out that the labels of most dietary supplements currently include information on quantitative amount. Thus, the agency believes that continuation of provision of this type of information as part of nutrition labeling will help ensure that consumers are fully informed about the content of these products.

The agency is proposing in § 101.36(b)(3)(i) that the quantitative amounts should be expressed in the increments specified in § 101.9(c), using the units of measure and the level of significance as that given in § 101.9(c)(8)(iv) for that nutrient. The agency is not aware of any reason for treating dietary supplements of vitamins or minerals any differently in this regard than food in conventional food form. In addition, dietary supplements of herbs and of other nutritional substances will be treated in the same manner since they are subject to § 101.9. Therefore, FDA tentatively concludes that no special provision need be made for dietary supplements of herbs or of other similar nutritional substances.

For example, 2.775 milligrams (mg) of thiamin would be declared as 2.8 mg, whereas 2.775 mg of niacin would be declared as 3 mg. The agency proposed that the quantitative amounts of foods in conventional food form be expressed in this manner in the November 27, 1991, proposed rule (56 FR 60366 at 60383). One comment objected to the provision, stating that it would be potentially confusing to consumers for thiamin, for example, to be declared to the first decimal place, e.g., 100.0 mg, and niacin to be declared to the nearest whole number, e.g., 100 mg. The comment suggested that decimal places be dropped, and that all nutrients be listed to the nearest whole number when nutrient levels are 10 or more times the RDI.

As discussed in the preamble of the January 6, 1993, final rule, FDA is not persuaded that consumers would be confused by decimals for some nutrients and not others. In addition, requiring only whole numbers would introduce a large amount of imprecision in the declaration of some nutrients. For example, it would cause 1.5 mg of thiamin (i.e., 100 percent of the RDI) to be rounded up to 2 mg—a 33 percent increase. However, when the decimal is followed by a zero, the agency generally has no objection to the zero being dropped. The agency points out that the amount declared refers to the amount measured analytically and does not take into consideration the bioavailability of the nutrient.

With the exception of calcium and iron, FDA is proposing in § 101.36(b)(3)(ii) that nutrients declared in the nutrition labeling of vitamin or mineral supplements be listed in the order that nutrients are listed in the nutrition labeling of foods in conventional food form (i.e., as specified in § 101.9(c)). The agency is proposing that calcium and iron be listed after the listing of any vitamins that are present so that all of the vitamins will be grouped together. As a result, under this proposal, minerals will be listed in the following order when present in a dietary supplement: Calcium, iron, phosphorus, iodine, magnesium, zinc, and copper.

The agency points out that under this proposal, the order that nutrients are listed on foods in conventional food form is the order that they are to be listed on dietary supplements of herbs and of other similar nutritional substances, since these supplements are subject to § 101.9. Thus, no special provision need be made regarding the order of nutrients for dietary supplements of herbs or of other similar nutritional substances. The agency tentatively finds that following a consistent order will help consumers to more quickly locate information of interest to them on the label than would be the case if some other order were permitted.

The agency is proposing that the last nutrient to be listed be separated from the bottom of the nutrition label by a bar, as shown in the sample labels in proposed § 101.36(c)(8). This bar will enhance the consistency of appearance of the nutrition labels on dietary supplements of vitamins or minerals and on foods subject to § 101.9. Thus, it will help consumers of dietary supplements to readily observe the nutrition information and to comprehend its significance. Because, under this proposal, dietary supplements of herbs or of other similar nutritional substances are subject to § 101.9, they will have the same format as the format of nutrition labeling for foods in conventional food form. Therefore, no special provision regarding format need be made for dietary supplements of herbs or other similar nutritional substances.

FDA recognizes that for some dietary supplements of vitamins or minerals the content of separate servings is different (e.g., product has a packet containing an assortment of supplements to be taken in the morning and a packet with a different assortment of supplements for the afternoon). Under proposed § 101.36(b)(3)(iii), when such differences exist, the amount for each packet will have to be presented and clearly indicated, as illustrated in proposed § 101.36(c)(8)(iii), or the information for each separate serving will have to be presented in individual nutrition labels (i.e., "Nutrition Facts" panel) that are clearly identified. While the agency tentatively concludes that the manufacturer should have some flexibility in how nutrition information on these types of products is presented, the agency is including proposed § 101.36(b)(3)(iii) in the regulations to ensure that the information is presented in a comprehensible manner. Also, the agency is proposing to amend § 101.9(h)(2) to make a parallel provision that would allow dietary supplements of herbs or other similar nutritional substances to be labeled in a similar manner.

In proposed § 101.36(b)(3)(iv), the agency is providing that the percent of vitamin A that is present as β-carotene may be declared to the nearest whole percent immediately adjacent to or beneath the nutrient name, as illustrated in § 101.9(c)(8). This provision is similar to § 101.9(c)(8)(vi), which pertains to foods in conventional food form and which was added in response to a comment. As discussed in the January 6, 1993, final rule (58 FR 2079 at 2170), the agency believes that it is appropriate to voluntarily distinguish the amount of vitamin A that is present as β-carotene. The agency is proposing that β-carotene be declared to the nearest whole percent to be consistent with the proposed increments in which percent RDI's and percent DRV's are to be expressed, as discussed later in this document.

The agency points out that the specific source of the vitamin A must be shown in the ingredient list, even when β-carotene is listed in the nutrition label. One comment received in response to the November 27, 1991, proposed rule (56 FR 60366 at 60388), advocated the parenthetical listing of the source of each vitamin or mineral immediately following its declaration on the nutrition information panel in lieu of a separate ingredient list. The comment argued that this listing would

avoid confusion by enabling consumers to readily identify the nutrient source and would save limited label space.

As discussed in the January 6, 1993, final rule (58 FR 2079 at 2170), dietary supplements, like any food, are required to bear a complete list of ingredients under section 403(i)(2) of the act, and such list must be separate from the nutrition label. Ingredient listing, moreover, is needed for substances other than vitamins or minerals, like fillers, artificial colors, flavors, binders, and excipients. Therefore, the agency is not proposing to provide for the listing of the source of vitamins and minerals within the nutrition label. Consumers desiring to know the source of a nutrient can merely look at the list of ingredients, just as they would for a food in conventional food form.

Consistent with nutrition labeling of foods in conventional food form, FDA is proposing in § 101.36(b)(3)(v) to allow synonyms to be added in parentheses immediately following the name of certain nutrients. The synonyms that FDA is proposing to provide for are ascorbic acid for vitamin C, vitamin B_1 for thiamin, vitamin B_2 for riboflavin, folacin for folate, and calories (energy). Energy content per serving may be expressed in kilojoules units, added in parentheses immediately following the statement of caloric content.

The agency is proposing in § 101.36(b)(3)(vi) to require that all nutrients listed on the nutrition label for dietary supplements of vitamins or minerals be displayed with uniform type size, type style, color, and prominence. This proposed requirement is consistent with § 101.9(d) and is necessary to give all nutrients equal prominence. This provision will enhance the consistency of appearance of nutrition labeling under § 101.9 and under proposed § 101.36. Because, under this proposal, dietary supplements of herbs or other similar nutritional substances are subject to § 101.9, they will be covered by § 101.9(d). Thus, no special provisions need be made for dietary supplements of herbs or of other similar nutritional substances.

The agency is proposing in § 101.36(b)(4) that the percent of the Daily Value, where appropriate, be listed for all nutrients in the supplement that are declared under § 101.36(b)(3), as illustrated in proposed § 101.36(c)(8)(i). The labeling of most dietary supplements currently includes information on the percent of the U.S. RDA. The agency believes that continuation of this type of labeling will help to ensure that consumers are fully informed about the nutrient content of these products.

The agency points out that, under this proposal, the term "% U.S. RDA" will be replaced on labels by the term "% Daily Value." In a document entitled "Food Labeling; Reference Daily Intakes and Daily Reference Values" (58 FR 2206, January 6, 1993), FDA changed the name of the U.S. RDA's to RDI's. Because of the provisions of the DS act, the agency did not change the quantitative values from those that had appeared in § 101.9(c)(7)(iv). At the same time, FDA established DRV's for nutrients that are not addressed by NAS in "Recommended Dietary Allowances" (Ref. 2). The distinction between RDI and DRV nutrients remains necessary for regulatory purposes because the values were derived from separate sources, and because these nutrients play different roles under the imitation and substitute food regulations (21 CFR 101.3). However, there is no need to make consumers aware of the regulatory distinction between RDI and DRV. After soliciting comments concerning an appropriate single term that would refer to both RDI's and DRV's in the mandatory nutrition labeling proposal (55 FR 29487, July 19, 1990) and after using the term "Daily Value" in consumer research, FDA concluded that the term "Daily Value" is appropriate as a single term to refer to all reference values on the nutrition label (58 FR 2079 at 2125). The agency is not aware of any reason to take a different approach in the nutrition labeling of dietary supplements.

Proposed § 101.36(b)(4) requires that the percent of the RDI specified in § 101.9(c)(8)(iv) or of the DRV specified in § 101.9(c)(9), as appropriate, be declared for each nutrient listed in the nutrition label that has an RDI or DRV, except that the percent for protein may be omitted, consistent with § 101.9(c)(7). The agency is proposing that no percent be given for sugars because they do not have a reference value (i.e., DRV). Under this proposal, this information is to be presented in a column under the heading "% Daily Value." The headings "% Daily Value (DV)," "% DV," "Percent Daily Value," and "Percent DV" may be substituted for "% Daily Value." Under this proposal, the column shall be aligned to the right of the column of nutrient names and quantitative amounts by weight.

FDA is proposing in § 101.36(b)(4)(i) to require that the percent of Daily Value be calculated by dividing the declared quantitative amount (i.e., after rounding) for each nutrient by the RDI or DRV for the specified nutrient and multiplying by 100, except that the percent for protein shall be calculated as specified in § 101.9(c)(7)(ii). The numerical value is to be followed by the symbol for percent (i.e., %). Except for calculating percent of Daily Value after rounding the quantitative amount, this approach is consistent with the one FDA has adopted for calculating percent Daily Value for foods in conventional food form. The agency is not aware of any reason why an alternate approach would be more appropriate for dietary supplements of vitamins and minerals.

Using the declared quantitative amount to calculate percent of Daily Value rather than the actual amount (i.e., before rounding) will ensure that the percent of Daily Value declaration will be consistent for all products that list the same quantitative amount by weight. For example, a product that contains from 32.5 to 37.4 mg of sodium would declare that amount as 35 mg on the nutrition label. Dividing the quantitative amount by the Daily Value for sodium of 2,400 mg would result in a declaration of 1 percent of Daily Value at the lower end of the range and 2 percent at the upper end. Calculating the percent Daily Values on the declared amount avoids this inconsistency.

FDA is proposing in § 101.36(b)(4)(ii) that percent Daily Values be expressed to the nearest whole percent. This provision is consistent with the increments in § 101.9(d)(7)(ii), under which percent Daily Values based on DRV's are reported in nutrition labeling for foods in conventional food form, but it is inconsistent with the increments in § 101.9(c)(8)(iii) for expressing percent Daily Values for vitamins and minerals that are based on RDI's (i.e., to the nearest 2-percent increment up to and including the 10-percent level, to the nearest 5-percent increment above 10 percent and up to and including the 50-percent level, and to the nearest 10-percent increment above the 50-percent level). The agency is proposing for supplements that percent Daily Values for all nutrients be expressed to the nearest whole percent because it believes that greater precision is possible with formulated supplements as opposed to what is possible for naturally-occurring nutrients in foods in conventional food form. The agency believes that consumers will be interested in this precision on dietary supplements of vitamins or minerals. Additionally, the agency observes that many dietary supplements are currently labeled in this manner. The agency requests comments on this deviation from its approach for foods in conventional food form.

FDA is proposing in § 101.36(b)(4)(iii) to require that the percentages of RDI's

be based on RDI values for adults and children 4 or more years of age unless the product is represented or purported to be for use by infants, children less than 4 years of age, pregnant women, or lactating women. If the product is intended for such groups, FDA is proposing to require that the column heading clearly state the intended group.

If the product is for persons within more than one group, FDA is proposing to require that the percent of Daily Value for each group be presented in additional columns, as illustrated in § 101.9(c)(8)(ii). The agency notes that there are no RDI values codified specifically for infants, children under 4 years of age, or pregnant or lactating women. FDA had intended to codify RDI values for these groups but did not in accordance with section 203 of the DS act, which, as stated above, provided that the agency could not adopt recommended daily values before November 8, 1993. To provide guidance to manufacturers in lieu of codifying values, the agency published label reference values for these groups in the preamble of the final rule on RDI's and DRV's on January 6, 1993 (58 FR 2206 at 2213). The label reference values are based on the 1968 NAS' RDA's (Ref. 3) and were formerly contained in 21 CFR 105.3(b). The agency encourages manufacturers to use these values on the labels of products intended for use by groups other than adults or children over 4 years of age. FDA intends to revisit the issue of whether to establish RDI's for infants, children under 4 years of age, or pregnant or lactating women at the time it considers the broader question of the appropriate values for RDI's.

When the content of separate servings is different (e.g., the product has a packet containing an assortment of supplements to be taken in the morning and a packet with a different assortment of supplements for the afternoon), the agency is proposing in § 101.36(b)(4)(iv) to require that the percent of Daily Value for each packet be presented and clearly indicated, as illustrated in § 101.36(c)(8)(iii), or that the information for each separate serving be presented in individual nutrition labels (i.e, "Nutrition Facts" panel) that are clearly identified. As stated above with respect to proposed § 101.36(b)(3)(iii), FDA is providing for these alternative means because it considers some flexibility in the labeling of these products to be appropriate but considers some standard to be necessary to ensure that the information is presented in a comprehensible and readily observable manner

FDA is proposing to require in § 101.36(b)(4)(v) that if the percent of Daily Value is declared for total fat, saturated fat, total carbohydrate, dietary fiber, or protein, the value be followed by an asterisk that refers to a footnote at the bottom of the nutrition label that states: "Percent Daily Values are based on a 2,000 calorie diet." The agency tentatively finds that this statement is needed to enable consumers to evaluate the appropriateness of the percent of Daily Value for their personal needs. This statement is required in nutrition labeling for all foods in conventional food form, regardless of what format is used. In addition, foods subject to § 101.9 that bear the full nutrition label are required to list the Daily Values for 2,000 calories and similar values for 2,500 calories for the nutrients that have DRV's and that are present in the food (see § 101.9(d)(9)(i)). The agency tentatively concludes that it is not necessary to require the complete footnote for dietary supplements of vitamins or minerals because nutrients for which Daily Values can be adjusted to reflect caloric intake are not major components of most dietary supplements of vitamins or minerals.

D. Format

In order to have a consistent look for nutrition labels on all foods and thereby help consumers to find the information, the agency is proposing in § 101.36(c) that the information required in § 101.36(b) be presented in a manner that is similar to the requirements listed in § 101.9(d) for foods in conventional food form. Specifically, the agency is proposing to require in § 101.36(c)(1) that the title of "Nutrition Facts" be set in a type size larger than all other print size in the nutrition label and, unless impractical, be set the full width of the nutrition label. Under this proposed provision, the title and all headings are to be highlighted to distinguish them from other information in the nutrition label.

Additionally, in response to consumer comments about legibility of nutrition labeling, the agency is proposing in § 101.36(c)(2) through (c)(6), respectively, to require that all information within the nutrition label utilize a single easy-to-read type style, upper and lower case letters, at least one point leading (i.e., space between two lines of text), type that is kerned (i.e., has proximity of placement) no tighter than −4 setting, and type size no smaller than 8 point, except that type size no smaller than 6 point shall be used for the headings required by proposed § 101.36(b)(4) and (b)(4)(ii) (i.e., "Amount Per Serving," and "% Daily Value") and for the voluntary listing of the percent of vitamin A that is present as β-carotene as specified in proposed § 101.36(b)(3)(ii).

In contrast with type size requirements in § 101.9(d)(1)(iii), the agency is proposing that for dietary supplements of vitamins or minerals, 6 point type size be allowed for packages that have a total surface area available to bear labeling of 40 or less square inches. The agency believes that allowing 6 point type size for dietary supplements that have 40 square inches or less available for labeling is appropriate because of the limitations of such an amount of space and the large number of nutrients contained in many of these products. The agency is not proposing a parallel provision for dietary supplements of herbs or of other similar nutritional substances because it believes that generally the composition of these supplements is more similar to the composition of foods in conventional food form than to the composition of dietary supplements of vitamins or minerals. Moreover, such products are not likely to include a large number of nutrients. Thus, the agency believes it is appropriate that supplements of herbs and of other similar nutritional substances are subject to § 101.9(d)(1)(iii). Finally, in the interest of uniformity, FDA is suggesting in proposed § 101.36(c)(7) that nutrition information be presented using the graphic specifications set forth in Appendix B of part 101 (21 CFR part 101).

E. Other Provisions

FDA tentatively concludes that dietary supplements of vitamins or minerals should be subject to the same compliance policies as conventional processed foods. The agency is not aware of any reason why an alternate approach would be more appropriate for dietary supplements of vitamins or minerals. Therefore, it is proposing in § 101.36(d)(1) to require that compliance be determined in accordance with proposed § 101.9(g)(1) through (g)(8). When compliance is not technologically feasible, or some other circumstance makes it impracticable, FDA is proposing in § 101.36(d)(2) that alternative means of compliance or additional exemptions may be permitted by FDA in accordance with § 101.9(g)(9). Under this proposal, dietary supplements of herbs or of other similar nutritional substances are subject to § 101.9, and, thus, are also covered by § 101.9(g)(1) through (g)(9).

The agency is proposing in § 101.36(e) to require that the location of nutrition information on a label be in compliance

with § 101.2 (21 CFR 101.2), except that where the total surface area available to bear labeling is 40 or less square inches, nutrition information can be presented on any label panel as provided in § 101.36(g). These provisions are consistent with the requirements listed in § 101.9(i) and in § 101.9(j)(13)(ii)(D) for foods that are in conventional food form. Additionally, under this proposal, dietary supplements of herbs and of other similar nutritional substances are subject to § 101.9 and thus are subject to the same requirements.

F. Exemptions and Special Conditions

The agency is proposing in § 101.36(f) to make dietary supplements of vitamins or minerals subject to an exemption from nutrition labeling for small businesses that is identical to § 101.9(j)(1). Because the agency is proposing that dietary supplements of herbs and or of other similar nutritional substances are subject to § 101.9, these supplements are subject to the exemption in § 101.9(j)(1).

The agency emphasizes that the exemption for small businesses is allowed provided that the food bears no nutrition claims or other nutrition information on its label or labeling or in its advertising. Consistent with § 101.9(a), a nutrition claim or any other nutrition information on the label will negate any exemption. For example, the agency would exempt a product produced by a small business that states "Vitamin C 250 mg" in its statement of identity providing the label makes no claims or provides no other nutrition information. However, if the label of the product provides nutrition information, such as that each unit represents 417 percent of the Daily Value for vitamin C, the product would have to bear nutrition labeling. The agency believes that it is necessary for such products to bear nutrition labeling to ensure that consumers are fully informed about the nutrient content of such food. Failure to include such information would render the food misbranded under sections 201(n) and 403(a) of the act for failure to reveal a fact that is material in light of other representations made on the label.

The agency is proposing in § 101.36(g) that dietary supplements of vitamins or minerals are subject to the applicable special provisions that are provided in § 101.9(j) for foods in conventional food form. These provisions include: § 101.9(j)(5)(i) for foods, other than infant formula, for infants and children less than 2 years of age; § 101.9(j)(5)(ii) for food, other than infant formula, for infants and children less than 4 years of age; § 101.9(j)(9) for foods shipped in bulk form that are not for distribution to consumers; § 101.9(j)(13)(i) for foods in small packages that have a total surface area available to bear labeling of less than 12 square inches; § 101.9(j)(13)(ii) for foods in packages that have a total surface area available to bear labeling of 40 or less square inches; § 101.9(j)(15) for multiunit retail food packages; and § 101.9(j)(16) for foods sold in bulk containers. The agency believes that these provisions are appropriate for foods in general, as discussed in the nutrition labeling final rule (58 FR 2079 at 2144, January 6, 1993), and are appropriate for dietary supplements of vitamins and minerals because they are a subcategory of food. The agency points out that under this proposal, dietary supplements of herbs and of other similar nutritional substances are subject to § 101.9, and thus are subject to the special provisions that are provided in § 101.9(j).

G. Misbranding

The agency is proposing to require in § 101.36(h) that dietary supplements of vitamins or minerals that are labeled under the provisions of this section be labeled in accordance with § 101.9(k)(1) through (k)(6), which details types of nutrition-related claims that cause a food to be misbranded. The agency has tentatively concluded that these provisions are appropriate for foods in general (58 FR 2079 at 2166, January 6, 1993) and are appropriate for dietary supplements of vitamins or minerals because they are a subcategory of food. Dietary supplements of herbs and of other similar nutritional substances are also to be covered by these provisions because under this proposal they are subject to § 101.9. The agency points out that § 101.9(k)(1) and (k)(5), were revised in the January 6, 1993, final rules for health claims and mandatory nutrition labeling, respectively (58 FR 2478 at 2533 and 58 FR 2079 at 2188), but that § 101.9(k)(2) through (k)(4) and (k)(6) merely represented a redesignation of regulations that had been promulgated in the **Federal Register** of January 19, 1973 (38 FR 2125).

Section 101.9(k)(1) provides that a food is misbranded if its labeling represents, suggests, or implies that the food, because of the presence or absence of certain dietary properties, is adequate or effective in the prevention, cure, mitigation, or the treatment of any disease or symptom. FDA notes that this provision had long been in effect at the time Congress drafted the 1990 amendments. While Congress did enact provisions under the 1990 amendments that allow for health claims on foods, nothing in the 1990 amendments or in the legislative history of the 1990 amendments suggests that Congress intended for this provision to be deleted. In the January 6, 1993, final rule (58 FR 2478 at 2533), the agency revised § 101.9(k)(1) to state that information about the relationship of a dietary property to a disease or health-related condition may only be provided in conformance with the requirements of § 101.14 (21 CFR 101.14) and subpart E of part 101. No comments objected to this revision.

Section 101.9(k)(5) was revised by deleting its second and third sentences, which prohibited substances found in nature from being incorporated into nutritional products and listed on the label. The agency was persuaded by the comments that there is no reason to prohibit safe substances from being incorporated into foods in conventional food form or into dietary supplements as long as their presence is noted in the ingredient list, and the product's label or labeling does not state or imply that the food has special dietary properties because of the presence of the substances when, in fact, their usefulness has not been established. Section 411(b)(2) of the act provides that vitamin and mineral products may contain substances that are not vitamins or minerals as long as the substances are only identified as a part of the ingredient list. Consequently, the agency promulgated the first sentence of § 101.9(k)(5), which provides that a food shall be deemed to be misbranded if its label represents, suggests, or implies that the food has dietary properties when such properties have not been shown to have significant value or need in human nutrition.

