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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–112; Special Conditions No. 25–ANM–108]

Special Condition: Gulfstream Aerospace Corporation, Model Gulfstream V, High Altitude Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for the Gulfstream Model Gulfstream V airplane. This new airplane will be capable of operating at a maximum altitude of 51,000 feet. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the fuselage structure or passengers and crew from the effects of high altitude operations. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald Lakin, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, (206) 227–1187.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1992, Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, GA 31402–2206, applied for an amended type certificate in the transport airplane category for the Model Gulfstream V airplane. The Gulfstream V is a T-tail, low swept wing, business jet airplane powered by two BMW Rolls-Royce BR700–710A1–10 turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 14,750 pounds thrust. The controls will be powered and capable of manual reversion. The airplane has a seating capacity of up to nineteen passengers, and a maximum takeoff weight of 89,000 pounds. Gulfstream has requested certification for operations up to 51,000 feet.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Gulfstream must show, except as provided in § 25.2, that the Model Gulfstream V meets the applicable provisions of part 25, effective February 1, 1995, as amended by Amendments 25–1 through 25–81. In addition, the proposed certification basis for the Model Gulfstream V includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification; and certain exceptions and special conditions that are not relevant to these special conditions. No exemptions are anticipated. These special conditions form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream V because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model Gulfstream V will be certificated for operations at a maximum altitude of 51,000 feet. This unusually high operating altitude constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards.

There are no specific regulations that address protection requirements for the airplane fuselage pressure vessel or passengers and crew, in the event of a rapid decompression, during high altitude operations. The potential adverse impact from rapid decompression at high altitudes has made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions require compliance with additional requirements to provide protection from the direct and indirect effects of high altitude operations.

Damage tolerance methods are proposed to be used to ensure pressure vessel integrity while operating at the higher altitudes. Crack grown data are used to prescribe an inspection program which will detect cracks before an opening in the pressure vessel would allow rapid decompression. Initial crack sizes for detection are determined under § 25.571, Amendment 25–72. The cabin altitude after failure may not exceed the limits specified in Figures 3 and 4.

In order to ensure that there is adequate fresh air to crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, these special conditions require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Such a measure can lead to cabin temperatures that exceed human tolerance. Therefore, these special conditions require airplane interior

temperature limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressure in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than two minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above 37,000 feet can result in cabin altitudes that approach the physiological limits of the average person; therefore, every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. These special conditions therefore require pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the proposed special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

As discussed above, these special conditions are applicable initially to the Model Gulfstream V. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Discussion of Comments

Notice of Proposed Special Conditions No. ANM–95–5–NM for the Gulfstream Aerospace Corporation, Model Gulfstream V, was published in the Federal Register on June 28, 1995 (60 FR 33366). One commenter, the applicant, submitted four comments as follows:

(1) The commenter states that the current nomenclature for the turbofan engine is BMW Rolls-Royce BR700–710A1–10 in lieu of Rolls-Royce BR710–48. The FAA agrees with the commenter and has incorporated the change in this document.

(2) The commenter states that the presently accepted Certification Basis for the Gulfstream V is part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–81 in lieu of Amendment 25–75. The FAA agrees with the commenter and has incorporated the change in this document.

(3) The commenter asks the question whether certain wording discrepancies under the ''Novel or Unusual Design Features'' portion of the notice are typographical errors or if there has been a change in philosophy. The wording has to do with the value of ''rapid decompressions above 24,000 feet,'' and ''decompression above 27,000 feet.'' In numerous preceding publications over the years of such high altitude special conditions, these altitudes have been stated as 34,000 and 37,000 feet respectively. The FAA confirms that these discrepancies are typographical errors made by the Federal Register when they published the notice. The correct values are 34,000 feet and 37,000 feet respectively, and those values are reflected in this document.

(4) The commenter asks the question whether a change in Figure 3, Cabin Altitude Vs Time, is an error or a change in philosophy/requirements. The question has to do with the fact that the horizontal portion of the 25,000 foot altitude line begins to break downward at the 6 minute point of the figure. In numerous preceding publications over the years of such high altitude special conditions, this break point in the graph has been at 7 minutes. The FAA confirms that the 6 minute break point is in error and the 7 minute break value is correct. Figure 3 is corrected in this document to reflect the 7 minute break value point.

Conclusion

This action affects certain design features only on the Gulfstream V airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Gulfstream Aerospace Corporation, Model Gulfstream V series airplanes.

1. Pressure Vessel Integrity

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

(c) With regard to the fuselage structural design for cabin pressure capability above 45,000 feet altitude, the pressure vessel structure, including doors and windows, must comply with § 25.365(d), using a factor of 1.67 instead of the 1.33 factor described.

2. Ventilation

In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure to any system which could adversely affect the cabin ventilating air. For normal operations, crew members must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. Air Conditioning

In lieu of the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL).

(a) After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. Pressurization

In addition to the requirements of FAR 25.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions, or failures, in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs d.1. and d.2. of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