III. Conforming Amendments

As discussed in section II. of this document, the agency is proposing to amend § 101.9(a), (d)(3)(ii), (h)(2), and (j)(6). Dietary supplements of herbs and of other similar nutritional substances are not covered by § 101.36 and thus must meet the requirements of § 101.9. FDA is proposing to amend section 101.9(a) to make clear that nutrition labeling must be provided for all food products whether in conventional food form or in dietary supplement form, unless an exemption is provided. The agency is proposing to amend section 101.9(d)(3)(ii) to specify that the statement "Serving Per Container" is not required when this information is stated in the net quantity of contents declaration. FDA is proposing to amend § 101.9(h) to provide in § 101.9(h)(2) for products that consist of two or more separately packaged foods that are

intended to be eaten individually and that are enclosed in an outer container. In addition, FDA is proposing to amend § 101.9(j)(6) to specify that dietary supplements that are covered by proposed § 101.36 are exempt from the requirements of § 101.9.

IV. Economic Impact

FDA has examined the economic implications of the proposed rules amending 21 CFR part 101 as required by the Regulatory Flexibility Act and Executive Orders 12291 and 12612. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The agency finds that the proposed rules on dietary supplements, taken together, do not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (P.L. 96–354), FDA has explored whether these proposed rules may have a significant impact on small businesses and has tentatively concluded that they do not.

A. Background

In the **Federal Register** of November 27, 1991 (56 FR 60366), FDA published a number of proposed food labeling regulations to implement the provisions of the 1990 amendments (Pub. L. 101–535). The agency also published a regulatory impact analysis (RIA) which preliminarily estimated the costs and benefits of the various proposed regulations and on which FDA asked for comments.

Final regulations that implemented the 1990 amendments except for dietary supplements were issued on January 6, 1993, including a final regulatory impact analysis (RIA) of those final regulations (58 FR 2927). In the RIA, FDA responded to the comments regarding dietary supplements with tentative conclusions.

In accordance with Executive Order 12291 and the Regulatory Flexibility Act, FDA is presenting one comprehensive analysis that presents the costs and benefits of all the labeling proposals regarding dietary supplements taken together.

Dietary supplements include products not in conventional food form that contain vitamins, minerals, herbs, and other similar nutritional substances. There may be over 25,000 such products. However, many products that contain herbs or other similar nutritional substances would not be subject to the nutrition label requirements because they do not contain the nutrients which must be declared. Moreover, some products marketed as "dietary supplements" have no recognized food function and would be unaffected by the NLEA health claim provisions. Disease claims on such products are subject instead to the drug provisions of the act.

There are approximately 150 dietary supplement manufacturers of products subject to these regulations. The source for this estimate is Dun and Bradstreet's Electronic Yellow Pages, which is a comprehensive data base of U.S. businesses. In a survey of consumers to determine vitamin and mineral usage, respondents reported use of 3,500 unique products. FDA recognizes that this number may not represent the universe of vitamin and mineral products marketed in the United States. Based on limitations in the survey and taking into account the number of products that do not contain the required nutrients, the agency estimates that there are about 5,000 vitamin, mineral, and other food supplement products marketed in the United States and approximately 15,000 labels that would be subject to the nutrition labeling proposal.

B. Costs

1. Relabeling

Categories of costs for relabeling include administrative, analytical, printing, inventory disposal, and reformulation. In all cost categories, except administrative costs, the costs of relabeling products produced and labeled in foreign countries cannot be separated from those products produced and labeled domestically. Thus, the administrative costs considered are domestic costs only, whereas the printing, inventory, and analytical costs considered are multinational.

The administrative costs associated with a labeling regulation result from the incremental administrative labor expended in order to comply with a regulation. The administrative activities which are anticipated to be undertaken in response to a change in regulation include: Identifying the underlying policy of the regulation, interpreting that policy relative to a firm's products, determining the scope and coverage related to product labels, establishing a corporate position, formulating a method for compliance, and managing the compliance method. Longer compliance periods decrease administrative costs because firm executives often delegate downward decisions that are less immediate. According to Research Triangle Institute (RTI), many firms estimate that administrative effort would be twice as high for a 6-month compliance period as for a 12-month compliance period (Ref. 4). FDA estimates that for a 6-month compliance period, manufacturers of dietary supplements will incur administrative costs of $850 per firm for each of 147 firms, or a total of $125,000.

Dietary supplement products will not undergo analytical testing as a result of these regulations if implemented as proposed. Dietary supplements of vitamins and minerals need only list those nutrients present in the supplement. The agency assumes that manufacturers of these types of products are already aware of the vitamin and mineral content of their vitamin and mineral products. As stated above, most herbs and other similar substances do not contain significant levels of the required nutrients and, therefore will not undergo testing or relabeling.

In the RIA of November 1991, FDA preliminarily determined that printing/redesign costs for dietary supplement manufacturers would be $250 per product. Comments, however, stated that supplement labels are more similar to labels for foods in conventional food form than FDA suggested and would incur a similar cost of printing and redesign. FDA assumed that the regulations covering foods in conventional food form were so comprehensive so as to cause manufacturers to redesign the entire label. However, the changes required on dietary supplements labels under these proposals are less comprehensive and will be comparable to a two color change. Therefore, for a 6-month compliance period, printing and redesign costs are estimated to be $1,000 per label for each of 15,000 labels, or a total of $15 million.

In the RIA of November 1991, FDA assumed that dietary supplement manufacturers would be able to use up existing label stock within the proposed 6-month compliance period. Comments objected to that assumption stating that the cost of discarding inventory would be over $25 million in order to implement the new requirements within 6 months, $15 million within a year, and $8 million within 2 years. However, these estimates were based on the incorrect assumption that all 25,000 products would be subject to these regulations. Given the proposed definition of a dietary supplement, the agency believes that the cost of inventory disposal for the 5,000 products that are likely to be subject to these regulations is approximately $5 million.

FDA has examined the impact of the proposed regulations on dietary

supplement manufacturers and has determined that administrative costs would be $125,000, printing and redesign costs would be $15 million, and inventory disposal costs would be $5 million. Therefore, total costs are estimated to be $20 million.

2. Health Claims

In a companion regulation, the Agency proposes to apply the same health claims defined for conventional foods to dietary supplements. These include for example the nutrient/disease relationships for calcium and osteoporosis, sodium and hypertension, dietary fat and cancer, and dietary saturated fat and cholesterol and coronary heart disease. The agency has not yet resolved certain other nutrient/disease relationships with respect to dietary supplements (i.e., folic acid and neural tube defects, zinc and immune function in the elderly, omega-3 fatty acids and coronary heart disease, antioxidant vitamins and cancer, dietary fiber and cancer, and dietary fiber and cardiovascular). The agency does not believe that most food dietary supplements make claims on their labels that would fall within the NLEA health claim provisions. Therefore, the health claims proposal will not result in any significant change.

C. Benefits of the Regulations

1. Mandatory Nutrition Labeling

The agency believes that, currently, almost all dietary supplements of vitamins or minerals contain substantial nutrition information—generally in as much detail as regulations already required for food. For example, most vitamin pills contain lists of ingredients, and amounts and the percent of the RDA for each. However, the format of nutrition information is not standardized. Because most supplements of vitamins and minerals already contain nutrition information, the benefits of the mandatory nutrition labeling requirements on these products are minimal. Thus, the agency's proposed regulations will benefit consumers by assuring that adequate nutrition information is provided accurately and consistently in order to aid consumers in their choices.

2. Nutrient Content Claims

Because adjectives such as "low" and "high" are a qualitative description of quantitative measurement, regulations defining nutrient content claims, in theory, will provide consumers the benefit of reduced search costs and concomitantly, an increased ability to accurately select product quality consistent with individual desires. However, as a practical matter, dietary supplements do not typically make nutrient content claims. Nor do most of the nutrient content claims that FDA is proposing to define make sense for use for dietary supplements. This proposed rule will not result in any change. Therefore, defining nutrient content claims will not result in any costs or benefits.

3. Health Claims

The agency believes that most supplements of vitamins and minerals do not currently make health claims on their labels or labeling. Of those that do, only calcium/osteoporosis claims are currently approved. The agency is proposing a standard for the scientific validity of health claims on dietary supplements. At this time, FDA is unable to present evidence that meets this standard for substances in dietary supplements. Therefore, FDA is unable to estimate the benefits of the health claims proposal. However, this standard will result in benefits to the extent that it creates a potential for future health claims by providing a framework which will allow scientifically valid claims.

D. Regulatory Options

1. Compliance Period Options

The 1990 amendments require that final regulations become effective 6 months after the date of promulgation of all final regulations. The 1990 amendments allow the Secretary to delay the effective date of the provisions for mandatory nutrition labeling and nutrient content claims for dietary supplements for up to 1 year if she finds compliance with the new provisions of the act would cause undue economic hardship. Therefore, the primary cost option available to the agency is to increase the amount of time firms have to comply with these provisions. Because the length of the compliance period affects all cost categories except analytical costs, extending the compliance period would result in significant savings. Extending the compliance period for 6 months would result in a cost savings of $6 million of the estimated $20 million in costs. If however, FDA were to extend the compliance period to the maximum allowable under the 1990 amendments to 18 months (a 1-year extension), total discounted costs would be $11 million with a cost savings of $9 million. FDA requests information regarding whether the costs of these regulations constitute an undue economic hardship.

2. Options for Nutrient Content and Health Claims

Because the 1990 amendments allow the agency to establish different standards for regulation of health claims and supplements than those used for conventional foods, the agency may adopt different standards. Standards for significant scientific agreement for dietary supplements could be less stringent to reflect the voluntary nature of consumption of these products. By their nature, dietary supplements are sold to promote health. For the most part, the efficacy of these products remains unproven despite their widespread appeal and decades of use. It is unclear that there will be a net societal benefit from relaxing the proposed standard.

E. Regulatory Flexibility

According to the Regulatory Flexibility Act, the definition of small business is a business independently owned and operated and not dominant in its field. The Small Business Administration (SBA) has set size standards for most business categories through use of four-digit Standard Industrial Classification codes. For most food processing industries, a business is considered small if it has fewer than 500 employees. For dietary supplements of vitamins and minerals, a business is considered small if it has fewer than 750 employees. Of the approximately 150 firms engaged in the production of dietary supplements of vitamins and minerals, virtually all meet the SBA definition of a small business.

The 1990 amendments granted an exemption from mandatory nutrition labeling for small businesses. The definition of a small business under section 403(q)(5)(D) of the act is a business with less than $500,000 annual gross sales or a business with annual gross sales of more than $500,000 but less than $50,000 in food sales. FDA does not have information to show how many firms or products would be exempted under this provision. The agency believes that very few firms will have sales low enough to meet this definition. Therefore, most or all of the businesses defined as small by the SBA will be subject to the rules if promulgated as proposed. The agency requests information regarding the number of products produced by small firms. Most of the costs associated with labeling regulations are fixed costs which are typically more burdensome for small firms than for large firms because of the smaller sales base on which to spread costs. However, the vitamin and mineral industry has

annual sales of $2.9 billion. Our estimated cost of $20 million is approximately 1 percent of this. In relation to the volume of sales, this does not appear to represent a significant cost.

An option available to the agency to reduce the impact on small businesses is to extend the compliance period as discussed above. Total costs could be reduced by as much as $9 million if the agency selected this option.

F. Summary

Total costs of these regulations have been estimated to be $20 million. These costs include administrative, analytical, printing, and inventory disposal costs. The benefits are primarily those that result from standardizing the format of nutrition information already provided on vitamin and mineral supplements with that of conventional foods. In addition, to the extent that nonvitamin and mineral supplements do not currently provide nutrition information, benefits are improved information with which consumers can refine their choices for health or other reasons. FDA is unable to quantify this benefit.

FDA has analyzed the costs and benefits of these proposals and has determined that the costs do not exceed the $100 million threshold, leading the agency to conclude that these proposals do not constitute a major rule as defined by Executive Order 12291.

FDA has also analyzed the impacts on small firms according to the Regulatory Flexibility Act and has determined that the proposed rules, if made final, will probably not have an adverse impact on a substantial number of small businesses. Nonetheless, there are burden-reducing options as discussed above and the agency requests comments on these.

V. Environmental Impact

The agency has previously considered the environmental effects of this proposed rule as announced in the **Federal Register** of November 27, 1991 (56 FR 60366). At that time the agency determined under 21 CFR 25.24(a)(11) that this proposed action was of a type that does not individually or cumulatively have a significant impact on the human environment. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. Effective Date

FDA is proposing to make this regulation effective 6 months after the publication of a final rule based on this proposal.

FDA notes, however, that in section 10(a)(3)(B) of the 1990 amendments, Congress provided that if the Secretary, and by delegation FDA, finds that requiring compliance with section 403(q) of the act, on mandatory nutrition labeling, or with section 403(r)(2) of the act, on nutrient content claims, 6 months after publication of the final rules in the **Federal Register** would cause undue economic hardship, they may delay the application of these sections for no more than 1 year. FDA requests comments and evidence that would permit the agency to make a determination as to whether there is "undue economic hardship" (see 58 FR 2070, January 6, 1993) for the dietary supplement industry.

VII. Comments

Interested persons may, on or before July 19, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

As mentioned previously in this preamble, the DS act requires that final rules implementing the 1990 amendments with respect to dietary supplements be issued by December 31, 1993. In order to meet this statutory timeframe, FDA must limit the comment period for this proposal to 60 days. FDA believes that the need to meet this timeframe constitutes good cause under § 10.40(b)(2) of its procedural regulations for limiting the comment period. Thus, the agency is announcing that because of the short statutory timeframe, FDA will be unable to grant any extensions to the comment period. In addition, the agency will not consider any comments received at the Dockets Management Branch after the close of the 60-day comment period.

VIII. References

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

1. Manager's Statement for the Senate on the DS Act of 1992, 138 Congressional Record S 17239 (October 7, 1992).

2. Subcommittee on the 10th Edition of the RDA's, Food and Nutrition Board, Commission on Life Sciences, National Research Council, "Recommended Dietary Allowances, 10th Ed.," Washington, DC, National Academy Press, 1989.

3. Food and Nutrition Board, Division of Biology and Agriculture, National Research Council, "Recommended Dietary Allowances, 7th ed., 1968," Publication 1694, Printing and Publishing Office, NAS, Washington, DC, 1968.

4. RTI, "Compliance Costs of Food Labeling Regulations," FDA Contract No. 223–87–2097, Project Officer—Richard A. Williams, Jr., December 1990.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 is revised to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 355, 371); sec. 202(a)(2) of the Dietary Supplement Act (Pub. L. 102–571).

2. Section 101.9 is amended by revising the first sentence of paragraph (a) and by revising paragraphs (d)(3)(ii), (h)(2), and (j)(6) to read as follows:

§ 101.9 Nutrition labeling of food.

(a) Nutrition information relating to food shall be provided for all products intended for human consumption and offered for sale, whether in conventional food form or in dietary supplement form, unless an exemption is provided for the product in paragraph (j) of this section. * * *

* * * * *

(d) * * *

(3) * * *

(ii) "Servings Per Container": The number of servings per container, except that this statement is not required on single serving containers as defined in paragraph (b)(6) of this section or on other food containers when this information is stated in the net quantity of contents declaration.

* * * * *

(h) * * *

(2) If a product consists of two or more separately packaged foods that are intended to be eaten individually and that are enclosed in an outer container (e.g., variety packs of cereals or snack foods), the nutrition information shall:

(i) Be specified per serving for each food in a location that is clearly visible

to the consumer at the point of purchase; and

(ii) Be presented in separate nutrition labels or in one aggregate nutrition label with separate columns for the quantitative amount by weight and the percent Daily Value for each food.

* * * * *

(j) * * *

(6) Dietary supplements of vitamins and minerals that have an RDI as established in paragraph (c)(8)(iv) of this section or a DRV as established in paragraph (c)(9) of this section shall be labeled in compliance with § 101.36, except that dietary supplements of vitamins and minerals in food in conventional form (e.g., breakfast cereals), of herbs, and of other similar nutritional substances shall conform to the labeling of this section.

* * * * *

3. Section 101.12 is amended in paragraph (b), Table 2, by alphabetically adding a new entry under the subheading "Miscellaneous category" to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

* * * * *

(b) * * *

TABLE 2.— REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY [1] [2] [3] [4]

Product category	Reference amount	Label statement [5]
* * * * *		
Miscellaneous category:		
* * * * *		
Dietary supplements not in conventional food form.	The maximum amount recommended, as appropriate, on the label for consumption per eating occasion or, in the absence of recommendations, 1 unit, e.g., tablet, capsule, packet, teaspoonful, etc.	_____tablet(s), _____capsule(s), _____ packet(s), _____ tsp(s) (_____g), etc.
* * * * *		

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the USDA.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e., heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; dry, fresh, and frozen pasta) is the amount required to make one reference amount of the prepared for. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFF–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term "piece" is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for frozen novelties).

* * * * *

4. Section 101.36 is added to subpart C to read as follows:

§ 101.36 Nutrition labeling of dietary supplements of vitamins or minerals.

(a) The label and labeling of a dietary supplement of a vitamin or a mineral that has a Reference Daily Intake (RDI) as established in § 101.9(c)(8)(iv) or a Daily Reference Value (DRV) as established in § 101.9(c)(9), shall bear nutrition labeling in accordance with this regulation, as illustrated in paragraph (c)(8) of this section, unless an exemption is provided for the product in paragraph (f) of this section. Dietary supplements of herbs or of other similar nutritional substances shall bear nutrition labeling in accordance with § 101.9.

(b) The declaration of nutrition information on the label and in labeling shall contain the following information, using the headings and format specified, under the heading of "Nutrition Facts". The nutrition information shall be enclosed in a box by use of lines and shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(1) The subheading "Serving Size" shall be placed under the heading and aligned on the left side of the nutrition label. The serving size shall be determined in accordance with § 101.9(b) and § 101.12(b), Table 2. Serving size shall be expressed using a term that is appropriate for the form of the supplement, such as "tablets," "capsules," "packets," or "teaspoonfuls."

(2) The subheading "Servings per container" shall be placed under the subheading "Serving Size" and aligned on the left side of the nutrition label, except that this information need not be provided when it is stated in the net quantity of contents declaration.

(3) A listing of all nutrients required in § 101.9(c), including any vitamin or mineral listed in § 101.9(c)(8)(iv) or § 101.9(c)(9), that is present in the dietary supplement except that nutrients present at insignificant amounts per serving shall not be declared. Insignificant amounts shall be defined as amounts that allow declaration of zero in nutrition labeling as specified in § 101.9(c), except that for total carbohydrate, dietary fiber, and protein, it shall be that amount that allows a declaration of "less than 1 gram." The name of each nutrient listed shall be immediately followed by the quantitative amount by weight of the nutrient. Nutrient names and quantitative amounts shall be presented in a column under the heading of "Amount Per Serving" and aligned on the left side of the nutrition label. The heading "Amount Per Serving" shall be separated from other information on the label by a bar above and underneath it.

(i) These amounts shall be expressed in the increments specified in § 101.9(c) using the units of measure and the level of significance given in § 101.9(c)(8)(iv), except that zeros following decimal points may be dropped.

(ii) Nutrients that are present shall be listed in the order specified in § 101.9(c) except that calcium and iron, when present, shall be grouped with other minerals which shall be listed in the following order after the complete listing of vitamins: Calcium, iron, phosphorus, iodine, magnesium, zinc, and copper. A bar shall separate the last nutrient to be listed from the bottom of the nutrition label, as shown in the sample labels in paragraph (c)(8) of this section.

(iii) If the product contains two or more separately packaged dietary supplements of vitamins and minerals (e.g., the product has a packet of supplements to be taken in the morning and a different packet to be taken in the afternoon), the quantitative amounts may be presented as specified in paragraph (b)(3) of this section in individual nutrition labels or in one aggregate nutrition label with separate columns declaring the quantitative amounts for each package as illustrated in paragraph (c)(8)(iii) of this section.

(iv) The percent of vitamin A that is present as β-carotene may be declared, to the nearest whole percent, immediately adjacent to or beneath the nutrient name (e.g., "Vitamin A (90 percent as β-carotene)").

(v) The following synonyms may be added in parenthesis immediately following the name of these nutrients: Vitamin C (ascorbic acid), thiamin (vitamin B_1), riboflavin (vitamin B_2), folate (folacin) and calories (energy). Energy content per serving may be expressed in kilojoules units, added in parentheses immediately following the statement of caloric content.

(vi) All nutrients shall be displayed with uniform type size, style, color, and prominence.

(4) A listing of the percent of the Daily Value (i.e., the percent of the RDI as established in § 101.9(c)(8)(iv) or DRV as established in § 101.9(c)(9)), where appropriate, of all nutrients listed in the "Nutrition Facts," except that no percent shall be given for sugars and the percent for protein may be omitted as provided in § 101.9(c)(7). This information shall be presented in one column aligned under the heading of "% Daily Value." The headings "% Daily Value (DV)," "% DV," "Percent Daily Value," and "Percent DV" may be substituted for "% Daily Value." This column shall be aligned to the right of the column of nutrient names and amounts.

(i) The percent of Daily Value shall be calculated by dividing the declared amount (i.e., after rounding) for each nutrient by the RDI or DRV for the specified nutrient and multiplying by 100, except that the percent for protein shall be calculated as specified in § 101.9(c)(7)(ii). The numerical value shall be followed by the symbol for percent (i.e., %).

(ii) The percentages based on RDI's and on DRV's shall be expressed to the nearest whole percent.

(iii) The percent of Daily Values for vitamins and minerals shall be based on RDI values for adults and children 4 or more years of age unless the product is represented or purported to be for use by infants, children less than 4 years of age, pregnant women, or lactating women, in which case the column heading shall clearly state the intended group. If the product is for persons within more than one group, the percent of Daily Value for each group shall be presented in additional columns as shown in paragraph (c)(8)(ii) of this section.

(iv) If the product contains two or more separately packaged dietary supplements of vitamins and minerals (e.g., the product has a packet of supplements to be taken in the morning and a different packet to be taken in the afternoon), the percent of Daily Value may be presented as specified in paragraph (b)(4) of this section in individual nutrition labels or in one aggregate nutrition label with separate columns declaring the percent of Daily Value for each package as illustrated in paragraph (c)(8)(iii) of this section.

(v) If the percent of Daily Value is declared for total fat, saturated fat, total carbohydrate, dietary fiber, or protein, the value shall be followed by an asterisk that refers to another asterisk at the bottom of the nutrition label that states: "Percent Daily Values are based on a 2,000 calorie diet."

(c) Nutrition information specified in this section shall be presented as follows:

(1) The title of "Nutrition Facts" shall be set in a type size larger than all other print size in the nutrition label and, unless impractical, shall be set full width of the nutrition label. The title and all headings shall be highlighted to distinguish them from other information.

(2) All information within the nutrition label shall utilize a single easy-to-read type style.

(3) All information within the nutrition label shall utilize upper and lower case letters.

(4) All information within the nutrition label shall have at least one point leading (i.e., space between two lines of text).

(5) All information within the nutrition label shall have type that is kerned (i.e., has proximity of placement) no tighter than −4 setting.

(6) All information within the nutrition label shall have type size no smaller than 8 point, except that type size no smaller than 6 point type size shall be used for the voluntary listing of the percent of vitamin A that is present as β-carotene as specified in paragraph (b)(3)(ii) of this section, for the headings required by paragraphs (b)(4) and (b)(4)(ii) of this section (i.e., "Amount Per serving" and "% Daily Value), for the footnote required by paragraph (b)(4)(v) of this section, and, on packages that have a total surface area available to bear labeling of 40 or less square inches, all information.

(7) In the interest of uniformity of presentation, FDA urges that the information be presented using the graphic specifications set forth in Appendix B to part 101, as applicable.

(8) The following sample labels are presented for the purpose of illustration:

(i) Multiple vitamin.

Nutrition Facts

Serving Size 1 tablet

Amount Per Serving

	%Daily Value
Vitamin A 5000 I.U. (50% as Beta Carotene)	100%
Vitamin C 60 mg	100%
Vitamin D 400 I.U.	100%
Vitamin E 30 I.U.	100%
Thiamin 1.5 mg	100%
Riboflavin 1.7 mg	100%
Niacin 20 mg	100%
Vitamin B_6 2.0 mg	100%
Folate 0.4 mg	100%
Vitamin B_{12} 6 mcg	100%
Biotin 0.03 mg	10%
Pantothenic Acid 10 mg	100%

(ii) Multiple vitamin for children and adults.

Nutrition Facts

Serving Size 1 tablet

Amount Per Serving

	%Daily Value for Children under 4 years of age	%Daily Value for Adults and Children over 4 years of age
Sugars less than 1g		
Vitamin A 2500 I.U. (50% as Beta Carotene)	100%	50%
Vitamin C 40 mg	100%	67%
Vitamin D 400 I.U.	100%	100%
Vitamin E 15 I.U.	150%	50%
Thiamin 1.1 mg	157%	73%
Riboflavin 1.2 mg	150%	71%
Niacin 14 mg	156%	70%
Vitamin B_6 1.1 mg	157%	55%
Folate 0.3 mg	150%	75%
Vitamin B_{12} 5 mcg	167%	83%

(iii) Multiple vitamins in packets.

Nutrition Facts

	AM Packet	PM Packet
Serving Size	1 packet	1 packet
Servings per container	10	10
Amount Per Serving		
	% Daily Value	% Daily Value
Vitamin A (50% as Beta Carotene)	2500 I.U. 50%	2500 I.U. 50%
Vitamin C	60 mg 100%	60 mg 100%
Vitamin D	400 I.U. 100%	
Vitamin E	30 I.U. 100%	
Thiamin	1.5 mg 100%	1.5 mg 100%
Riboflavin	1.7 mg 100%	1.7 mg 100%
Niacin	20 mg 100%	20 mg 100%
Vitamin B_6	2.0 mg 100%	2.0 mg 100%
Folate	0.2 mg 50%	0.2 mg 50%
Vitamin B_{12}	3 mcg 50%	3 mcg 50%
Biotin		0.03 mg 10%
Pantothenic Acid	5 mg 50%	5 mg 50%

(d)(1) Compliance with this section shall be determined in accordance with § 101.9 (g)(1) through (g)(8).

(2) When it is not technologically feasible, or some other circumstance makes it impracticable, for firms to comply with the requirements of this section, FDA may permit alternative means of compliance or additional exemptions to deal with the situation in accordance with § 101.9(g)(9). Firms in need of such special allowances shall make their request in writing to the Office of Food Labeling (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

(e) Except as provided in paragraph (g) of this section, the location of nutrition information on a label shall be in compliance with § 101.2.

(f)(1) Dietary supplements of vitamins or minerals are exempt from this section when they are offered for sale by a manufacturer, packer, or distributor

who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or information on a label or labeling or in advertising.

(2) For purposes of this paragraph, calculation of the amount of sales shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years, reasonable estimates must indicate that annual sales will not exceed the amounts specified. For foreign firms that ship foods into the United States, the business activities to be included shall be the total amount of food sales, as well as other sales to consumers, by the firm in the United States.

(g) Dietary supplements of vitamins and minerals shall be subject to the special labeling conditions specified in § 101.9 (j)(5)(i) and (j)(5)(ii) for food, other than infant formula, represented or purported to be specifically for infants and children less than 2 years of age and 4 years of age, respectively; in § 101.9(j)(9) for food products shipped in bulk form that are not for distribution to consumers; in § 101.9(j)(13) for foods in small or intermediate-sized packages; in § 101.9(j)(15) for foods in multiunit food containers; and, in § 101.9(j)(16) for foods sold in bulk containers.

(h) Dietary supplements of vitamins and minerals shall be subject to § 101.9(k) on misbranding.

Dated: June 10, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93–14274 Filed 6–15–93; 8:45 am]

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21 CFR Part 101

[Docket No. 91N–384D]

RIN 0905–AD96

Food Labeling; Requirements for Nutrient Content Claims for Dietary Supplements of Vitamins, Minerals, Herbs, and Other Similar Nutritional Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations on nutrient content claims to include dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances under the coverage of the general principles for nutrient content claims; to provide for the use of expressed and implied nutrient content claims on labels or in labeling of dietary supplements; and to provide for petitions for nutrient content claims for dietary supplements. This action is in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and to the Dietary Supplement Act of 1992 (the DS act).

DATES: Written comments by August 17, 1993. The agency is proposing that any final rule that may issue based upon this proposal become effective 6 months following its publication.

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

FOR FURTHER INFORMATION CONTACT: Camille E. Brewer, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–205–5817.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

A. Food Labeling Reform

In the **Federal Register** of August 8, 1989 (54 FR 32610), FDA published an advance notice of proposed rulemaking (ANPRM) that announced a major initiative of the U.S. Department of Health and Human Services to investigate the possible use of food labeling as a tool for promoting sound nutrition for the nation's consumers. FDA asked for public comment on five areas of food labeling, including the use of nutrient content claims, such as "low" or "free," to characterize foods.

FDA received over 2,000 written comments in response to the August 8, 1989, ANPRM, plus over 5,000 responses to a questionnaire that was distributed by a consumer organization. Among the comments there was nearly universal agreement that nutrient content claims should be defined, and that FDA needed to proceed quickly to develop regulatory definitions for all undefined nutrient content claims. Additionally, 4 national public hearings and 50 local consumer exchange meetings were held to discuss nutrition labeling and other issues related to food labeling, such as nutrient content claims.

The comments revealed a common concern about the unregulated use of nutrient content claims. Many comments stated that the proliferation of undefined terms had resulted in confusion for consumers and unfair competition for manufacturers. One comment stated that the terms were "meaningless in the way they are now used and are primarily used as marketing tools rather than as guides for the health conscious consumer."

B. The 1990 Amendments and Subsequent Proposals

On November 8, 1990, the President signed into law the 1990 amendments (Pub. L. 101–535) which significantly amended the Federal Food, Drug, and Cosmetic Act (the act). Most notably, the 1990 amendments confirmed FDA's authority to regulate nutrient content claims on food labels and in food labeling. Section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A)), which was added by the 1990 amendments, provides that a product is misbranded if it bears a claim in its label or labeling that either expressly or implicitly characterizes the level of any nutrient of the type required to be declared as part of nutrition labeling, unless such claim has been specifically defined, or otherwise exempted, by regulation. The 1990 amendments also directed the Secretary of Health and Human Services (the Secretary) and, by delegation, FDA to promulgate regulations to define specific nutrient content claims including "free," "low," "light" or "lite," "reduced," "less," and "high" (section 3(b)(1)(A)(iii) of the 1990 amendments).

In the **Federal Register** of November 27, 1991 (56 FR 60421), FDA published two documents in which it proposed, among other things, to define nutrient content claims, to provide for their use on food labels, and to establish procedures for the submission and review of petitions regarding the use of nutrient content claims. These proposals grouped dietary supplements with conventional foods for the purpose of regulating nutrient content claims.

C. The DS Act and Final Labeling Rules

On October 6, 1992, the President signed the DS act (Pub. L. 102–571). Section 202(a)(1) of the DS act established a 1 year moratorium on the implementation of the 1990 amendments with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances (hereinafter referred to as "dietary supplements"). Section 202(a)(2) of the DS act required the Secretary, and by delegation FDA, to issue proposed regulations applicable to dietary supplements no later than June

15, 1993. In addition, section 203 of the DS act instructed FDA not to promulgate regulations that require the use of, or are based upon, recommended daily allowances of vitamins or minerals, other than regulations establishing the United States Recommended Daily Allowances specified in 21 CFR 101.9(c)(7)(iv) as in effect on October 6, 1992, before November 8, 1993.

FDA issued final regulations that implemented the 1990 amendments by defining specific nutrient content claims and providing for their use on food in the form of conventional food on January 6, 1993 (58 FR 2302) (hereinafter referred to as the "final rule on nutrient content claims").

II. FDA Authority

As stated above, section 3(b)(1)(A)(iii) of the 1990 amendments directs the Secretary to issue regulations on a variety of nutrient content claims. The final rule on nutrient content claims responded to that directive for foods in conventional food form. To comply with 3(b)(1)(A)(iii) of the 1990 amendments and with section 202(a)(2) of the DS Act for dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances, the agency is now proposing to amend its existing regulations on nutrient content claims to include provisions for such products.

FDA is proposing to establish the conditions under which claims may be made about the level of a nutrient in a dietary supplement. FDA is also proposing to define the circumstances in which the various terms defined in the final rule on nutrient content claims can be applied to dietary supplements. FDA has authority to take these actions regarding nutrient content claims under sections 201(n), 403(a), 403(r), and 701(a) of the act (21 U.S.C. 321(n), 343(a), 343(r), and 371(a)). These sections authorize FDA to adopt regulations that prohibit labeling that: (1) Is false or misleading in that it fails to reveal facts that are material in light of other representations made in the labeling or that are material with respect to the consequences that may result from use of the food and (2) uses terms to characterize the level of any nutrient in a food that have not been defined by regulation by FDA.

However, not all terms or phrases used to describe a dietary supplement are nutrient content claims. A term may describe some attribute of a dietary supplement other than its nutrient content, such as "contains no preservatives." Such claims are not to be subject to requirements for § 101.13 (21 CFR 101.13). These claims will be discussed later in this document.

III. Proposed Rules

A. Relationship to January 6, 1993, Final Rules

In response to the DS act, the agency has reviewed the final rule on nutrient content claims for foods in conventional food form to determine the extent to which the provisions of that final rule can be applied to dietary supplements. As part of this review, FDA also considered how best to regulate nutrient content claims on dietary supplements. As Congressman Waxman stated in discussing the DS act:

> As both statutory text and legislative records reveal, the NLEA primarily addresses food products. Because of the differences in the history of use and function of dietary supplements and conventional foods, it is appropriate for Congress to enact this moratorium so that the issue of how best to regulate dietary supplements may be carefully considered.

(Ref. 6)

A joint statement by Senators Hatch and Kennedy reiterated the importance of "informative labeling" and emphasized the roles of FDA, manufacturers, distributors, and suppliers in ensuring that dietary supplements are safe and are appropriately labeled (Ref. 7). The DS act and its associated legislative history direct the agency to identify ways in which dietary supplements are different from foods in conventional food form. This proposal is a partial response to that mandate.

The agency has tentatively determined that, in many respects, the regulations promulgated in the final rules for nutrient content claims for foods in conventional food form are directly applicable to dietary supplements. However, the agency has also tentatively concluded that several sections of the final rules require revision to ensure appropriate application to dietary supplements.

B. Consistency with Established Nutrient Content Claims

Dietary supplements differ from foods in conventional food form in their history of use and in their perceived function in the diet. Dietary supplements are formulations marketed to meet consumers' desires to include particular substances in their diets at particular levels. Because dietary supplements are generally formulated products, their content or composition is significantly more amenable to manipulation than that of some foods in conventional food form.

However, there is much about dietary supplements and about nutrient content claims that suggests that the rules that govern nutrient content claims for dietary supplements should be the same as the rules for nutrient content claims on foods in conventional food form. Dietary supplements that are not intended for use as drugs have traditionally been regulated as foods and, as such, must be evaluated within the context of the total daily diet. In addition, nutrients from dietary supplements serve the same physiological function as nutrients from foods in conventional food form. While some consumers seek to ensure that the nutrient content of their diet is adequate through foods in conventional food form, other consumers seek to ensure nutritional adequacy through the addition of dietary supplements to their diets (Ref. 8). Consistent use of terms on dietary supplements and on foods in conventional food form will thus help consumers to construct a nutritionally adequate total daily diet by allowing consumers to make meaningful comparisons among these products. It will also facilitate use of these terms by consumers.

Thus, FDA has tentatively concluded that it would be helpful to continue to minimize inconsistencies in nutrient content claims between dietary supplements and foods in conventional food form. FDA believes that consumers would be confused if they were confronted with a situation in which nutrient content claims were allowed for nutrients when they are present at a certain level in foods in conventional food form but not when they are present at the same level in dietary supplements, or vice versa.

C. Scope

1. Dietary Supplements of Vitamins, Minerals, Herbs, and Other Similar Nutritional Substances

Section 202(a)(2)(A) of the DS act amends the 1990 amendments (section 3(b)(1)(A)) to direct the Secretary to issue proposed regulations that are applicable to dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances. In response to this provision, FDA is proposing to prescribe the circumstances in which claims that characterize the level of a nutrient in a dietary supplement may be made on a label or in labeling of such a food. Because FDA has tentatively concluded that nutrient content claims for dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances should generally be subject

to the same requirements as other foods, FDA is proposing to amend § 101.13(a), which establishes the general requirements for its nutrient content claims on food, to include dietary supplements within its coverage.

2. Nutrient Content Claims—Expressed and Implied

Section 403(r)(1)(A) of the act provides that claims, either expressed or implied, that characterize the level of a nutrient that is of a type required to be declared in nutrition labeling may not be made on the label or in labeling of any food intended for human consumption that is offered for sale unless the claim is made in accordance with section 403(r)(2) of the act. FDA reflected this statutory language in § 101.13(b) of the final rule on nutrient content claims.

Section 101.13(b) specifically references § 101.9, the general regulation on nutrition labeling. In a companion document published elsewhere in this issue of the **Federal Register** entitled "Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins or Minerals," FDA is proposing to adopt § 101.36 (21 CFR 101.36) to govern nutrition labeling of dietary supplements of vitamins or minerals. A question is thus raised as to whether § 101.13(b) needs to be amended to also reference § 101.36 to reflect the coverage of dietary supplements of vitamins or minerals in this regulation. FDA finds that it need not be. Section 101.36 itself also references § 101.9 to delineate the nutrients that it covers (proposed § 101.36(b)(3)). Thus, FDA tentatively finds that no change in § 101.13(b) is necessary, and that the proposed amendments of § 101.13(a) is adequate to establish that dietary supplements are covered by this regulation.

While FDA is proposing, to the extent possible, consistent with law, to make the express claims (see § 101.13(b)(1)) that it has defined for foods in conventional food form applicable to dietary supplements, the resource constraints and strict timeframes under which this rulemaking is proceeding have made it impossible for FDA to develop proposed regulations that authorize any specific implied claims (see § 101.13(b)(2)) for dietary supplements at this time. In section IV.B.7. of this document, however, the agency does discuss implied nutrient content claims for dietary supplements at some length and solicits comment on this matter.

3. Dietary Supplements for Infants and Toddlers

Nutrient content claims for foods in conventional food form are typically based on dietary guidance, and such guidance is not generally intended for young children (Refs. 1, 2, and 3). The agency lacks evidence that more restrictive dietary patterns for nutrients, such as sodium or increased intakes for nutrients such as fiber or specific vitamins or minerals, are appropriate or recommended for infants and toddlers. Therefore, FDA limited the use of nutrient content claims on foods in conventional food form that are specifically intended for infants and toddlers less than 2 years of age. Section 101.13(b)(3) of the final rule on nutrient content claims states that except for statements about the percentage of the Recommended Daily Intake (RDI), nutrient content claims may not be made on food intended specifically for use by infants and children less than 2 years of age unless the claim is specifically provided for in parts 101, 105, or 107 (21 CFR parts 101, 105, or 107).

However, the agency is proposing to take a slightly different tack with respect to dietary supplements. FDA is proposing to add § 101.60(c)(4) (21 CFR 101.60(c)(4)) to allow nutrient content claims about sugars content for dietary supplements for infants and toddlers. This proposed amendment is discussed in detail in the section on nutrient content claims for sugar, section IV.B.4.d. of this document.

D. General Principles

1. Statements From the Nutrition Label

Section 403(r)(1) of the act specifically excludes statements that appear as part of the nutrition label from the coverage of the nutrient content claims provisions. This exclusion was included in the 1990 amendments to make it clear that the information required on the nutrition label, and the optional information that is permitted as a part of nutrition labeling, are not claims under section 403(r)(1) of the act and thus are not subject to the disclosure requirements in section 403(r)(2) of the act (136 Congressional Record H 5841 (July 30, 1990)).

FDA is proposing to amend § 101.13(c) to provide that information that is required or permitted to be declared in nutrition labeling of dietary supplements, as well as of foods in conventional food form, and that appears as part of the nutrition label, is not a nutrient content claim, and is not subject to the requirements of this section. To affect this proposed amendment, FDA is adding "or § 101.36, as applicable" to § 101.13(c). This action is consistent with FDA's tentative determination that it is appropriate to regulate nutrient content claims for dietary supplements, to the extent possible, in the same general manner that it regulates such claims made for foods in conventional food form.

The legislative history of the 1990 amendments specifically states, however, that information that is required or permitted within the nutrition label will be subject to the requirements of nutrient content claims if it is included in another portion of the label (136 Congressional Record H 5841 (July 30, 1990)). FDA reflected this fact in § 101.13(c). Under this proposal, this aspect of § 101.13(c) will apply equally to dietary supplements and to foods in conventional food form.

2. Substitute Foods

Under section 403(r)(2)(A)(ii) of the act, for a food to be labeled as "(nutrient) free," the nutrient must usually be present in the food or in a food that substitutes, as that term is defined by the Secretary (and by delegation, FDA), for the food. Accordingly, the agency defined "'substitute' foods" in § 101.13(d) in the January 6, 1993 final rule (58 FR 2302 at 2411) for the purpose of identifying the characteristics that substitute foods must have if they are to bear nutrient content claims that highlight differences between them and the foods for which they substitute. The definition states that a substitute food is one that may be used interchangeably with another food that it resembles, i.e., to which it is organoleptically, physically, and functionally (including shelf life) similar, and to which it is not nutritionally inferior unless it is labeled as an "imitation." In addition, in §§ 101.13(d)(1) and (d)(2), FDA sought to ensure that material differences between the use of the substitute food and the use of the original food are conspicuously stated on the label or labeling of the food, so that consumers can make fully informed judgments about their value and their usefulness in maintaining healthy dietary practices.

FDA has reviewed the applicability of these sections to dietary supplements and recognizes that there may be confusion as to the circumstances in which one dietary supplement may be considered to substitute for another dietary supplement or for a food in conventional food form. By extending the logic used in defining substitute foods for foods in conventional food form, FDA tentatively concludes that a

substitute dietary supplement is one that is used interchangeably with another dietary supplement that it resembles in its physical characteristics (e.g., chewable, liquid, or tablet), in its formulation (e.g., multivitamin, single vitamin, single mineral, or multivitamin plus iron), and in its intended target population (e.g., children).

For example, children's chewable multivitamin tablets generally contain sugar. Therefore, a children's chewable multivitamin that was formulated without sugar could function as a substitute for one with sugar. In such a case, it would be appropriate to allow a "sugar free" claim on the substitute product. However, if the substitute chewable multivitamin product contained less of a particular vitamin than any other product of that type on the market, and was therefore nutritionally inferior, § 101.13(d) would require that product to be labeled as an "imitation." The agency believes that the occurrence of such circumstances is extremely unlikely, because such products can easily be formulated to contain equivalent amounts of nutrients.

Based on the foregoing discussion, FDA tentatively finds § 101.13(d) appropriate for the regulation of nutrient content claims on dietary supplements.

3. Reformulation Requirements for "Low" and "Free" Claims

Section 101.13(e)(1) of the final rule on nutrient content claims provides that only foods that have been specially processed, altered, formulated, or reformulated so as to lower the amount of the nutrient in the food, remove the nutrient from the food, or not include the nutrient in the food may bear a "free" or "low" claim before the name of the food. Section 101.13(e)(2) provides that, when the food has not been specially processed, altered, formulated, or reformulated to qualify for that claim, any "free" or "low" nutrient content claim shall indicate that the food inherently meets the criteria and shall clearly refer to all foods of that type and not merely to the particular brand to which the labeling attaches.

FDA tentatively concludes that these provisions are directly applicable to dietary supplements. For example, because most, if not all, dietary supplements of vitamins and minerals contain no or physiologically insignificant amounts of fat, saturated fat, and cholesterol, the agency tentatively finds that it would be misleading to make a "free" claim for any of those nutrients (e.g., "fat free vitamin C supplement") without making it clear that the claim was true of all supplements of that type (e.g., "vitamin C, a fat-free supplement).

The agency tentatively concludes that this requirement is necessary to prevent the consumer from being misled by an implication that a particular food has been altered to lower its sodium content, for example, when in fact all foods of that type are free of, or low, in sodium. FDA is aware that the effect of this provision will be to allow "free" or "low" claims on dietary supplements that do not usually contain, or are usually low in, the nutrient (e.g., "Brand A multivitamin, a fat free supplement"). However, for the reasons stated above, the agency believes that this course is the appropriate one. FDA specifically requests comments on this aspect of the proposal.

E. Labeling Mechanics

1. Prominence

The 1990 amendments do not include specific limits on the prominence of nutrient content claims. Although FDA recognizes the importance that certain nutrient content claims can have in encouraging sound dietary practices, it also considers it important that individual foods be evaluated in the context of the total diet. Consequently, FDA concluded in the January 6, 1993, final rule that claims should not be used to overemphasize any one aspect of a particular food. Therefore, § 101.13(f) requires that a nutrient content claim be no larger in type size and style than two times that of the statement of identity.

This requirement ensures that nutrient content claims are not given undue prominence. This requirement was promulgated under section 403(f) and 403(r) of the act. Section 403(f) of the act states that a food is misbranded if any statement required by or under the authority of the act is not placed on the label with such conspicuousness, as compared to other words, statements, designs, or devices, as to render it likely to be understood by the ordinary consumer. This requirement ensures that importance of the information provided by the nutrient content claim is fully understood by consumers.

FDA tentatively finds that the section on claim prominence published in the January 6, 1993, final rule, § 101.13(f), is directly applicable to dietary supplements. The agency is not aware of any reason why a different rule should apply to dietary supplements, given the regulatory scheme established by the act.

Moreover, because consistency between foods in conventional food form and dietary supplements in how information is presented will facilitate the use of the information by consumers, FDA throughout this document will propose to use the same labeling mechanics for dietary supplements as for foods in conventional food form, unless there is an affirmative reason to take a different approach. The agency requests comment on this proposed requirement and on the ways in which labeling mechanics for nutrient content claims for dietary supplements should differ from those of foods in conventional food form, if at all. The agency is particularly interested in the impact of this proposal on dietary supplements that are packaged in small containers.

2. Referral Statements

Section 403(r)(2)(B) of the act states that if a nutrient content claim is made, the label or labeling of the food shall contain, prominently and in immediate proximity to such claim, the following statement: "See _____ for nutrition information" (hereinafter referred to as "the referral statement"). Under section 403(r)(2)(B)(i) of the act, the blank must identify the panel on which the information described in the statement may be found. FDA has incorporated this requirement in § 101.13(g) of the final rule on nutrient content claims. The agency tentatively finds that this requirement is applicable to dietary supplements. The agency is not aware of any basis that would justify a different rule under the act, nor does the agency believe that it has the authority to establish a different rule given the language of section 403(r)(2)(B) of the act.

3. Type Size and Style for Referral Statements

Section 403(r)(2)(B) of the act requires that the referral statement appear prominently, but it does not contain specific prominence requirements such as type size or style. The agency proposed in November of 1991 to require in § 101.13(g)(1) that the referral statement be one-half the size of the claim but in no case less than one-sixteenth of an inch. The agency did this because it has traditionally required that information be in a size that is reasonably related to the information that it modifies. When codified, this has been one half the size of the information modified.

Because of problems with label clutter, however, FDA modified section 101.13(g)(1) in the final rule to require that the referral statement be no less than that required by § 101.105(i) for net quantity of contents statements, except where the size of the claim is less than

two times the required size of the net quantity of the contents statement, in which case the referral statement must be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch. The one-sixteenth of an inch requirement is the same as specified in § 101.2(c) as the minimum type size for most other mandatory information on the principal display panel or information panel (e.g., designation of ingredients, name and place of business, and warning and notice statements) and the minimum type size for certain net quantity of contents statements.

The agency sees no reason for alternate or additional requirements for dietary supplements. It recognizes that, because the available label space for many dietary supplements will be small, one-sixteenth of an inch will be the minimum size of the referral statement in many cases. Consequently, the agency tentatively concludes that the requirement for the size of the referral statement should be applicable to dietary supplements.

In addition, § 101.13(g)(1) states that the referral statement must be "in easily legible boldface print or type in distinct contrast to other printed or graphic matter." Section 403(r)(2)(B) of the act states that the referral statement for nutrient content claims should be "prominent". FDA tentatively finds that § 101.13(g)(1) is applicable to dietary supplements to ensure under section 403(f) that the referral statement is presented in a way that makes it likely to be read.

4. Proximity

Section 403(r)(2)(B) of the act provides that the referral statement shall be in immediate proximity to the claim. Although there is no specific guidance given as to what constitutes immediate proximity, FDA has traditionally defined immediate proximity as immediately adjacent with no intervening material present. For example, § 101.2(e) requires that there be no intervening material among the information that is required to appear on the information panel. By no intervening material, FDA means that there may be no printed matter, either pictorial or character, between the two pieces of information. FDA has taken a similar position in § 101.13(g)(2), requiring that the referral statement be immediately adjacent to the nutrient content claim.

However, a claim may be made immediately preceding or as part of the statement of identity. Under § 101.13(g)(2), when the nutrient content claim immediately precedes or is part of the statement of identity, the statement of identity or the nonclaim part of the statement of identity will not be considered intervening material. For example, if a product were labeled "Low sodium multivitamin; see side panel for nutrition information," and no pictorial or written material intervened, the agency would consider that the related statement and the referral statement were in immediate proximity to the nutrient content claim of "low sodium." The term "multivitamin" in this example would not be considered to be intervening material.

In addition, § 101.13(g)(2) provides that it is not necessary to include a referral statement if a claim is made on the panel containing nutrition information. In the final rule on nutrient content claims, the agency concluded that referral statements where not necessary when claims are made on the information panel because such claims would be made in view of the nutrition information cited in the referral statement.

FDA tentatively finds that § 101.13(g)(2) is directly applicable to dietary supplements. It is unaware of any basis on which to provide for a different rule for dietary supplements. Therefore, the agency sees no need to modify § 101.13(g)(2) for dietary supplements.

5. Referral Statements for Multiple Claims

Section 3(b)(1)(A)(v) of the 1990 amendments states that the Secretary and, by delegation, FDA shall provide that if multiple claims subject to the nutrient content claim regulations are made on a single panel of the food label or page of a labeling brochure, a single statement may be made to satisfy the requirements for referral statements. To ensure that this referral statement is adequately prominent, the agency promulgated § 101.13(g)(3) of the final rule on nutrient content claims which specifies that the statement is to be adjacent to the claim that is printed in the largest type on the panel. FDA adopted this provision because the claim in the largest type is the one most likely to initially be seen by the consumer.

The agency tentatively concludes that this provision is appropriate for dietary supplements. Given the small size of many supplement labels, requiring more than one referral statement on a panel would be unreasonable. However, section 403(r)(2)(B) of the act and section 3(b)(1)(A)(v) of the 1990 amendment read together require that there be at least one referral statement.

6. Disclosure Statements

Section 403(r)(2)(B)(ii) of the act states that if a food that bears a nutrient content claim "contains a nutrient at a level which increases to persons in the general population the risk of a disease or health-related condition which is diet related, taking into account the significance of the food in the total daily diet, the required referral statement shall also identify such nutrient," i.e., a disclosure statement.

The analysis that the agency performed in arriving at the circumstances where a disclosure statement on foods in conventional food form is required (i.e., disclosure levels) was based upon dietary guidelines, taking into account the significance of the food in the total daily diet. In the final rule on nutrient content claims (58 FR 2302 at 2308), the agency defined disclosure levels for sodium, fat, saturated fat, and cholesterol at 20 percent of the daily reference value (DRV) established by FDA. These disclosure levels stated in § 101.13(h) are 13 grams (g) of fat, 4 g of saturated fat, 60 milligrams (mg) of cholesterol, and 480 mg of sodium per reference amount customarily consumed, per labeled serving size, or for a food with a reference amount customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g.

The agency believes that disclosure statements concerning fat, saturated fat, and cholesterol are of limited usefulness for dietary supplements. The agency believes that amounts of fat, saturated fat, and cholesterol are negligible in most dietary supplements. However, fish liver oils and grain oils (e.g., wheat germ oil) may contribute to daily total fat intake above the disclosure levels at the intake levels recommended in the labeling, and disclosure statements on these products when nutrient content claims are made may be useful in alerting consumers to the presence of these nutrients in such supplements.

The agency is aware that some nutrients found in dietary supplements may be formulated with sodium containing compounds (e.g., sodium ascorbate), and that the amounts of sodium in these various products can vary widely. The agency tentatively concludes that the amount of sodium in these products may possibly exceed disclosure levels. In such a case, the sodium content may be significant, particularly for persons on sodium restricted diets, making the disclosure statement important in calling the consumer's attention to the sodium level of the food.

Therefore, FDA tentatively finds that § 101.13(h)(1) is applicable to dietary supplements. This provision states that if a food contains more than 13 g of fat, 4 g of saturated fat, 60 mg of cholesterol, or 480 mg of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference amount customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g, then that food must disclose, as part of the referral statement, that the nutrient exceeding the specified level is present in the food (e.g., "See side panel for information about total fat and other nutrients").

Section 101.13(h)(2) and (h)(3) pertain to disclosure levels for meal products and to main dish products and are therefore not relevant to dietary supplements.

F. Statements About the Amount or Percentage of a Nutrient

The 1990 amendments provide, in section 3(b)(1)(A)(iv), that FDA shall permit statements describing the amount or percentage of nutrients in food if they are not misleading, and if they are consistent with the terms defined by the agency. As discussed in the proposal on general principles for nutrient content claims (56 FR 60421 at 60426), the legislative history of the 1990 amendments contemplates that the agency would define the circumstances by regulation "under which statements disclosing the amount and percentage of nutrients in food will be permitted" (136 Congressional Record, H 5841 (July 30, 1990)). Accordingly, in § 101.13(i) of its final regulations on nutrient content claims, FDA set out the conditions under which statements of the amount or percentage of nutrients would be permitted.

The agency believes that statements about the amount or percentage of nutrients would be equally useful to consumers on the labels or in labeling of dietary supplements as they are on foods in conventional food form for such purposes as calling attention to the level of a nutrient in the product and facilitating comparisons between two or more dietary supplements. Accordingly, FDA tentatively finds that § 101.13(i)(1) is appropriate for dietary supplements.

However, before specifying the situation in which such statements would be permitted, the agency made exceptions of amount or percentage statements provided for in § 101.9 or in § 101.13(q)(3). These exceptions are to clarify that amounts or percentages declared within the nutrition label are not subject to § 101.13(i), nor are statements that describe the percentage of a vitamin or mineral in the food (see § 101.13(q)(3)). While these exceptions are applicable to dietary supplements subject to § 101.9, dietary supplements of vitamins or minerals are not covered by the existing provision. Therefore, the agency is proposing to amend § 101.13(i) by adding an exception for § 101.36 to cover amounts and percentages declared within nutrition labels of dietary supplements of vitamins and minerals.

1. When the Amount or Percentage Statement Meet the Criteria for a Claim

In rulemaking to implement the 1990 amendments, FDA considered how to permit statements of amount or percent that implicitly characterize the level of a nutrient (e.g., "less than 140 mg of sodium per serving") in a manner that benefits consumers and also satisfies the requirements of the statute (56 FR 60421 at 60426; 58 FR 2302 at 2308). In § 101.13(i)(1) the agency concluded that these conditions could be met when such amount or percentage statements about a nutrient are made on foods that meet the criteria for any nutrient content claim provided for in subpart D of 21 CFR part 101, including relative claims. The agency is unaware of any reason not to make the same provision for dietary supplements. Therefore, FDA tentatively concludes that this same criterion is applicable for amount or percentage statements on labels or in labeling of dietary supplements.

2. When the Amount and Percentage Statement Does not Meet the Criteria for a Claim

The agency concluded in the final rule on nutrient content claims that in circumstances in which the level of a nutrient in a food does not meet the criteria for a claim, an amount or percentage statement that implicitly characterizes the level of a nutrient, appearing by itself might be misinterpreted (58 FR 2302 at 2308). Therefore, § 101.13(i)(2) of the final rule on nutrient content claims requires that when the label or labeling of a food contains a statement that characterizes the amount or percentage of a nutrient, and that statement is not consistent with a definition set forth in Subpart D, the label must carry a disclaimer adjacent to the statement stating that the food is not "low" in or a good source of the nutrient, such as "only 200 mg sodium per serving, not a low sodium food." This provision also states that the disclaimer must be in easily legible print or type and in a size no less than required by § 101.105(i) for statements of net quantity of contents, in which case the disclaimer should be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch.

The agency is aware that similar situations might arise with respect to dietary supplements and is unaware of any reason to treat them any differently than it treats such situations that arise with respect to foods in conventional food form. Therefore, FDA tentatively concludes that this provision is entirely applicable to dietary supplements.

3. Amount or Percentage Statements That do not Characterize the Level of a Nutrient

In rulemaking implementing the 1990 amendments, FDA concluded that there are some circumstances in which an amount claim cannot be considered to characterize in any way the level of a nutrient in a food. For example, the statement "60 mg Vitamin C" on the principal display panel of a food would be a simple statement of amount that by itself conveys no implied characterization of the level of the nutrient. Section 101.13(i)(3) of the final rule on nutrient content claims states that amount or percentage statements may be made on the label or labeling of a food when the statement does not in any way implicitly characterize the level of the nutrient, and it is not false or misleading in any respect, in which case no disclaimer is required.

FDA tentatively concludes that § 101.13(i)(3) is also applicable to dietary supplements. The agency points out that such statements about the amount of a nutrient in a dietary supplement could apply to nutrients provided for in § 101.9 or, where applicable, § 101.36 for which FDA has established RDI's or DRV's as well as other vitamins or minerals of the same type for which RDI's have not been established (e.g., vitamin K, selenium, manganese, fluoride, chromium, molybdenum, and chloride). In this manner, amounts of vitamins or minerals that are not listed in § 101.9(c), and therefore which cannot be declared within the nutrition label, may be declared elsewhere on the label of the dietary supplement (e.g., "vitamin K—65 micrograms").

G. Relative Claims

In the final rule on nutrient content claims, the agency defined a relative claim in § 101.13(j) as a statement that compares the level of a nutrient in a food to the level of the same nutrient in a reference food These statements include "less" (or "fewer"), "light," "reduced," and "more" claims. These claims are termed "relative claims" to distinguish them from "absolute"

nutrient content claims such as "low." These terms are intended to help guide consumers to foods that may be useful in meeting current dietary recommendations. In addition, these terms provide a basis for comparing the level of a nutrient in one food to its level in another food.

The agency tentatively concludes that this definition is entirely appropriate for dietary supplements. The agency is unaware of any information that would lead to a different conclusion. The applicability of each currently authorized claim to dietary supplements will be discussed later in this document.

1. Reference Foods for Relative Claims

Because the nutrient profiles of similar foods may vary widely, a relative claim about the level of a nutrient in a food would be misleading if the food to which the labeled product was compared was not stated. Consequently, the agency concluded in the final rule on nutrient content claims that a food bearing a relative claim, but not the identity of the reference food, would be misbranded under sections 403(a) and 201(n) of the act because it would fail to reveal a fact that is material to understanding the significance of the claim. Specifically, information about the nature of the modification of the product, which would be essential in judging the usefulness of the product, would not be declared.

As previously discussed, the agency has defined a relative claim as a statement that compares the level of a nutrient in a food with the level of a nutrient in a reference food. The agency uses the term "reference food" to describe the food to which the labeled product is compared. Because a relative claim may be made with respect to a variety of reference foods, FDA has concluded that for such a claim to be complete and not misleading, the claim must be accompanied by a statement that compares the food for which the claim is made to a specified reference food. This information is important because the amount of a nutrient may vary widely among brands as well as types of food. As used in this discussion the term "reference food" includes dietary supplements, which are generally subject to regulation as foods.

Section 101.13(j)(1) states that to bear a relative claim about the level of a nutrient, the amount of that nutrient in the food must be compared to an appropriate reference food. Section 101.13(j)(1)(i)(A) states that for "less" (or "fewer") and "more" claims, the reference food may be a dissimilar food within a product category that can generally be substituted for one another in the diet (e.g., potato chips as reference for pretzels) or a similar food (e.g., a potato chip as reference for potato chips).

Section 101.13(j)(1)(i)(B) states that for "light," "reduced," "added," "fortified," and "enriched" claims, the reference food shall be a similar product (e.g., potato chips as reference for potato chips). FDA tentatively concludes that these provisions are appropriate for dietary supplements because they allow comparisons of nutrient content to a variety of categories of dietary supplements, as well as to foods in conventional food form. FDA is not aware of any information that would suggest a different conclusion.

Section 101.13(j)(ii)(A) states that for "light" claims, the reference food shall be representative of the type of food that includes the product that bears the claim. The nutrient values for the reference food shall be representative of a broad base of foods of that type, e.g., a value in a representative valid data base, an average value determined from the top three national or regional brands, a market basket norm, or when its nutrient value is representative of the food type, a market leader. Firms using such a reference nutrient value as a basis for a claim are required to provide specific information upon which the nutrient value was derived, on request to consumers and appropriate regulatory officials. Because of the limited calorie and fat levels in many dietary supplements, FDA considers this provision to have limited applicability to dietary supplements. To the extent it is applicable, however, FDA is not aware of any basis to find that a different position would be appropriate for dietary supplements. Therefore, FDA tentatively concludes that it is fully applicable to these products.

Section 101.13(j)(1)(ii)(B) states that for relative claims other than "light," including "less" and "more" claims, the reference food may be the same as that provided for "light" in paragraph (j)(1)(ii)(A) of this section, or it may be the manufacturer's regular product, or that of another manufacturer, that has been offered for sale to the public on a regular basis for a substantial period of time in the same geographic area by the same business entity or by one entitled to use its trade name. The nutrient value for a single manufacturer's product shall be the value declared in nutrition labeling on the product. FDA finds that this provision is directly applicable to dietary supplements, and therefore sees no need to modify this provision. A manufacturer's regular product provides a reference to a known specific food or dietary supplement and consequently provides a meaningful basis for claims that compare one product directly to another.

The agency tentatively concludes that the provisions discussed above are as appropriate for dietary supplements as they are for foods in conventional food form. The agency is unaware of any facts that would suggest that a different rule is appropriate for dietary supplements.

2. Accompanying Information for Relative Claims

In the final rule on nutrient content claims, the agency concluded that even though terms used in relative claims have been defined by regulation, the claims may be misleading unless they are accompanied by certain material facts that are necessary if consumers are to understand the change that has been made in the food. The agency considers that, in the presence of a relative claim, the percent of change in the nutrient level and the amount of the nutrient in the labeled food and the reference food are material facts under sections 403(a) and 201(n) of the act. Therefore, § 101.13(j)(2)(i) provides that the label or labeling must state the identity of the reference food and the percentage (or fraction) of the amount of the nutrient in the reference food by which the nutrient has been modified (e.g., "50 percent less sodium than (reference food)" or "⅓ less sugar than (reference food)"). The agency tentatively concludes that this provision is appropriate for dietary supplements. This provision facilitates comparison between brands of dietary supplements and allows manufacturers to demonstrate improvements in their products. Thus, it would assist consumers in maintaining health dietary practices.

Section 101.13(j)(2)(ii) provides that the information accompanying a relative claim is subject to the same type size and style requirements as prescribed for the referral statement (§ 101.13(g)(1)). This requirement ensures that consumers will be provided with the information that they need to understand the basis for the claim without overcrowding the label. FDA tentatively concludes that this requirement should apply equally to dietary supplements. The requirement is written in a way that accounts for space limitations that may exist on dietary supplement packages. Thus, FDA is unaware on any basis on which to adopt a different rule for these products.

The agency recognizes that the information required to accompany a relative claim is considerable, but this

information is necessary to ensure that the claim is not misleading. On the other hand, FDA also recognizes that a requirement that this information be included each time a relative claim is made would overburden the label to the point that the usability of the required information could be diminished. Therefore, the agency has provided in 101.13(j)(2)(iii) that the identity of the reference food and the percent (or fraction) of the change is only required to accompany the most prominent declaration of the claim on the food.

The determination of which use of the claim is in the most prominent location is based on the following facts, considered in order: (1) A claim on the principal display panel adjacent to the statement of identity (§ 101.13(j)(2)(iii)(A)), (2) a claim elsewhere on the principal display panel (§ 101.3(j)(2)(iii)(B)), (3) a claim on the information panel (§ 101.13(j)(2)(iii)(C)), or (4) a claim elsewhere on the label or labeling (§ 101.13(j)(2) (iii)(D)).

The agency tentatively finds that each of the above provisions is applicable to dietary supplements. The agency is unaware of any facts that would require a different approach for dietary supplements.

Section 101.13(j)(2)(iv)(A) of the final rule on nutrient content claims states that the label shall bear clear and concise quantitative information comparing the amount of the subject nutrient in the product per labeled serving with that in the reference food. To provide some flexibility in label arrangement, the agency has provided in § 101.13(j)(2)(iv)(B) that this statement be allowed to appear adjacent to the most prominent claim or on the information panel. Because these provisions provide for the provision of necessary information in a flexible manner, the agency tentatively concludes that these provisions are applicable to dietary supplements that make relative claims (e.g., "Contains 400 ug folate, Product X contains 180 ug folate"). Therefore, FDA is proposing to make nutrient content claims on dietary supplements subject to these requirements.

3. Relative Claims for Low Levels of Nutrients

The agency has previously expressed concern that relative claims that highlight a decrease in the amount of a nutrient will be made on products that normally contain only a small amount of that nutrient (56 FR 60421 at 60446 and 58 FR 2302 at 2348). In such products, a large percentage reduction would produce only a small change in the actual amount of the nutrient present. This concern extends to dietary supplements. For instance, a dietary supplement containing only 40 mg of sodium per serving could be reformulated to contain 20 mg of sodium per serving and thereby qualify to use a relative claim. The difference of 20 mg of sodium is not of nutritional significance, however, because the product was already low sodium. A claim for such a nutrient content difference would be misleading.

To address this concern, the agency provided in § 101.13(j)(3) that a relative claim for decreased levels of a nutrient may not be made on the label or in labeling of a food if the nutrient content of the reference food meets the requirement for a "low" claim for that nutrient (e.g., 3 g fat). FDA concluded that the definition for a "low" claim on a per serving basis should be used as such a limit because the value for "low" is the level above which the amount of a nutrient becomes significant relative to the total diet. After considering the relevance of this provision for claims on dietary supplements, the agency tentatively concludes, for the same reason that applies to food in conventional food form, that the level of "low" specified for foods in conventional food form is appropriate for limiting relative claims on dietary supplements.

4. "Modified"

The term "modified" is not a nutrient content claim and has not been defined by the agency. This term was developed for foods in conventional food form to be used as part of the statement of identity to reflect a change in a food (56 FR 60454). The term was not meant to be used alone, nor was the term meant to be used to describe products that had not been altered (58 FR 2302 at 2367 and 2412). The reference food used for the "modified" claim is intended to be one that was appropriate for a "reduced" claim (56 FR 60421 at 60454 and 58 FR 2302 at 2367). For example, a "modified fat cheddar cheese" would have as its reference a full fat version of cheddar cheese, not some other type of cheese.

Section § 101.13(k) of the final rule on nutrient content claim provides that the term "modified" may be used in the statement of identity of a food that bears a relative claim followed immediately by the name of the nutrient whose content has been altered (e.g., "Modified fat cheesecake"). This statement of identity must be immediately followed by the comparative statement such as "Contains 35 percent less fat than _____." The label or labeling must also bear the information required by paragraph (j)(2) of § 101.13 in the manner prescribed.

FDA is not aware of any application for this term for dietary supplements. The agency tentatively concludes that the authorized express claims (e.g., "low," "free") and the relative claims (e.g., "more," "less," "reduced") are sufficient to describe modifications for dietary supplements. However, while the use of this term as part of the statement of identity of dietary supplements is unlikely, the agency sees no reason not to extend the use of this term to dietary supplements if an appropriate situation arose. Therefore, FDA is not proposing to modify § 101.13(k) to preclude that use of "modified" on dietary supplements. Comment is requested on this tentative conclusion, on the appropriateness of authorizing the use of this term for dietary supplements, and on any situations in which the term may be useful for dietary supplements.

H. Meal Products and Main Dish Products

Section 101.13(l) and (m) of the final rule on nutrient content claims addresses meal products and main dish products and therefore has no application to dietary supplements.

I. Nutrition Labeling

Section 101.13(n) of the final rule on nutrient content claims states that nutrition labeling in accordance with § 101.9 or § 101.10, as applicable shall be provided for any food for which a nutrient content claim is made.

Nutrition labeling is necessary when a claim is made to ensure that other important nutritional aspects of the food are presented along with the aspect that is highlighted by the claim. This fact is recognized in section 403(r)(2)(B) of the act, which requires that any nutrient content claim be accompanied by a statement referring the consumer to the nutrition label. Thus, nutrition labeling in the labeling of a food that bears a claim will assist consumers in maintaining healthy dietary practices because it provides them with additional important information about the food. FDA tentatively concludes that the above analysis is as appropriate for dietary supplements as it is for foods in conventional food form. Therefore, the agency is proposing to amend § 101.13(n) to state that nutrition labeling in accordance with §§ 101.9, 101.10, or 101.36, as applicable, shall be provided for any food for which a nutrient content claim is made.

J. Analytical Methodology

Section 101.9(g)(2) of the final rule on nutrient content claims published January 6, 1993 (58 FR 2079 at 2183), states that foods shall be analyzed by appropriate methods as specified by the American Organization of Analytical Chemists (AOAC) International or by other reliable and appropriate analytical procedures. The agency believes that these methods as provided for in § 101.13(o) are appropriate for dietary supplements. The agency is not aware of any evidence that would suggest a different conclusion. Therefore, FDA is proposing to include dietary supplements in the coverage of this provision.

K. Reference Amounts

Section 101.13(p)(1) of the final rule on nutrient content claims states that unless otherwise specified, the reference amount customarily consumed set forth in § 101.12 (b) through (f) shall be used in determining whether a product meets the criteria for a nutrient content claim. Further, the provision states that if the serving size declared on the product label differs from the reference amount customarily consumed, and the amount of the nutrient contained in the labeled serving does not meet the maximum or minimum amount criterion in the definition for the nutrient content claim for that nutrient, the claim shall be followed by the criteria for the claim as required by § 101.12(g) e.g. "very low sodium, 35 mg or less per 240 milliliters (8 fl oz."). Section 101.13(p)(2) states that the criteria for the claim shall be immediately adjacent to the most prominent claim in easily legible print or type and in a size in accordance with § 101.13(g)(1).

The proposal for mandatory nutrition labeling for dietary supplements published elsewhere in this issue of the **Federal Register** contains a proposal to amend § 101.12(b) to define reference amounts customarily consumed for dietary supplements as "the amount recommended on the label for consumption per eating occasion or, in the absence of recommendations, 1 tablet, capsule, packet, or teaspoonful, as appropriate". The agency tentatively concludes that with the proposed addition of a reference amount for dietary supplements to § 101.12(b), the above provision is directly applicable to dietary supplements.

L. Exemptions

The 1990 amendments provide certain exemptions from the requirements for nutrient content claims. The exemptions that are provided for in § 101.13(q) are reviewed below in terms of their applicability to dietary supplements.

1. Claims in a Brand Name

Section 101.13(q)(1) of the final rule on nutrient content claims states that nutrient content claims not defined by regulation, appearing as part of a brand name that was in use prior to October 25, 1989, may be used on the label or in labeling of a food, provided they are not false or misleading under section 403(a) of the act. Section 403(r)(2)(C) of the act states:

> Subparagraph (2)(A) does not apply to a claim described in subparagraph (1)(A) and contained in the label or labeling of a food if such claim is contained in the brand name of such food and such brand name was in use on such food before October 25, 1989, unless the brand name contains a term defined by the Secretary under subparagraph (2)(A)(i). Such a claim is subject to paragraph (a).

Paragraph (a) refers to section 403(a) of the act which states that a food is misbranded if its labeling is false or misleading in any particular.

Manufacturers may continue to use brand names that include nutrient content claims that have not been defined by regulation so long as these claims appeared as part of a brand name before October 25, 1989, and are not false or misleading. Section 403(r)(2)(B) of the act, which requires the referral statement, does apply to foods whose brand name includes such claims. Consequently, the labeling of products whose brand name includes such terms will have to bear an appropriate referral statement.

FDA tentatively concludes that § 101.13(q)(1) is applicable to dietary supplements. The agency is aware of nothing in the statute, its legislative history, or the available evidence that would provide the basis for a different conclusion.

2. Soft Drinks

Section 101.13(q)(2) addresses soft drinks and therefore has no application to dietary supplements.

3. Percentage of Vitamins and Minerals

Section 403(r)(2)(E) of the act states:

> Subclauses (i) through (v) of subparagraph (2)(A) do not apply to a statement in the label or labeling of food which describes the percentage of vitamins and minerals in the food in relation to the amount of such vitamins and minerals recommended for daily consumption by the Secretary.

Accordingly, § 101.13(q)(3) of the final rule on nutrient content claims authorizes the use of statements on the label or in labeling of a food that describes the percentage of a vitamin or mineral in relation to the RDI as defined in § 101.9(c)(8)(iv) without specific regulations authorizing claims for each specific vitamin or mineral. Such claims are permitted unless they are expressly prohibited by regulation under section 403(r)(2)(A)(vi) of the act. Such claims have to be accompanied by a referral statement. FDA tentatively concludes that the above provision is fully applicable to dietary supplements.

4. Infant Formulas, Medical Foods, and Restaurant Foods

Section 101.13(q)(4) states that the requirements of this section do not apply to infant formulas subject to section 412(h) of the act (21 U.S.C. 350a) and to medical foods as defined by section 5(b) of the Orphan Drug Act. Section 101.13(q)(5) addresses specific provisions for restaurant foods. These sections have no application to dietary supplements.

5. Claims That are Part of the Common or Usual Name

Section 101.13(q)(6) of the final rule on nutrient content claims states that nutrient content claims that are part of the common or usual names of foods that were subject to a standard of identity on November 8, 1990, are not subject to the requirements for the definitions of expressed and implied nutrient content claims provisions, to the labeling mechanics provisions, and to the referral statement provisions. Because there are no standards of identity for dietary supplements, this provision is not relevant to dietary supplements.

6. Use of Terms Defined in Response to Petitions

Section 101.13(q)(7) of the final rule on nutrient content claims states that implied nutrient content claims may be used as part of a brand name, provided that the use of the claim has been authorized by FDA. Petitions requesting approval of such claims may be submitted under § 101.69(o).

Section 403(r)(4)(A) (ii) and (iii) of the act authorizes the agency to permit the use of certain types of claims in response to a petition, without requiring that the agency grant such approval by regulation. The claims covered by this section are those made by use of a term that is consistent with a nutrient content claim defined by the agency, i.e., a synonym, or by an implied claim made as part of a brand name. The act sets forth specific timeframes and procedures for FDA's handling of these petitions, which FDA codified in § 101.69.

FDA intends to list any approved synonyms in the regulation defining the underlying nutrient content claim. The regulations will be updated in the annual issuance of the Code of Federal Regulations. On the other hand, because brand name approvals apply to individual firms, the agency intends to retain a separate, publicly available list of approved implied nutrient content claims that may be made as part of a brand name.

FDA tentatively concludes that this provision is also applicable to dietary supplements. The agency is not aware of any information that would suggest that a different approach is appropriate for dietary supplements.

M. Fluoridation of Bottled Water

Section 101.13(q)(8) states that terms denoting the addition of fluoride may be used on the label or in the labeling of bottled water that contains fluoride. This provision is not relevant to dietary supplements.

IV. Definitions for Specific Nutrient Content Claims Terms

A. Basis for Definitions

1. January 6, 1993, Final Rule

FDA tentatively concludes that most, but not all, of the terms defined in the final rule on nutrient content claims (58 FR 2302 at 2410) are directly applicable to dietary supplements. Those terms authorized for use on labels of foods in conventional food form that the agency believes are not appropriate for dietary supplements include "unsalted," "lean," and "extra lean." The reasons that these are not appropriate for use with dietary supplements will be discussed in the sections that follow.

In response to its 1989 ANPRM, FDA received many comments asking for increased consistency among nutrient content claims to aid consumers in recalling and using the defined terms. In addition, the Institute of Medicine of the National Academy of Science in a report entitled "Nutrition Labeling, Issues and Directions for the 1990's," recommended that claims should have a consistent definition across food categories. For example, the report recommended that "low sodium" should have the same meaning whether it is applied to soup, frozen peas, or meat (Ref. 5). FDA accepted this reasoning in the final rule on nutrient content claims (58 FR 2302 at 2319). The agency tentatively concludes that the same reasoning applies to dietary supplements. Thus, "low sodium", for example, should have the same meaning on a dietary supplement as it does on foods in conventional food form. Accordingly, the definitions that FDA is proposing to authorize for nutrient content claims for dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances are those previously defined by the agency for foods in conventional food form as set forth in §§ 101.54, 101.60, 101.61, 101.62, and 101.65.

2. Use of RDI's and DRV's in Formulating Definitions

In a related final rule on food labeling that published in the **Federal Register** of January 6, 1993 (58 FR 2206), and consistent with the DS act, FDA replaced the term U.S. Recommended Daily Allowance ("U.S. RDA") with "RDI" and established DRV's for eight food components, including sodium, potassium, and dietary fiber.

The agency has limited the proposed definitions for nutrient content claims for dietary supplements to nutrients for which there are RDI's or DRV's. This approach has the advantage of linking nutrient content claims to established reference values, thereby providing a consistent and quantitative basis for defining terms. Additionally, these reference values were determined using established scientific reports (Ref. 4), as well as recognized consensus reports and dietary recommendations (Refs. 1, 2, and 3), ensuring that there is an appropriate scientific basis for these values.

The agency recognizes that there may be other nutrients (i.e., nutrients without RDI's) for which dietary supplement manufacturers might wish to make claims. As previously discussed, § 101.13(i)(3) provides for amount or percentage statements that do not characterize the level of a nutrient (including those nutrients without an RDI or DRV) and that are therefore not nutrient content claims but rather state amounts present. For example, while there is no RDI for vitamin K, this provision would allow a vitamin K supplement to declare the amount of the nutrient present (e.g., vitamin K 65 micrograms). FDA is not aware of any basis on which to characterize the levels of these substances. FDA requests comment on this issue. The agency is interested in comments on whether there is a need to allow nutrient content claims for nutrients without RDI's (e.g., vitamin K, selenium, manganese, fluoride, chromium, molybdenum, and chloride). If there is, comments should address how such claims can be defined in the absence of an RDI.

3. General Requirements for Nutrient Content Claims

Under section 403(r)(1)(A) of the act, a label claim that characterizes the level of a nutrient in a food may only be made in accordance with the regulations that FDA adopts under section 403(r)(2) of the act. This provision is reflected in the general requirements for each set of nutrient content claims in §§ 101.54(a), 101.56(a), 101.60(a), 101.61(a), and 101.62(a). These paragraphs state that such claims may only use terms that FDA has defined by regulation, must be made in accordance with general requirements for nutrient content claims in § 101.13, and must bear nutrition labeling according to § 101.9 or § 101.10. For the reasons stated above, the agency tentatively concludes that these provisions are appropriate for dietary supplements. However, because FDA is proposing a new § 101.36 in a separate document published elsewhere in this issue of the **Federal Register** that would address nutrition labeling of dietary supplements of vitamins or minerals, a modification of the above paragraph is needed to add a reference to § 101.36.

Therefore, the agency is proposing to amend several sections of Subpart D (§§ 101.54(a)(3), 101.56(a)(3), 101.60(a)(3), 101.61(a)(3), and 101.62(a)(3)) to state that the food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

B. Specific Requirements for Nutrient Content Claims (21 CFR 101, Subpart D)—Applicability to Dietary Supplements

1. Nutrient Content Claims for "Good Source," "High," and "More." (§ 101.54)

a. *"Good source" and "high."* As directed by the 1990 amendments (section 3(b)(1)(A)(iii)(VI)), FDA defined the term "high" and the synonyms "rich in" and "excellent source of" for use on labels and in labeling in § 101.54 (58 FR 2302 at 4114). In the final rule on nutrient content claims, the agency stated that the term "good source" may be used to describe a food when a serving of the food contains 10 to 19 percent of the RDI or the DRV for a nutrient. Likewise, the agency stated that the term "high" may be used to describe a food when a serving contains 20 percent or more of the RDI or the DRV. FDA concluded that the use of these terms would permit a sufficient number of food items to bear "good source" and "high" claims to allow consumers to use the claims in selecting foods that are better sources of nutrients. The agency also pointed out that the specified levels provide an

appropriate basis for upper-level nutrient content claims on labels or in labeling of foods in conventional food form and can readily be used by consumers to implement current dietary guidelines (58 FR 2344).

Under the present definitions, most, if not all, dietary supplements of vitamins, minerals, potassium, and fiber would qualify for "good source" or "high" claims. Dietary supplements of vitamins and minerals are typically concentrated sources of nutrients that often meet or exceed 100 percent the RDI per serving except for nutrients such as biotin, an expensive nutrient whose cost constrains the amount usually added in a supplement, and fiber and calcium, whose mass limits the quantity that can be formulated into single servings in tablet form. However, multiple servings are often recommended for fiber and for calcium supplements to provide recommended daily intake levels.

Dietary supplements are intended to be, and are expected to be, concentrated sources of nutrients (Ref. 3). While "good source" and "high" nutrient content claims would be of limited utility in comparing the nutrient content among dietary supplements because virtually the entire class of products would qualify for such claims, these claims would be useful in comparing the nutrient content of dietary supplements with that of foods in conventional food form. Further, these terms would also be useful in highlighting the nutrient content of a few herbs and other similar nutritional substances that have nutrients at levels high enough to qualify for the definition of one of the above terms.

However, section 411(b)(2)(B) of the act (21 U.S.C. 350(b)(2)(B)) states that the labeling and advertising for dietary supplements of vitamins and minerals may not give prominence to or emphasize ingredients that are not vitamins or minerals or represented as a source of vitamins or minerals. This provision serves to limit the types of claims that can be made on dietary supplements of vitamins or minerals. Because of this provision, statements about ingredients that are not vitamins or minerals (e.g., "more fiber," "good source of fiber," "high protein") may not be made on dietary supplements of vitamins or minerals. Therefore, the agency is proposing to amend § 101.54(b), (c), and (e), by adding that the claims authorized in this section (i.e., "high," "good source," and "more") may not be used on dietary supplements of vitamins or minerals to characterize the level of any substance that is not a vitamin or mineral.

As previously discussed, maintaining consistency in definitions of nutrient content claims across the food supply is necessary to facilitate consumer use of the information. Accordingly, the agency tentatively concludes that with the proposed change in § 101.54(b), (c), and (e), and excluding the provisions pertaining to main dish and meal type products, all of the provisions of § 101.54 pertaining to the terms "good source," "high," and their synonyms are applicable to dietary supplements. Comments are requested on the usefulness of "good source" and "high" claims on dietary supplements and on the appropriateness of the proposed levels. If other levels are suggested, data in support of such levels are requested.

b. *"More."* Although the 1990 amendments do not require that FDA define the term "more," the agency recognized that there could be instances when a manufacturer could make a statement on the label or in labeling that a food contains more of a desirable nutrient than is in a reference food. FDA said that such claims could be useful to describe the level of vitamins, minerals, protein, potassium, and dietary fiber in a food (56 FR 60421 at 60453).

Section 101.54(e)(1)(i) of the final rule on nutrient content claims requires that a food contain at least 10 percent more of the RDI for vitamins or minerals or of the DRV for protein, dietary fiber, or potassium before a comparative claim using the term "more" would be permitted. As discussed in the final rule on nutrient content claims that published in the **Federal Register** of January 6, 1993 (58 FR 2302 at 2361), the agency concluded that a 10 percent or greater level of a nutrient relative to the RDI or DRV in a serving of a food is nutritionally significant and is also necessary to ensure that there is truly a nutritional difference in the foods being compared. This minimum difference corresponds to the minimum level of a nutrient that must be provided by a food for the food to meet the definition of "good source" described in § 101.54(c) (58 FR 2302 at 2414). Consistent with this requirement, a food must provide at least an additional 10 percent of the DRV or RDI compared to the reference food before it can be designated as a better source, i.e., having "more" of the nutrient.

The agency tentatively finds that this provision is applicable to dietary supplements, and that the definition of "more" and its synonyms can be extended to dietary supplements without revision. FDA points out that the difference must be on the basis of the RDI or DRV, rather than on a weight basis, for the relative difference to have nutritional significance. For example, consider a product containing 150 mg of calcium per serving. On a weight basis, it would have 50 percent more calcium than a product containing 100 mg and 100 percent more than a product containing 75 mg. However, in terms of the RDI for calcium (1 g), a serving of the three products contains 15, 10, and 7.5 percent of the RDI, respectively. While the first two products meet the definition of a "good source", i.e., at least 10 percent of the RDI per serving, the difference between them is not nutritionally significant and therefore, no one product can claim to contain "more" calcium than the other two.

2. Nutrient Content Claims for "Light" and "Lite" (§ 101.56)

Section 3(b)(1)(A)(iii)(III) of the 1990 amendments requires FDA to define "light" or "lite" unless it finds that the term is misleading. In its final rule on nutrient content claims, FDA concluded that while the term "light" or "lite" is primarily a relative claim that compares one food to another food, it is often used to directly describe the food itself in the way that an absolute claim such as "low sodium" is used. The agency defined the circumstances in which the term "light" can be used in § 101.56 of the final rule on nutrient content claims (58 FR 2302 at 2414). The definition of these terms is based on their calorie, fat, or sodium content.

Based on the agency's tentative conclusion that the definition of terms should be consistent for all foods, the agency is proposing to include dietary supplements in the coverage of § 101.56. Section 101.56(b)(4) states that a "light" claim may not be made on a food for which the reference food meets the definition of "low fat" and "low calorie." As previously discussed, the calorie and fat content of dietary supplements is generally negligible. Therefore, § 101.56(b)(4) is likely to preclude the use of the term "light" on labels or in labeling of dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances. However, the agency is not aware of any evidence that the term "light" or "lite" would be useful to consumers of dietary supplements, or that the term is currently used to describe dietary supplements.

Similarly, the term "lite in sodium" may not be used on a food for which the reference food meets the definition of "low in sodium" (§ 101.56(c)(2)(iii)). This provision is likely to preclude the use of the term "lite in sodium" on dietary supplements because the majority of dietary supplements meet the definition of "low in sodium." (n

the case of sodium, the agency is proposing several nutrient content claims to describe the level of this nutrient, and the agency tentatively concludes that these items will be adequate to cover the likely range of variation of sodium content in dietary supplements.

3. "Less," "Reduced" and "Fewer" Claims—Background

Under section 3(b)(1)(A)(iii) (IV) and (V) of the 1990 amendments, FDA is required to define the terms "less" and "reduced." To ensure that the reductions that are the subject of these comparative claims are nutritionally meaningful, and that consumers are not misled by claims for reductions that are inconsequential, the agency determined that such claims on the label or in labeling of a food can be made only if the food has been formulated so that it contains at least 25 percent less of the nutrient than the reference food. The 25 percent reduction requirement is based on agency findings that products in which there has been a 25 percent or greater reduction in the amount of a nutrient will serve a useful role in the diet of those individuals who are attempting to limit their consumption of the nutrient. In addition, the agency concluded that because of variations in nutrient content within a food or class of food, any less of a reduction would not always ensure that the altered product contained less of the nutrient than the regular product. The agency included this requirement for a 25 percent reduction in the recent final regulations defining "fewer calories," "less sugars," "less sodium," "less fat," "less saturated fat," and "less cholesterol" (58 FR 2302 at 2414).

In the final rule on nutrient content claims, the agency determined that the terms "reduced" and "less," could be used to denote the same reduction in the level of a nutrient. However, the agency concluded that there were differences in the meaning of the two claims, as reflected in the provisions for the reference food to which the comparison drawn by each claim was made (58 FR 2362). The agency listed the terms "reduced" and "less" (in the case of calories the agency also included the term "fewer") as synonyms (subject to § 101.13(j)) in § 101.60(b)(4) for calories (58 FR 2302 at 2416), § 101.60(c)(4) for sugars (58 FR 2417), § 101.61(b)(6) for sodium (58 FR 2302 at 2418), § 101.62(b)(4) for fat (58 FR 2302 at 2418), (c)(4) for saturated fat (58 FR 2302 at 2419), and (d)(4) for cholesterol (58 FR 2302 at 2422). The agency will discuss each of these claims in detail in the discussion of claims involving each of these nutrients that follows.

4. Nutrient Content Claims for the Calorie Content of Foods (§ 101.60)

a. *"Calorie free."* Under section 3(b)(1)(A)(iii)(I) of the 1990 amendments, FDA is required to define the term "free," unless it finds that use of the term would be misleading. For a food to be labeled as a "(nutrient) free (product)," under section 403(r)(2)(A)(ii)(I) of the act, the nutrient must usually be present in the food or in a food for which it substitutes, as that term is defined by the Secretary (and by delegation FDA) (§ 101.13(d)).

In arriving at the definitions for "free" for the various nutrients, the agency chose the level of the nutrient that is at or near the reliable limit of detection for the nutrient and that is dietetically trivial or physiologically inconsequential. This approach is consistent with that used by the agency in the past for defining "free." FDA established a policy of using "free" as a nutrient content claim for physiologically insignificant components when it adopted a regulation for sodium nutrient content claims that published in the **Federal Register** of April 18, 1984 (49 FR 15510).

Based on the agency's tentative conclusion that the definition of terms should be consistent for all foods, the agency is proposing to include dietary supplements in the coverage of § 101.60. Section 101.60(b)(1) of the final rule on nutrient content claims defines "calorie free" and its synonyms as having less than 5 calories per reference amount. FDA defined "calorie free" because the ability to call attention to products free of calories provides useful guidance to consumers who are seeking to control their caloric intake. However, the agency recognizes that the majority of dietary supplements are typically devoid of calories or have negligible calories. Therefore, under this proposal, "calorie free" claims on these products will have to meet the requirements of § 101.60(b)(1)(ii). This section provides that a food that is inherently free of calories must disclose that calories are not usually present in the food (e.g., "cider vinegar, a calorie free food").

b. *"Low calorie."* i. *Background on "low" claims.* In its rulemaking on nutrient content claims, the agency defined "low" as a nutrient content claim for total fat, saturated fat, cholesterol, sodium, and calories (56 FR 60421 at 60438). The agency stated that it did not believe that the term "low" should necessarily mean that a nutrient is present in a food in an inconsequential amount, as with "free," but rather that the selection of a food bearing the term should assist consumers in assembling a daily diet that is consistent with recommendations to limit the intake of certain nutrients. The starting point for the definition of "low" was the level that FDA defined as a measurable amount of the nutrient in a serving of food. FDA defined this amount as 2 percent or more of the reference value (i.e., DRV), the level at which all of the nutrients in question can be measured in all or nearly all foods.

Because FDA believed that 2 percent of the DRV could be overly restrictive as a definition for "low" for those nutrients that are not contributed by all food categories or that are found in relatively few foods, the agency then adjusted the 2 percent definition according to the nutrient's estimated distribution across food categories (56 FR 60421 at 60440).

ii. *Application of the nutrient content claim "low calorie" to dietary supplements.* Section 101.60(b)(2) of the final rule on nutrient content claims defines "low calorie" as having no more than 40 calories per reference amount and, if the food has a reference amount of 30 g or less or two tablespoons or less (except for sugar substitutes), per 50 g. This definition represents 2 percent of the agency's reference calorie intake of 2,000 calories. Because calories are ubiquitous across food categories, no adjustment was necessary. This definition reflects the agency's long-established criterion of 40 calories per serving in the definition of "low calorie" (43 FR 43248, September 22, 1978). As previously discussed, the agency believes that, except in fish oils and certain herbal products, calories are negligible in dietary supplements. This term will thus likely be of limited usefulness and infrequently employed on the labels or in labeling of dietary supplements. However, FDA tentatively concludes that there is no reason to preclude the use of this term.

c. *"Reduced calories" and "fewer calories."* Section 101.60(b)(4) of the final rule on nutrient claims defines "reduced calories" and "fewer calories" and their synonyms as being at least 25 percent fewer calories per reference amount than an appropriate reference food. Because dietary supplements are negligible sources of calories, it is unlikely that this term will be used on the label or in labeling of dietary supplements. While FDA believes that these terms are likely to be of limited usefulness on the label and in labeling of these products, there may be some instances in which these terms are

applicable to particular brands or types of dietary supplements. Therefore, the agency tentatively concludes that there is no need to preclude the use of these terms.

d. *Nutrient content claims for sugar content.* i. *"Sugar free."* Section 101.60(c)(1) requires that for a food in conventional food form to make a "sugar free" claim, the food must contain less than 0.5 g of sugars per serving. The final rule on mandatory nutrition labeling (58 FR 2079 at 2098) defines "sugars" in § 101.9(c)(6)(ii) to include all free monosaccharides and disaccharides. Sugar alcohols are not included in the definition of "sugars" because they have metabolic effects different than sugars and have a history of being considered to be sugar substitutes rather than sugars.

Less than 0.5 g of sugar per serving is an amount that is consistent with the agency's policy of defining "free" claims at or near the reliable limit of detection and in an amount which is dietetically inconsequential. As a result, even frequent consumption of a food bearing a "sugar free" claim would not result in an intake of sugars that would affect the overall diet in any meaningful way. Further, the agency also considers it important that nutrient content claims correspond with the nutrition label, which serves as a source of specific information for consumers concerning the nutritional value of the food.

FDA is proposing to include dietary supplements within the coverage of this definition. The agency is taking this action based on its tentative conclusion that the definition of terms should be consistent for all foods. Moreover, this position is consistent with the position that FDA is taking with respect to sugars in the proposed rule on mandatory nutrition labeling for dietary supplements of vitamins or minerals which is published in a separate document in this issue of the **Federal Register** (see proposed § 101.36(b)(3)). Under that proposal, the nutrition label must contain information on sugars content when sugars are present in the dietary supplement in more than insignificant amounts, or when a claim is made. In that proposal, analytical values for sugar content that are less than 0.5 g are to be declared as zero on the nutrition label, thus providing consistency with this document.

As stated above, section 411 of the act states that the label or labeling of a dietary supplement of a vitamin or mineral may not give prominence to any ingredient that is not a vitamin or a mineral. Therefore, if a sugar was an ingredient in a dietary supplement of vitamins or minerals, claims about the sugars content would have to be restricted on the product. However, "sugar-free" is an absence claim which asserts that a sugar is not an ingredient. Therefore, FDA tentatively concludes that the use of this term is acceptable on dietary supplements for vitamins or minerals, as well as for other types of dietary supplements.

Section 101.60(c)(1)(ii) requires that the food contain no ingredient that is a sugar or that is generally understood by consumers to contain sugars, unless the listing of the ingredient in the ingredient statement is followed by an asterisk that refers to the statement below the list on ingredients, which states "adds a negligible amount of sugar" or "adds a dietarily insignificant amount of sugar." The agency tentatively concludes that this provision is not in conflict with section 411 of the act because any such amounts are dietarily insignificant. Moreover, such an approach is consistent with FDA's tentative conclusion that the definition of terms should be consistent for all foods.

Further, FDA believes that "sugar free" claims are appropriate on dietary supplements because of consumer interest in the sugars content of food; the fact that sugars are added to dietary supplements, particularly to chewable children's dietary supplements; and the agency's long-standing practice of providing for the use of descriptive terms intended to reflect the absence of sugars. Therefore, FDA tentatively finds that following synonyms for "sugar free" for foods in conventional food form are applicable to dietary supplements: "free of sugar," "no sugar," "zero sugar," "without sugar," "sugarless," "trivial source of sugar," "negligible source of sugar," and "dietarily insignificant source of sugar."

The agency recognizes that there are chewable dietary supplements marketed for very young children that are formulated with sugar or other sweeteners. While the amounts of other nutrients of public health importance in dietary supplements, such as sodium, may be quite small or nonexistent, the amount of sugars in dietary supplements in chewable form represents a potentially contributing factor to dental caries. As a result, the agency is proposing in new § 101.60(c)(4) to provide for absence claims for sugars on dairy supplements of vitamins or minerals that are intended specifically for use by infants and children less than 2 years of age. As a result, current § 101.60(c)(4) and (c)(5) are redesignated as § 101.60(c)(5) and (c)(6).

ii. *"Low sugar".* While the agency defined "sugar free," FDA did not define "low sugars" in its final rule on nutrient content claims. Unlike the claim "sugar free," which is based on the absence of sugars in a food, a definition for a "low" level of sugars in a food would relate to the total amount recommended for daily consumption. Because the available consensus documents do not provide quantitative recommendations for daily intake of sugars, FDA has not set a reference value for this nutrient (see 58 FR 2206 at 2220). The agency thus concluded that without a reference value for sugars, "low sugars" could not be defined (58 FR 2302 at 2335). For these reasons, the agency has tentatively concluded that "low sugar" cannot be defined for use on labels and in labeling of dietary supplements.

FDA is not aware of any new data that would provide a basis for defining a claim of "low sugar" for use on labels or in labeling of dietary supplements. Additionally, section 411 of the act specifies that ingredients of dietary supplements of vitamins or minerals, other than vitamins or minerals, cannot be highlighted or given prominence. Therefore, even if a definition of "low sugar" is eventually possible, under the act, its use could not be authorized on dietary supplements of vitamins and minerals.

iii. *"No added sugar."* Section 101.60(c)(2) states that the terms "no added sugar," "without added sugar," or "no sugar added" may be used only if: (1) No amount of sugars, as defined in § 101.9(c)(6)(ii), or any ingredient that contains sugars or that functionally substitutes for added sugars is added during processing or packaging, (2) the product does not contain an ingredient containing added sugars, and (3) the food that it resembles and for which it substitutes normally is formulated with sugars.

In a discussion of the nutrient content claim "no added sugars" in the November 1991 proposal on nutrient content claims (56 FR 60421 at 60437 and 60438), the agency summarized its position on the use of the terms "no added sugar," "no sugar added," and "without added sugar." FDA expressed concern that consumers may expect such products to be "low" or "reduced in calories" and has therefore required that statements that the food is not "low calorie" or "reduced calorie" accompany the claim unless the food meets the requirements for a "low" or "reduced calorie" claim.

In the final rule on nutrient content claims, the agency concluded that the use of a descriptive term that implies

that the product has been made without adding sugars would be more helpful to consumers in implementing dietary guidelines (i.e., "consume sugars only in moderation") (Ref. 1) than would a term that is limited only to sucrose (i.e., "sugar") (58 FR 2302 at 2326). Further, the agency concluded that to avoid misleading consumers, such terms should be limited to foods that would be expected to contain added sugars. Claims concerning the absence of added sugars in foods in conventional food form that would not normally contain added sugars (e.g., canned tuna or potato chips) are likely to mislead consumers into thinking that a particular brand may be more desirable when compared to other brands of the same product.

As previously discussed, FDA tentatively concludes that dietary supplements are negligible sources of calories. However, the agency believes that the declaration of the presence or absence of sugars in dietary supplements may be useful for consumers because of the relationship of sugars and dental caries and the fact that some dietary supplements are made with sugars

As is the case for foods in conventional food form, the agency believes that to avoid misleading consumers, the term "no added sugar" should be limited to dietary supplements that would be expected to contain added sugars. Claims concerning the absence of added sugars on products that would not normally contain added sugar (e.g., dietary supplements for adults) are likely to mislead consumers into thinking that a particular brand may be more desirable when compared to other brands of the same product. Accordingly, FDA tentatively concludes that § 101.60(c)(2) is applicable to dietary supplements in its entirety.

iv. "*Reduced sugar" or "less sugar.*" Section 101.60(c)(4), which FDA is proposing to redesignate as § 101.60(c)(5), defines "reduced sugar," "less sugar," and "lower sugar" as a reduction of at least 25 percent per reference amount. FDA tentatively concludes that these terms cannot be made on dietary supplements of vitamins and minerals because section 411 of the act states that labeling and advertising for dietary supplements of vitamins and minerals cannot give prominence to or emphasize ingredients that are not vitamins or minerals. Therefore, FDA is proposing to amend § 101.60(c)(5) by adding dietary supplements to the list of foods on which the use of the term "reduced" or its synonyms to describe the sugars content is not permissible.

However, under this proposal, these terms may be used on dietary supplements that are not subject to section 411 of the act, such as dietary supplements of fiber, of herbs, and of other similar nutritional substances. Section 411 does not preclude such claims and, as stated above, the agency has tentatively concluded that the definition of terms should be consistent for all foods at least to the extent permitted by law.

v. "*Unsweetened" and "no added sweeteners.*" In the September 22, 1978, final rule, on label statements for special dietary foods (43 FR 43248), FDA addressed the term "unsweetened" and "no added sweeteners." The agency concluded that "unsweetened" and "no added sweeteners" claims are factual statements about the organoleptic properties of the foods (i.e., they are "taste claims"). FDA received no comments to its November 27, 1991, proposed rules on nutrient content claims to change this view (58 FR 2302 at 2327). Unlike the terms "sugar free" or "no added sugars," these terms are not nutrient content claims for foods in conventional food form (see § 101.60(c)(3)).

The term "unsweetened" is meaningful for foods in conventional food form and is used primarily for foods with inherent sugars content (such as juices). Dietary supplements, however, generally do not have an inherent sugars content because they are generally formulated products. Therefore, the agency believes that there is no apparent usefulness in applying the terms "unsweetened" or "no added sweeteners" to dietary supplements. While the agency believes that the terms "sugar-free" and "no added sugar," and their synonyms, are sufficient to describe absence claims for sugar for dietary supplements, the agency tentatively concludes that there is no need to preclude the use of the term "unsweetened."

5. Nutrient Content Claims for the Sodium Content of Foods (§ 101.61)

a. "*Sodium free.*" In its April 18, 1984, regulation on sodium nutrient content claims (21 CFR 101.13), FDA defined a "sodium free" food as one containing less than 5 mg of sodium per serving. FDA established this definition to ensure that a food that meets this definition would contribute only a trivial amount of sodium to the total diet for all individuals (49 FR 15510). This definition was retained in the final rule on the nutrient content claims (58 FR 2302 at 2417) and codified at § 101.61(b)(1). This definition is consistent with the concept of a dietetically trivial amount used as the basis for determining "free" claims for foods in conventional food form.

As previously discussed in section IV.B.3.a. of this document on "calorie free" claims, the agency is concerned about potential consumer confusion if a food bearing a "nutrient free" claim lists that nutrient on the ingredient list. Section 101.61(b)(1)(ii) of the final rule on nutrient content claims states that the term "sodium free" may be used if the food contains no ingredient that contains sodium, unless the listing of the ingredient in the ingredient statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: "Adds a trivial amount of sodium," "adds a negligible amount of sodium," or "adds a dietarily insignificant amount of sodium." The agency believes that, as in the case of "sugar free," such a disclosure statement will be helpful to avoid consumer confusion about the quantity of sodium in the food.

FDA is unaware of any evidence that would suggest that the definition for "sodium free" should be changed for dietary supplements. Thus, FDA tentatively concludes that § 101.61(b)(1) is applicable to dietary supplements

b. "*Low sodium" and "very low sodium.*" Section 101.61(b)(2) of the final rule on nutrient content claims states that the term "very low sodium" may be used on the label and in labeling of foods that contain 35 mg or less of sodium per reference amount and, if the food has a reference amount of 30 g or less per 2 tablespoons or less, per 50 g. Section 101.61(b)(4) states that the term "low sodium" may be used on the label and in labeling of foods that contain 140 mg or less of sodium per reference amount and, if the food has a reference amount of 30 g or less per 2 tablespoons or less, per 50 g. The synonyms for "low sodium" include "low in sodium," "contains a small amount of sodium," and "low source of sodium."

The descriptive terms "low sodium" and "very low sodium" have been defined and used for nearly 10 years, and the agency believes that consumers have become familiar with them. Given this fact and the agency's tentative conclusion that the definition of terms should be consistent for all foods, the agency tentatively finds that there is no reason to create different definitions for sodium for dietary supplements than for foods in conventional food form. Therefore, the agency tentatively finds that the provisions for "low sodium" and "very low sodium" in § 101.61 are appropriate for dietary supplements.

c. *"Reduced sodium."* Section 101.61(b)(6) defines "reduced sodium" claims and its synonyms. This section states that the food must contain at least 25 percent less sodium per reference amount than an appropriate reference food (§ 101.61(b)(6)(i)). Section 101.61(b)(6)(iii) states that the nutrient content claim "reduced sodium" and its synonyms may not be made on the label or in labeling of a food if the nutrient content of the reference food meets the definition for "low sodium."

Based on its tentative conclusion that the definition of terms should be consistent for all foods, the agency is proposing to include dietary supplements in the coverage of § 101.61(b)(6). The agency notes, however, that the use of this term on dietary supplements will be limited by § 101.61(b)(6)(iii) because the majority of likely reference foods for dietary supplements will meet the definition of "low sodium." However, the agency is not aware of any reason to preclude the use of this term on dietary supplements. Moreover, many dietary supplements may qualify for a "less sodium" claim. Thus the agency is proposing to provide for the use of these terms on dietary supplements.

d. *"Unsalted" and "salt free."* FDA has defined "salt free," "unsalted," "without added salt," and "no salt added" for foods in § 101.61(c) to prevent the use of these terms from being misleading to consumers. Section 101.61(c)(1) requires that any food bearing the claim "salt free" must meet the definition of "sodium free". As defined by § 101.61(c)(2), the terms "unsalted," "no salt added," or "without added salt" may be used only if no salt is added to the food during processing, and the food that it resembles and for which it substitutes is normally processed with salt (e.g., peanuts). In addition, a declaration on the food label that the food is not sodium free, if that is in fact the case, is required to avoid misleading consumers when claims that a food is unsalted or contains no added salt are made. The intent of these requirements is to aid consumers in maintaining healthy dietary practices by helping consumers identify foods with minimal sodium content.

Claims on the salt content of foods in conventional food form are meaningful because salt is the major source of sodium in food. Salt is added to food for flavor, for preservation, and as a processing aid. The agency has no evidence that salt is used in the formulation of dietary supplements. Further, § 101.61(c)(2)(ii) states that these terms may only be used when the food that it resembles or for which it substitutes is normally processed with salt.

Salt is not needed for preservation or as a processing aid in the manufacture of dietary supplements. Salt is unlikely to be used as a flavoring agent in dietary supplements because it would impart an undesirable salty taste. Therefore, the agency tentatively concludes that requirements for salt claims are not useful for, or applicable to, dietary supplements, and that the use of these terms is precluded by the provision cited above. Therefore, no other provisions are necessary to preclude the use of this term. Comments are requested on this tentative conclusion. The agency is also interested in any data on the presence of salt in dietary supplements.

6. Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Foods (§ 101.62)

a. *"Fat free," "low fat," and "reduced fat."* Section 101.62(b)(1)(i) states that a food may be labeled as "fat free" if the food contains less than 0.5 g of fat per reference amount. If the food contains less than that amount of fat without benefit of special processing, alteration, formulation, or reformulation, it must be labeled to disclose that fat is not usually present in the food (e.g., "broccoli, a fat free food").

Section 101.62(b)(2)(i) states that the terms "low fat" and its synonyms may be used on the label and in labeling of foods provided that the food contains 3 g or less of fat per reference amount and, if the food has a reference amount of 30 g or less or 2 tablespoons, per 50 g. Section 101.62(b)(2)(ii) provides that if the food meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower fat, it shall be labeled to clearly refer to all food of its type and not merely to the particular brand to which the label attaches (e.g., "frozen perch, a low fat food").

Section 101.62(b)(4) states that the term "reduced fat" and its synonyms may be used on the label and in labeling of foods provided that the food contains at least 25 percent less fat per reference amount than an appropriate reference food, while § 101.62(b)(4)(iii) provides that the claim "reduced fat" cannot be made on the label or in labeling of a food if the nutrient content of the reference food meets the definition of "low fat."

Based on the agency's tentative conclusion that the definition of terms should be consistent for all foods, the agency is proposing to include dietary supplements in the coverage of these provisions. Although fat content is typically insignificant or nonexistent in dietary supplements, and "fat-free," "low-fat," and "reduced fat" claims are unlikely, there may be products for which these claims would appropriately apply. For example, some fish liver oils may qualify for a "low fat" claim depending on the labeled serving size. Further, the form of the claim allowed on foods naturally free of, or low in, fat (i.e., "a fat-free food") would be permitted under this rule. FDA requests comment and relevant data on the above tentative conclusion.

b. *Nutrient content claims for fatty acid content.* Section 101.62(c)(1)(i) states that the term "saturated fat free" and its synonyms may be used on the label or in labeling of a food if the food contains less than 0.5 g of saturated fat per reference amount and the level of trans fatty acids does not exceed 1 percent of the total fat. Section 101.62(c)(1)(iii) provides that the food must be labeled to disclose that saturated fat is not usually present in the food, if the food contains less than 0.5 g saturated fat without the benefit of special processing, alteration, formulation, or reformulation.

Section 101.62(c)(2)(i) states that the term "low in saturated fat" and its synonyms may be used on the label and in labeling of food if the food contains 1 g or less of saturated fatty acid per reference amount and not more than 15 percent of calories from saturated fatty acids. Section 101.62(c)(2)(ii) requires that the food must be labeled to refer to all foods of its type, not merely to a particular brand as being low in saturated fat, if the food meets the definition of "low in saturated fat" without the benefit of special processing, alteration, formulation, or reformulation (e.g., "raspberries, a low saturated fat food") (58 FR 2302 at 2338).

Section 101.62(c)(4)(i) states that the term "reduced saturated fat" and its synonyms may be used if the food contains at least 25 percent less saturated fat per reference amount than an appropriate reference food, and § 101.62(c)(4)(iii) states that a "reduced saturated fat" claim may not be made on the label or in labeling of a food if the nutrient meets the definition for "low saturated fat."

For the reasons set forth in the previous section on fat claims, even though saturated fat claims are likely to have limited application to dietary supplements, FDA is proposing to include dietary supplements in the coverage of § 101.62(c).

c. *Nutrient content claims for cholesterol.* Section 101.62(d)(1)(i) and

(d)(1)(ii) states that the term "cholesterol free" and its synonyms may be used provided that the food contains less than 2 mg of cholesterol per reference amount and per 50 g if the reference amount is 30 g or less or 2 tablespoons or less. In addition, the food must contain 2 g or less of saturated fat per serving.

Section 101.62 (d)(1)(i)(D) and (d)(1)(ii)(E) provides that if the food contains less than 2 mg of cholesterol per reference amount without the benefit of special processing, alteration, formulation, or reformulation to lower cholesterol content, then it must be labeled to disclose that cholesterol is not usually present in the food (e.g., "applesauce, a cholesterol-free food").

Other paragraphs in § 101.62(d) require that foods that contain more than 13 g of total fat per reference amount per labeled serving or per 50 g, if the reference amount is 30 g or less or 2 tablespoons or less, disclose the amount of fat in a serving. The agency is not aware of any dietary supplement that contains fat at this level and thus tentatively concludes that these paragraphs will have no application to dietary supplements. Comment is requested on this tentative conclusion.

Section 101.62 (d)(2)(i) and (d)(2)(ii) states that the term "low in cholesterol" and its synonyms may be used on the label and in labeling of foods provided that the food contains 20 mg or less of cholesterol per reference amount and, if the food has a reference amount of 30 g or less or 2 tablespoons or less, per 50 g. The food must also contain 2 g or less saturated fat per reference amount. Again, foods that contain 20 mg or less of cholesterol without the benefit of special processing, alteration, formulation, or reformulation to lower cholesterol content must be labeled to refer to all foods of that type and not merely to the particular brand (e.g., "low fat cottage cheese, a low cholesterol food").

Section 101.62(d)(4)(i) states that the term "reduced cholesterol" and its synonyms may be used on the label or in labeling of food if the food has been specifically formulated, altered, or processed to reduce its cholesterol content by 25 percent or more from the reference food for which it substitutes, that has a significant (i.e., 5 percent or more) market share, and the food contains 2 g or less of saturated fatty acid per reference amount.

As discussed previously, the agency has tentatively concluded that amounts of cholesterol, like total fat and saturated fat, are negligible in dietary supplements. Therefore, the cholesterol claims are likely to be of limited usefulness on dietary supplements. Other than the form of the claims allowed on foods naturally free of, or low in, a nutrient (e.g., "a fat-free food," "a low cholesterol food"), the use of cholesterol claims is unlikely. However, based on the agency's tentative conclusion that the definition of terms should be consistent for all foods, the agency is proposing to include dietary supplements in the coverage of § 101.62(d).

In summary, the agency tentatively concludes that subject to the proposed change in § 101.62(a)(3) and excluding the provisions that pertain to main dish and meal-type products, all of the provisions of § 101.62 pertaining to the fat, fatty acid, and cholesterol content of foods are applicable to dietary supplements.

d. *"Lean" and "extra lean."* The definitions for "lean" and "extra lean" in § 101.62(e) specify permitted levels of total fat, saturated fat, and cholesterol and limit the use of the terms to seafood or game meat, meal products and main dish products. Therefore, FDA tentatively concludes that, at least as currently defined, these terms have no application for dietary supplements. Accordingly, the agency is not proposing to extend the coverage of the terms "lean" or "extra lean" to dietary supplements.

7. Implied Nutrient Content Claims (§ 101.65)

a. *Claims that are not nutrient content claims.* Section 403(r)(1)(A) of the act provides that a food is misbranded if it bears a claim that "expressly or by implication characterizes the level" of a nutrient unless the claim is made in accordance with regulations established by FDA. Section 3(b)(1)(A)(i) of the 1990 amendments instructs the agency to establish regulations that identify claims described in section 403(r)(1)(A) of the act that comply with section 403(r)(2) of the act. Accordingly, FDA defined implied nutrient content claims in § 101.13(b)(2) (58 FR 2302 at 2411).

In § 101.65, FDA listed several types of statements that can be excluded from the requirements of section 403(r) of the act because they are not implied nutrient content claims (58 FR 2302 at 2423). These statements include: (1) Statements that facilitate avoidance, (2) statements about ingredients that do not serve nutritive purposes, (3) statements about ingredients that provide added value, (4) certain types of statements of identity, and (5) statements of special dietary usefulness. Section 101.65(b) states that these types of label statements about the nature of a product are not nutrient content claims when made on labels of foods, unless such statements are made in a context that would make them an implied claim under § 101.13(b)(2).

The agency acknowledges that in many instances, whether a label statement is an implied nutrient content claim can only be evaluated on a case-by-case basis, considering the entire label and the context within which the claim was made. Some ingredient statements are implied nutrient content claims, and some are not. The agency will evaluate ingredient statements in the context of the total label to determine whether they are implied nutrient content claims and therefore subject to section 403(r)(1)(A) of the act. The agency's focus will be on whether the ingredient statement identifies a nutrient explicitly or by implication, and whether it states or implies that the nutrient is absent, or that it is present in a certain amount.

The agency has tentatively concluded that the following statements are not nutrient content claims unless made in a context that would make them implied claims and are therefore not subject to § 101.13. FDA is proposing to make each applicable, either entirely or in part, to dietary supplements.

i. *Statements that facilitate avoidance.* Statements of the absence of an allergen are regulated under § 105.62 (21 CFR 105.62), which provides for labeling of foods for special dietary use by reason of the absence of an allergenic property. According to § 101.65(b)(1), statements that declare the absence of food components or ingredients that are intended to facilitate avoidance because of food intolerance (e.g., lactose free), religious beliefs, dietary practices such as vegetarianism (e.g., "100 percent milk free"), or other nonnutrition-related reasons are not nutrient content claims. The agency tentatively concludes that this paragraph is entirely applicable to dietary supplements. The agency is not aware of any facts that would provide the basis for a different conclusion. FDA requests comment on other examples that are appropriate for dietary supplements.

ii. *Claims about a substance that is nonnutritive.* In the final rule on nutrient content claims, the agency determined that claims about the absence of certain substances that do not function as nutrients, such as preservatives and artificial colors, provide important information to certain consumers but are not nutrient content claims because they are not claims about the level of a nutrient (58 FR 2302 at 2369). Consequently, such claims are subject to regulation under section 403(a) of the act to ensure that

they are truthful and not misleading but not section 403(r) of the act. Section 101.65(b)(2) of the final rule on nutrient content claims states that claims about a substance that is nonnutritive or that does not have a nutritive function, e.g., "contains no preservatives," or " no artificial colors," are not implied nutrient content claims.

Statements of this type are common on dietary supplements and do not reflect the level of a nutrient in a product. Therefore, the agency tentatively concludes that this provision is directly applicable to dietary supplements.

iii. *Claims about ingredients that provide added value.* Section 101.65(b)(3) of the final rule on nutrient content claims states that some ingredient claims would be useful as tools for the manufacturer to communicate to the consumer that the product is of high quality because preferred ingredients (i.e., those with an added value) have been used (58 FR 2302 at 2369). Such claims would generally not be considered nutrient content claims. However, where the added value statement is made in such a context that it would imply not only that a preferred ingredient is used, but that the food contains a certain level of a nutrient, such statements would be subject to section 403(r) of the act.

FDA tentatively concludes that this section of the final rule is applicable to dietary supplements of herbs or other similar nutritional substances. In regard to claims on labels of these types of dietary supplements, statements such as "contains rosehips" would be considered to be an ingredient statement, not a statement about the product's nutrient content. However, under section 411(b)(2) of the act, prominence cannot be given on the label or in labeling of dietary supplements of vitamins and minerals to ingredients that are not vitamins or minerals or that are represented as a source of vitamins or minerals. Therefore, while the statement "contains rosehips" could be made on a dietary supplement of vitamin C because rosehips are a source of this vitamin, the statement "contains chaparral" may not because this herb is not a source of vitamins or minerals. Accordingly, FDA is proposing to amend § 101.65(b)(3) to state that claims about the presence of any ingredients or component other than vitamins or minerals or ingredients that are represented as a source of vitamins or minerals are not permitted on labels or in labeling of dietary supplements of vitamins or minerals.

iv. *Statements of identity.* Section 101.65(b)(4) of the final rule on nutrient content claims states that when an ingredient constitutes essentially 100 percent of a food, so that the name of the ingredient is the statement of identity, the name of the ingredient does not constitute an implied nutrient content claim. In such circumstances, the name of the ingredient constitutes the common or usual name of the product as described in § 101.5.

FDA tentatively concludes that this provision is applicable to all dietary supplements. For example, a statement of identity for a dietary supplement in which an ingredient constitutes essentially 100 percent of a supplement, e.g., ("60 mg—vitamin C") is not a nutrient content claim. FDA is proposing to amend § 101.65(b)(4) to reflect this fact.

Similarly, the agency found in § 101.65(b)(5) that a statement of identity that names as a characterizing ingredient, an ingredient associated with a nutrient benefit (e.g., oat bran-dietary fiber supplement) is not a nutrient content claim, unless such a claim is made in a context in which label or labeling statements, symbols, vignettes, or other forms of communication suggest that a nutrient is absent or present in a certain amount. The agency tentatively concludes that this provision is also applicable to dietary supplements.

v. *Statements of special dietary usefulness.* Section 101.65(b)(6) of the final rule on nutrient content claims states that label statements made in compliance with a specific provision of 21 CFR part 105, solely to note that a food has special dietary usefulness relative to a physical, physiological, pathological, or other condition, where the claim identifies the special diet of which it is intended to be a part is not an implied nutrient content claim.

The agency tentatively concludes that this provision is appropriate for dietary supplements. The agency is not aware of any evidence that would suggest a different conclusion.

b. *Particular implied nutrient content claims.* Section 101.65(c) of the final rule on nutrient content claims states that claims about a food or an ingredient therein that suggests that a nutrient or an ingredient is absent or present in a certain amount (e.g., "high in oat bran") are implied nutrient content claims.

Other requirements under § 101.65(c) address additional ingredient and equivalency issues. A statement such as "contains as much fiber as an apple" is an implied claim about the fiber content of a food. This statement implies that an apple is a good source of fiber, and that by being equivalent in fiber to an apple, the labeled food is also a good source of fiber. Such a claim can be used to provide valid, valuable information to the consumer about the nature of a product in terms of another product that the consumer already understands. However, the agency has concluded that such a statement would be misleading if comparisons between the foods were not made on a common basis. Because a serving of the product is the amount customarily consumed in one eating occasion, the agency has concluded that comparisons using this type of claim should be made on a per serving basis.

FDA tentatively concludes that the provisions set forth in § 101.65(c) are applicable to dietary supplements. The agency is not aware of evidence that would suggest a different conclusion. Thus, under this proposal, the phrase "contains the same amount of the (nutrient) as a (supplement or other food)" may be used on the label or in the labeling of dietary supplements, provided that the amount of the nutrient in the reference food is enough to qualify as a "good source" (i.e., at least 10 percent of the RDI), and the labeled supplement, on a per serving basis, also contains at least 10 percent of the RDI of the nutrient (e.g., "Contains the same amount of Vitamin C as an 8 oz glass of orange juice"; "As much iron as 'brand X' "). The use of a 10 percent criterion is consistent with the definition of "more," in which the agency concluded that 10 percent is nutritionally significant, and is also necessary to ensure that there is truly a difference in the foods being compared.

c. *General nutritional claims.* In its final rule on nutrient content claims, FDA concluded that a claim that a food, because of its nutrient content, may be useful in maintaining healthy dietary practices is a claim that characterized the level of a nutrient in that food (58 FR 2302 at 2375). The claim is essentially saying that the level of nutrients in the food is such that the food will contribute to good health. Examples of such claims discussed in the preamble to the final rule included "healthy," "wholesome," and "nutritious." The agency concluded that these terms can be implied nutrient content claims when they appear in a nutritional context on a label or in labeling. FDA advised that it would consider these terms to appear in a nutritional context when they are presented in association with an explicit or implicit claim or statement about a nutrient. For example, in the statement "nutritious, contains 3 g of fiber," "nutritious" is an implied nutrient content claim because it suggests that the food may be useful in maintaining healthy dietary practices. Accordingly,

the agency provided in § 101.65(d)(1) that such statements are implied nutrient content claims and are subject to the requirements of section 403(r) of the act.

However, the agency also stated that when a term such as "healthy," "wholesome," and "nutritious" appears on a food label in a context that does not render it an implied nutrient content claim, it is not subject to the requirements of section 403(r) of the act (58 FR 2375). Under such conditions, the use of the term is subject to section 403(a) of the act, and FDA will determine whether it is misleading on a case-by-case basis.

FDA tentatively concludes that § 101.65(d)(1) is applicable to dietary supplements. Terms that are often encountered on labels or in labeling of dietary supplements that seem to imply that the dietary supplement will contribute to good health and that therefore might fall into this category include such terms as "high potency," "high absorption," and "balanced." The agency requests comment on whether there are established meanings for these terms, and, if so, whether they characterize the level of the nutrients in the food. If comments demonstrate that there are accepted definitions used in the dietary supplement industry for these terms that characterize the level of nutrients, and that these definitions will assist consumers in maintaining healthy dietary practices, FDA will proceed with further rulemaking to adopt those definitions or to propose new ones. Significantly, if FDA agrees that such terms are implied nutrient content claims, under the provisions of the statute, such implied claims would be prohibited after the effective date for final rules, until such time as the terms are defined by FDA by regulation.

If comments demonstrate that there are accepted definitions for these terms, and that they do not characterize the level of nutrients, in accordance with § 101.65(d)(1), such terms would not be subject to section 403(r) of the act unless used in a nutritional context in association with an explicit or implicit claim or statement about a food.

8. Petitions for Nutrient Content Claims (§ 101.69)

Section 403(r)(4) of the act provides that any person may petition the Secretary to make nutrient content claims that are not specifically provided for in FDA's regulations. This section describes procedures for petitions that seek to define additional nutrient content claims, to establish synonyms, and to use an implied nutrient content claim in a brand name.

The final rule on nutrient content claims provided for petitions for new claims. The final rule delineates the procedural requirements and evaluation criteria for nutrient content claim petitions, synonym petitions, and brand name petitions. Because FDA sees no reason why the same requirements should not apply to petitions for claims for substances in dietary supplements as to petitions for claims for substances in conventional foods, it is not distinguishing between dietary supplements and foods in conventional form in § 101.69. The agency tentatively finds that this section is directly applicable to dietary supplements.

V. Economic Impact

FDA has examined the economic implications of the proposed rules amending 21 CFR part 101 as required by the Regulatory Flexibility Act and Executive Orders 12291 and 12612. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The agency finds that the proposed rules on dietary supplements, taken together, do not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has explored whether these proposed rules may have a significant impact on small businesses and has tentatively concluded that they do not.

The costs of the proposed regulations on dietary supplements, taken as a whole, are estimated to be $20 million. The benefits are primarily those that result from standardizing the format of nutrition information already provided on vitamin and mineral supplements with that of conventional foods. However, because dietary supplements do not typically make nutrient content claims and most nutrient content claims that FDA is proposing to define to make sense for use for dietary supplements, this proposed rule will not result in any change. Therefore, defining nutrient content claims will not result in any benefits. The agency has presented a more in-depth analysis in the document covering mandatory nutrition labeling requirements for dietary supplements, published elsewhere in this issue of the **Federal Register**.

VI. Environmental Impact

The agency has previously considered the environmental effects of the proposed rule in the **Federal Register** of November 27, 1991 (56 FR 60421). At that time the agency determined under 21 CFR 25.24 (a)(8) and (a)(11) that these proposed actions were of the types that do not individually or cumulatively have a significant impact on the human environment. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required.

VII. Effective Date

FDA is proposing to make this regulation effective 6 months after the publication of a final rule based on this proposal. FDA notes, however, that in section 10(a)(3)(B) of the 1990 amendments, Congress provides that if the Secretary, and by delegation FDA, finds that requiring compliance with section 403(q) of the act, on mandatory nutrition labeling or with section 403(r)(2) of the act, on nutrient content claims, 6 months after publication of the final rules in the **Federal Register** would cause undue economic hardship, the Secretary, and by delegation FDA, may delay the application of these sections for no more than 1 year. FDA requests comments and evidence that would permit the agency to make a determination as to whether there is "undue economic hardship" (see 58 FR 2070, January 6, 1993) for the dietary supplement industry.

VIII. Comments

Interested persons may, on or before July 19, 1993, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

As mentioned previously in this preamble, the DS act requires that final rules implementing the 1990 amendments with respect to dietary supplements be issued by December 31, 1993. In order to meet this statutory timeframe, FDA must limit the comment period for this proposal to 60 days. FDA believes that the need to meet this timeframe constitutes good cause under 21 CFR 10.40(b)(2) of its procedural regulations for limiting the comment period. Thus, the agency is announcing that because of the short statutory timeframe, FDA will be unable to grant any extensions to the comment period.

In addition, the agency will not consider the content of any comments received at Dockets Management Branch after the close of the 60-day comment period.

IX. Paperwork Reduction Act of 1980

Section 101.69, which FDA is proposing to extend to cover dietary supplements, contains requirements for submission of petitions to FDA that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0288.

This proposal contains collection of information requirements that are subject to review by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Therefore, in accordance with 5 CFR 1320, the title, description, and respondent descriptions of the proposed collection of information requirements are shown below with an estimate of the annual collection of information burden. Included in the estimate is the amount of time for reviewing instructions, searching existing data sources, gathering necessary information, and completion and submission of petitions.

Title: 21 CFR 101.69—Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms.

Description: The proposed rule provides the procedures for the submission of petitions to the agency. The information included in these petitions will be reviewed by the agency, and a decision will be made in accordance with the criteria specified in the proposed rule.

The 1990 amendments added section 403(r)(4) to the act. This section provides that any person may petition the Secretary to make nutrient content claims that are not specifically provided for in FDA's regulations. It describes the procedures for petitions that seek to define additional nutrient content claims, to establish synonyms, and to use an implied nutrient content claim in a brand name.

Nutrient Content Claim petitions—Section 403(r)(4)(A)(i) of the act grants to any person the right to petition FDA to issue a regulation to define a nutrient content claim that has not been defined in the regulations under section 403(r)(2)(A)(i) of the act. The statute requires that such a petition include an explanation of the reasons why the claim that is the subject of the petition meets the requirements of section 403(r) of the act and a summary of the scientific data that support those reasons. Section 101.69(m) sets forth the data requirements specific to nutrient content claim petitions. FDA is proposing to include dietary supplements within the coverage of this section.

Synonym petitions—Section 403(r)(4)(A)(ii) of the act grants the right to petition the FDA for permission to use terms in a nutrient content claim that are consistent (i.e., synonymous) with terms defined in regulations issued under section 403(r)(2)(A)(i) of the act. The petition requirements in § 101.69(n) are those that FDA has found to be necessary to demonstrate that use of a proposed synonym is not misleading and consistent with the purpose of the 1990 amendments. FDA is proposing to include dietary supplements within the coverage of this section.

Brand-name petitions—Section 403(r)(4)(A)(iii) of the act grants the right to petition FDA for permission to use an implied claim in a brand name that is consistent with terms defined by the Secretary under section 403(r)(2)(A)(i) of the act. Section 101.69(o) sets forth the data requirements that are specific to brand-name petitions. These requirements are those necessary for the petition to demonstrate that use of the proposed implied claim is not misleading and is consistent with the purpose of the 1990 amendments. FDA is proposing to include dietary supplements within the coverage of this section.

Description of Respondents: Persons and businesses, including small businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
101.69(m)	2	1	200	400
101.69(n)	2	1	75	150
101.69(o)	1	1	75	75
Total	.....	.....	.....	625

FDA has submitted copies of the proposed rule to OMB for its review of these reporting requirements.

Interested persons should send their comments regarding these estimated burdens, including suggestions for reducing these burdens, to the addressees given above.

X. References

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

1. DHHS and USDA, "Nutrition and Your Health, Dietary Guidelines for Americans," 1990.

2. "The Surgeon General's Report on Nutrition and Health," DHHS (Public Health Service) Publication No. 88–50210 (Government Printing Office Stock No. 017–001–00465–1), U.S. Government Printing Office, Washington, DC, 1988.

3. Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, National Academy of Sciences, "Diet and Health, Implications for Reducing Chronic Disease Risk," National Academy Press, Washington, DC, 1989.

4. Subcommittee on the 10th Edition of the Recommended Dietary Allowances, Food and Nutrition Board, Commission on Life Sciences, National Research Council, "Recommended Dietary Allowances, 10th Ed.," Washington, DC, National Academy Press, 1989.

5. Committee on the Nutrition Components of Food Labeling, Food and Nutrition Board, Institute of Medicine, National Academy of Sciences, "Nutrition Labeling, Issues and Directions for the 1990's," Washington, DC, National Academy Press, 1990.

6. 138 Congressional Record—House, H 11730–H11731, October 5, 1992.

7. 138 Congressional Record—Senate S 17237–S17240, October 7, 1992.

8. Moss, A. J., Levy, A. S., Kim, I., Park Y., "Use of Vitamin and Mineral Supplements in the United States, Current Users, Types of Products and Nutrients, Advance Data from Vital and Health Statistics of the National

Center for Health Statistics," No. 174, July 18, 1989.

9. House of Representatives, House Report 101–538, "Nutrition Labeling and Education Act of 1990," June 13, 1990.

List of Subjects in 21 CFR Part 101

Food Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 355, 371); sec. 202(a)(2) of the Dietary Supplement Act (Pub. L. 102–571).

2. Section 101.13 is amended by revising paragraph (a), the first sentence in paragraph (c), the introductory text of paragraph (i), and paragraph (n) to read as follows:

§ 101.13 Nutrient content claims—general principles.

(a) This section and the regulations in subpart D of this part apply to foods that are intended for human consumption and that are offered for sale, including foods in conventional food form and dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances.

* * * * *

(c) Information that is required or permitted by § 101.9 or § 101.36, as applicable, to be declared in nutrition labeling, and that appears as part of the nutrition label, is not a nutrient content claim and is not subject to the requirements of this section. * * *

* * * * *

(i) Except as provided in §§ 101.9 or 101.36, as applicable, or in paragraph (q)(3) of this section, the label or labeling of a product may contain a statement about the amount or percentage of a nutrient if:

* * * * *

(n) Nutrition labeling in accordance with §§ 101.9, 101.10, or 101.36, as applicable, shall be provided for any food for which a nutrient content claim is made.

* * * * *

3. Section 101.54 is amended by revising paragraphs (a)(3), (b)(1), (c)(1), and (e)(1) introductory text to read as follows:

§ 101.54 Nutrient content claims for "good source," "high," and "more."

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

* * * * *

(b) * * * (1) The terms "high," "rich in," or "excellent sources of" may be used on the label or in the labeling of foods, except meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m) and except dietary supplements of vitamins or minerals to characterize the level of any substance that is not a vitamin or mineral, provided that the food contains 20 percent or more of the RDI or the DRV per reference amount customarily consumed.

* * * * *

(c) * * * (1) The terms "good source," "contains," or "provides" may be used on the label or in labeling of foods, except meal products as described in § 101.13(l) and main dish products as described in § 101.13(m) and except in dietary supplements of vitamins or minerals to characterize the level of any substance that is not a vitamin or mineral, provided that the food contains 10 to 19 percent of the RDI or the DRV per reference amount customarily consumed.

* * * * *

(e) * * * (1) A relative claim using the terms "more," fortified," "enriched," and "added" may be used on the label or in labeling of foods to describe the level of protein, vitamins, minerals, dietary fiber, or potassium, except as limited by § 101.13(j)(1)(i) and except meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m), and except dietary supplements of vitamins or minerals to characterize the level of any substance that is not a vitamin or mineral, provided that:

* * * * *

4. Section 101.56 is amended by revising paragraph (a)(3) to read as follows:

§ 101.56 Nutrient content claims for "light" or "lite."

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

* * * * *

5. Section 101.60 is amended by revising paragraph (a)(3), redesignating paragraphs (c)(4) and (c)(5) as paragraphs (c)(5) and (c)(6), by adding new paragraph (c)(4), and by revising the introductory text of newly redesignated paragraph (c)(5) to read as follows:

§ 101.60 Nutrient content claims for the calorie content of foods.

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

* * * * *

(c) * * *

(4) The claims provided for in paragraphs (c)(1) and (c)(2) of this section may be used on labels or in labeling of dietary supplements of vitamins or minerals that are intended specifically for use by infants and children less than 2 years of age.

(5) The terms "reduced sugar," "reduced in sugar," "sugar reduced," "less sugar," "lower sugar," or "lower in sugar" may be used on the label or in labeling of foods, except meal products as defined in § 101.13(l), main dish products as defined in § 101.13(m), and dietary supplements of vitamins or minerals, provided that:

* * * * *

6. Section 101.61 is amended by revising paragraph (a)(3) to read as follows:

§ 101.61 Nutrient content claims for the sodium content of foods.

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

* * * * *

7. Section 101.62 is amended by revising paragraph (a)(3) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

* * * * *

8. Section 101.65 is amended by revising paragraphs (a)(3), (b)(3), and (b)(4) to read as follows:

§ 101.65 Implied nutrient content claims and related label statements.

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

(b) * * *

(3) A claim about the presence of an ingredient that is perceived to add value to the product, e.g., "made with real

butter," "made with whole fruit," or "contains honey," except that claims about the presence of ingredients other than vitamins or minerals, or ingredients that are represented as a source of vitamins or minerals, are not allowed on labels or in labeling of dietary supplements of vitamins or minerals that are not in conventional food form.

(4) A statement of identity for a food in which an ingredient constitutes essentially 100 percent of a food (e.g., "corn oil," "oat bran," "vitamin C 60 mg").

* * * * *

David A. Kessler,

Commissioner of Food and Drugs.

Dated: June 10, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93–14273 Filed 6–15–93; 8:45 am]

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Federal Register

Vol. 58, No. 116

Friday, June 18, 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

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FEDERAL REGISTER PAGES AND DATES, JUNE

31147–31330.....1
31331–31460.....2
31461–31646.....3
31647–31892.....4
31893–32040.....7
32041–32268.....8
32269–32432.....9
32433–32590.....10
32591–32834.....11
32835–33004.....14
33005–33184.....15
33185–33318.....16
33319–33496.....17
33497–33752.....18

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
6567.....31893
6568.....31895
6569.....31897
6570.....32041
6571.....32267
6572.....33185

Executive Orders:
July 2, 1910 (Modified by PLO 6981).....32856
6277 of September 8, 1933 (Revoked in part by PLO 6975).....31475
10582 (See DOL notice of June 1).....31220
12073 (See DOL notice of June 1).....31220
12699 (See REA final rule of June 3 and DOT final rule of June 14).....32438, 32867
12850.....31327
12851.....33183

Administrative Orders:
Memorandums:
June 25, 1991 (Superseded by EO 12851)
Presidential Determinations:
No. 93–21 of May 12, 1993.....31461
No. 93–22 of May 19, 1993.....31463
No. 92–23 of May 28, 1993.....31329
No. 93–24 of May 31, 1993.....32269
No. 93–25 of June 2, 1993.....33005
No. 93–26 of June 3, 1993.....33007

5 CFR

294.....32043
351.....32046
531.....33497
532.....32273, 33499
550.....32048, 32273, 33497, 33501
591.....32273, 33501
831.....32051
843.....32051
890.....33009
1201.....31234
1633.....31331
Ch. XXXIII.....33319

7 CFR

354.....32433
401.....33506, 33507
406.....33507
415.....33507
422.....33507
905.....31465
907.....33010, 33187
908.....33010, 33187
917.....32591
926.....33012
932.....33013
945.....33014
946.....32592, 33016
947.....33018
948.....33019
958.....32594
981.....33021
982.....32595
985.....32596
989.....32598
993.....32003
998.....32600
999.....33320
1139.....32434
1220.....32436
1755.....32749
1792.....32438

Proposed Rules:
28.....32454
54.....32616
75.....32617
319.....32456
457.....32458
792.....33029
920.....33035
945.....33037

Proposed Rules:
1001.....33347
1002.....33347
1004.....33347
1005.....33347
1007.....33038, 33347
1011.....33347
1030.....32464, 33347
1033.....33347
1036.....33039, 33347
1040.....33347
1044.....33347
1046.....33347
1049.....33347
1065.....33347
1068.....33347
1079.....33347
1093.....33347
1094.....33347
1096.....33347
1097.....33347
1098.....33347
1099.....33347
1106.....33347
1108.....33347

1124.....33347
1126.....32465, 33347
1131.....33347
1135.....33347
1137.....32467
1138.....33347
1205.....32066
1230.....32468

8 CFR

103.....31147

9 CFR

97.....32433
391.....33322
Proposed Rules:
381.....33040

10 CFR

26.....31467
70.....31467
73.....31467
Proposed Rules:
2.....31478
19.....33042
20.....33570
30.....33042, 33396
32.....33396
35.....33396
40.....33042
50.....33042
60.....33042
61.....33042
70.....33042
72.....31478, 33042
150.....33042

12 CFR

327.....31150
363.....31332
517.....33323
620.....33189
932.....31899
Proposed Rules:
34.....31878
225.....31878
303.....33050
323.....31878
545.....31878
563.....31878
564.....31878
611.....32071
613.....32071
614.....32071
620.....32071
621.....32071
627.....32071

13 CFR

123.....32053

14 CFR

25.....33325
39.....31159, 31160, 31342, 31647, 31649, 31650, 31902, 31904, 32055, 32278, 32281, 32602, 32603, 32606, 32608, 32835, 32836
71.....31652
91.....31640, 32838, 33189
93.....32838
97.....32840, 32842
137.....32838
Proposed Rules:
23.....32034
39.....31347, 31348, 31350, 31352, 31354, 31356, 31481, 31681, 31916, 31917, 31920, 31922, 32469, 32471, 32877, 33574, 33576
71.....31483, 31484, 31485, 31486, 32313, 33053, 33054
73.....33223
91.....32244
119.....32248
121.....32248, 33316
125.....32248
127.....32248
135.....32248

15 CFR

776.....33509
785.....33509
786.....33509
799.....32003, 33509

17 CFR

1.....31162
17.....33327
18.....33327
156.....31167
211.....32843
260.....33189
Proposed Rules:
4.....32314

18 CFR

Proposed Rules:
284.....32473

19 CFR

Proposed Rules:
151.....31487
152.....31487

20 CFR

366.....31343
404.....31906
626.....31471
627.....31471
628.....31471
629.....31471
630.....31471
631.....31471
637.....31471
Proposed Rules:
626.....33000
638.....33000

21 CFR

177.....32609
310.....31236
520.....33330
1301.....31171, 31907
1304.....31171, 31907
Proposed Rules:
Ch. I.....33690
101.....33055, 33700, 33715, 33731
1301.....31180

22 CFR

705.....33319
Proposed Rules:
308.....31181

24 CFR

203.....32057
Proposed Rules:
594.....32210
905 006
960 006
3280.....32316
3282.....32316

26 CFR

1.....33510
6a.....33510
301.....31343
602.....33510
Proposed Rules:
1.....32317, 32473, 33060
602.....32473

29 CFR

825.....31794, 32611
2676.....33023
Proposed Rules:
1910.....31923
1928.....31923

30 CFR

56.....31908
57.....31908
75.....31908
916.....32847
917.....32283
920.....33331
926.....33553
935.....32611
Proposed Rules:
218.....33414
913.....32003
917.....32618
920.....33578
935.....33416
938.....31925, 31926

31 CFR

344.....31908

33 CFR

100.....32292, 33024, 33334, 33335, 33336
117.....31473, 32292, 33191, 33337, 33338
165.....31473, 32293, 32294, 33339
Proposed Rules:
100.....31488
165.....32317

34 CFR

73.....32996
655.....32574
656.....32574
657.....32574
658.....32574
660.....32574
661.....32574
669.....32574
671.....32574
Proposed Rules:
610.....32014
643.....32580
648.....33224
649.....33308
668.....32188
776.....32828

36 CFR

242.....31175, 31252
Proposed Rules:
Ch. I.....32878

38 CFR

2.....32442
3.....31909, 32442, 32443
17.....32445
21.....31910
Proposed Rules:
4.....33235

39 CFR

111.....31177

40 CFR

51.....31622
52.....31622, 31653, 31654, 32057, 33192, 33194, 33196, 33197, 33200, 33201, 33203, 33205, 33340
60.....33025
61.....33025
86.....33207
131.....31177
180.....32295, 32296, 32297, 32298, 32299, 32300, 32301, 32302, 32303, 33211, 33554
271.....31344, 31474, 31911, 32855
279.....33341
372.....32304
721.....32228
761.....32060
Proposed Rules:
Ch. I.....31685, 31686, 32474, 32881, 33061, 33578
51.....31358
52.....31928, 31929, 32081, 33578
55.....33589
75.....32318
63.....33242
80.....33417
82.....33488
86.....33417
88.....32474, 33417
180.....32319, 32320, 32620
185.....32320
192.....32174
228.....32322
372.....32622
600.....33417
721.....32222, 32628

42 CFR

50.....33342

43 CFR

20.....32446
Public Land Orders:
5 (Revoked by PLO 6982).....32857
6960 (Corrected by PLO 6980).....33025
6974.....31655
6975.....31475
6976.....31475
6977.....31655
6978.....31656
6979.....31656
6980.....33025
6981.....32856
6982.....32857

44 CFR

64.....33555, 33556, 33558
65.....32857, 32859
67.....32861
Proposed Rules:
67.....31929, 32749, 32881

45 CFR

402.....31912

46 CFR

164.....32416

47 CFR

0.....33560
61.....31914
73.....31178, 31657, 31658, 32339, 32340, 32449
76.....32449, 32452, 33560
80.....33343
90.....31345, 31476, 31477, 33212

Proposed Rules:

Ch. I.....31182, 31686
2.....31183
15.....31183
22.....31183
61.....31936, 33061
73.....31183, 31184, 31686, 31687, 31688, 32339, 32503, 32504
80.....31185
87.....31185
90.....33062
99.....31183

48 CFR

201.....32416
206.....32416
207.....32061, 32416
209.....32416
210.....32061
215.....32062, 32416
217.....32416
219.....32416
222.....32416
223.....32416
225.....32416
227.....32416
228.....32416
231.....32416
233.....32416
235.....32416
237.....32416
239.....32416
252.....32062, 32416
253.....32416
801.....31914
905.....32306
915.....32306
933.....32306
942.....32306
952.....32306
970.....32306
3402.....32614
3409.....32614

Proposed Rules:

515.....32085
538.....32085, 32890
552.....32890
814.....31937
833.....31937
836.....31937
852.....31937

49 CFR

41.....32867
106.....33302
107.....33302
110.....33302
130.....33302
171.....33302
172.....33302
173.....33302
174.....33302
176.....33302
178.....33302
180.....33302
571.....31658
591.....32614

Proposed Rules:

192.....33064
207.....33593
209.....33595
397.....33418
555.....32091
571.....32504, 32630
1312.....31490, 32340
1314.....31490

50 CFR

17.....31660, 32308, 33562
100.....31175, 31252
204.....33565
226.....33212
227.....33219, 33220
282.....33565
285.....32872
625.....31234
630.....32311, 33568
641.....33025
651.....32062, 33028, 33344
661.....31664
663.....31179, 31345
672.....31679, 31680, 32003, 32064, 33345
675.....32003, 32615, 32874

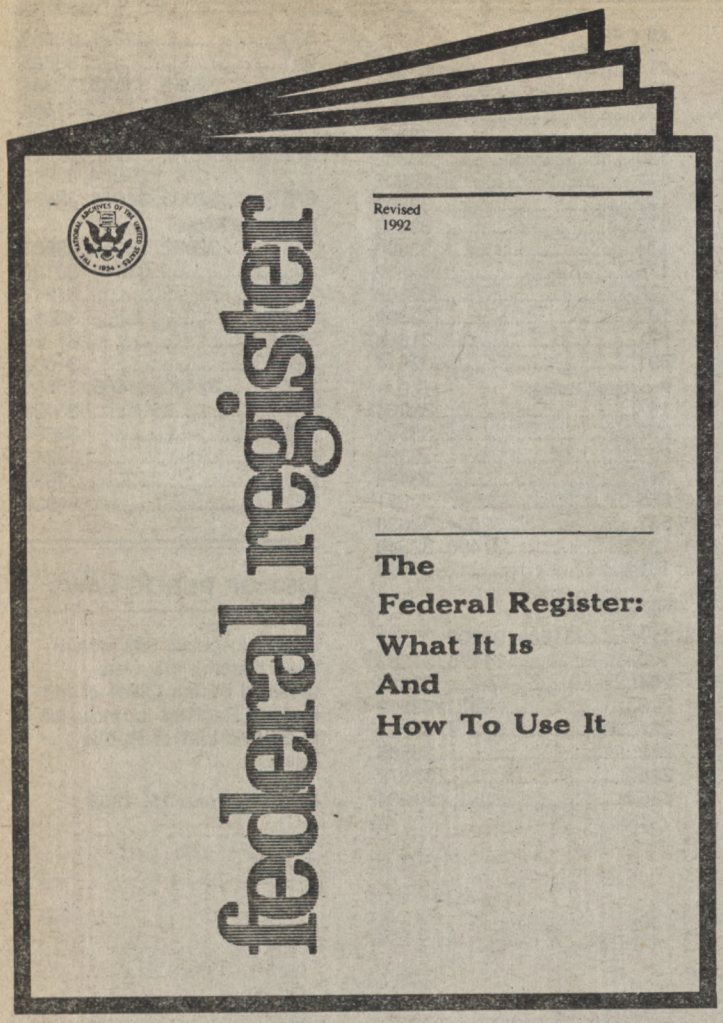
Proposed Rules:

17.....32632, 33148, 33606
20.....31244, 33158
21.....31247
215.....32892
216.....31186
222.....31688
227.....31490, 31688, 33605
228.....33425
285.....32894
625.....33243
640.....32639
652.....31938

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 June 15, 1993



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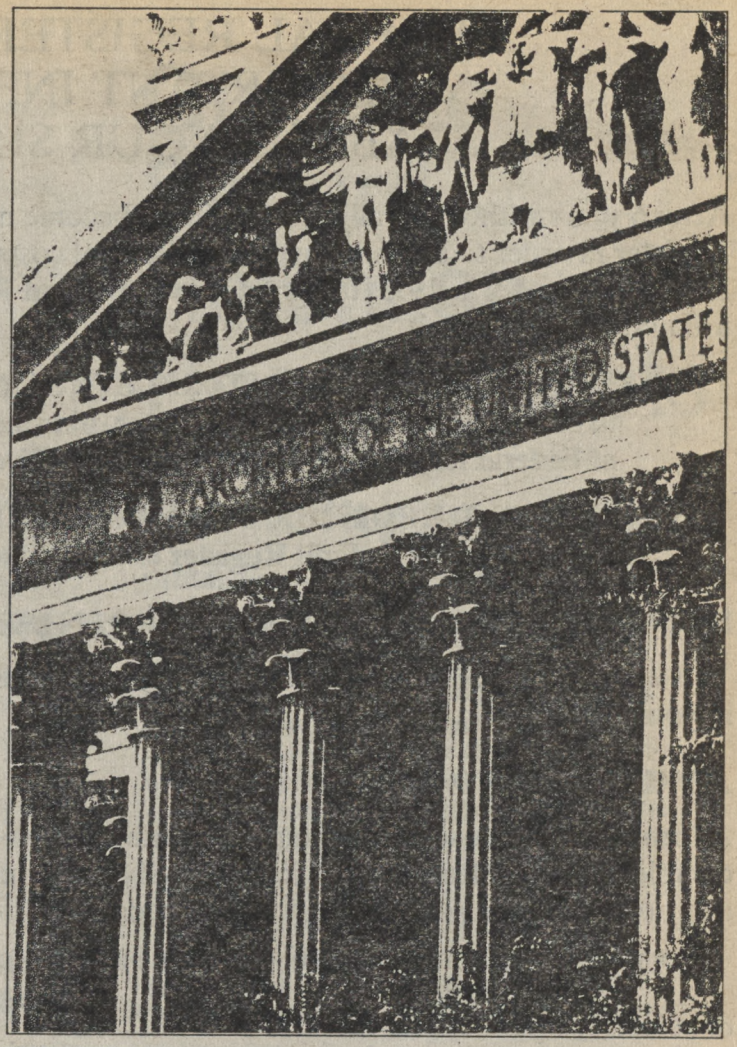
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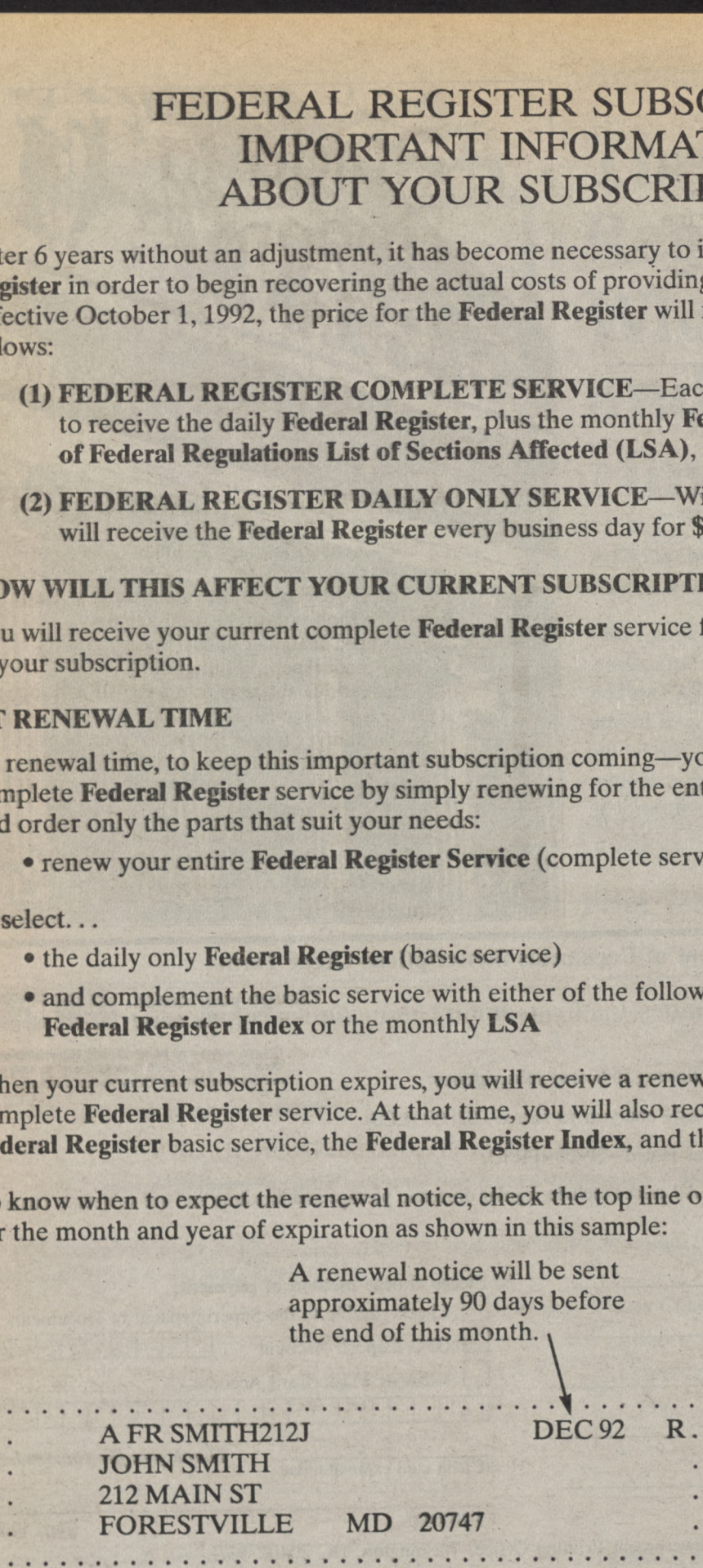
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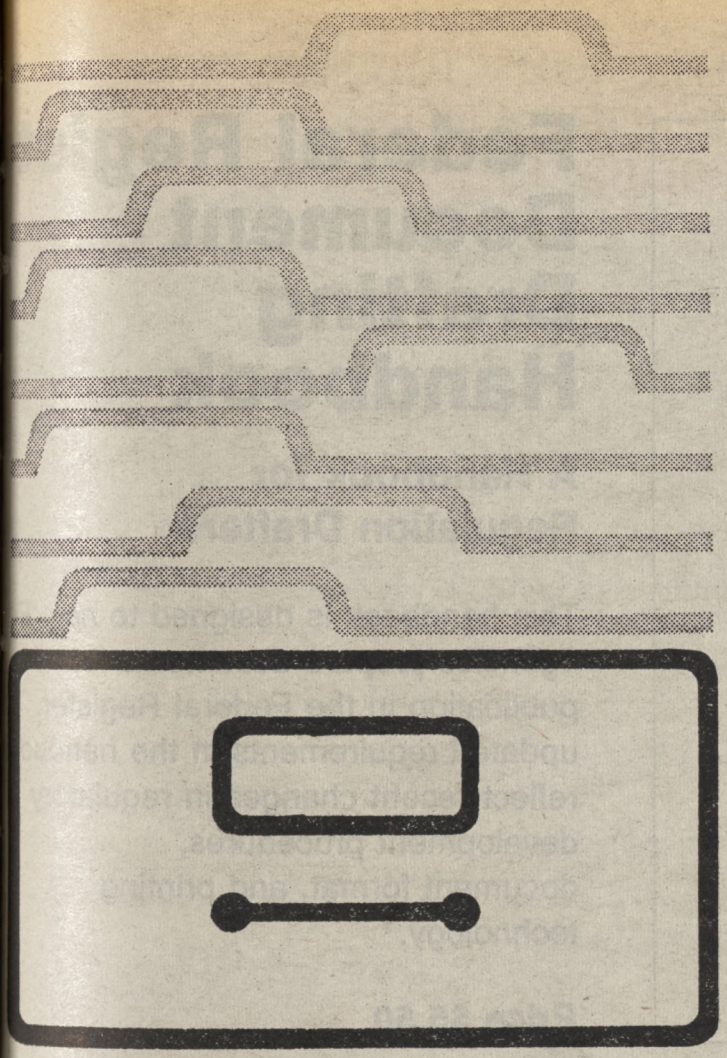
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GUIDE: Revised January 1, 1992

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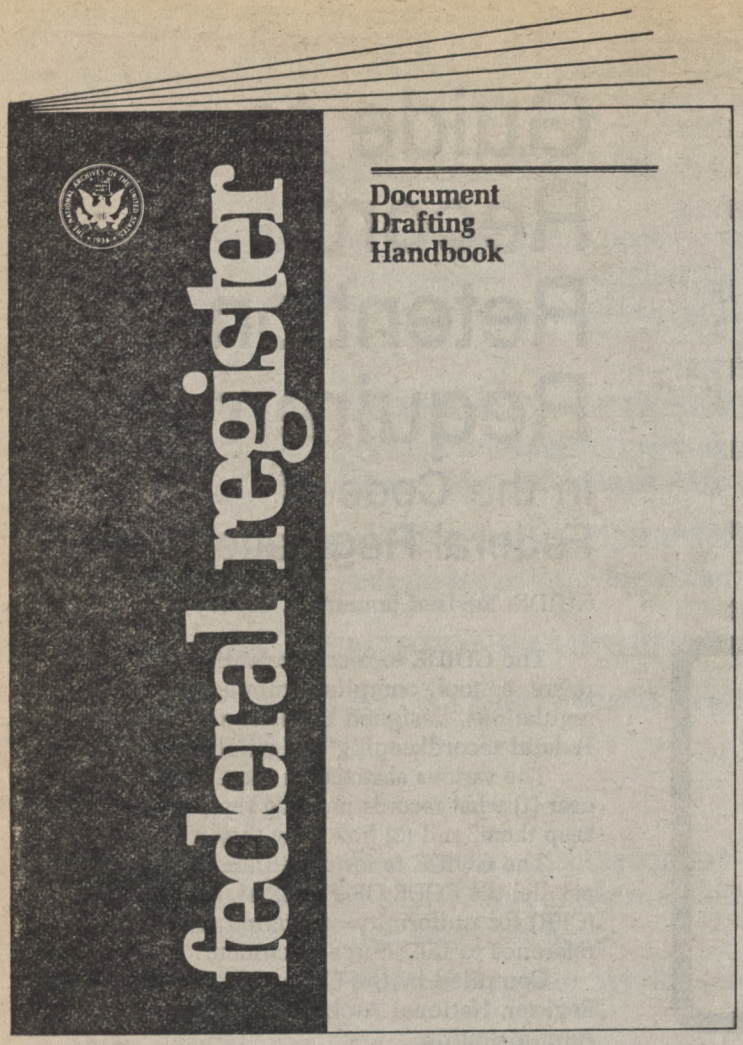
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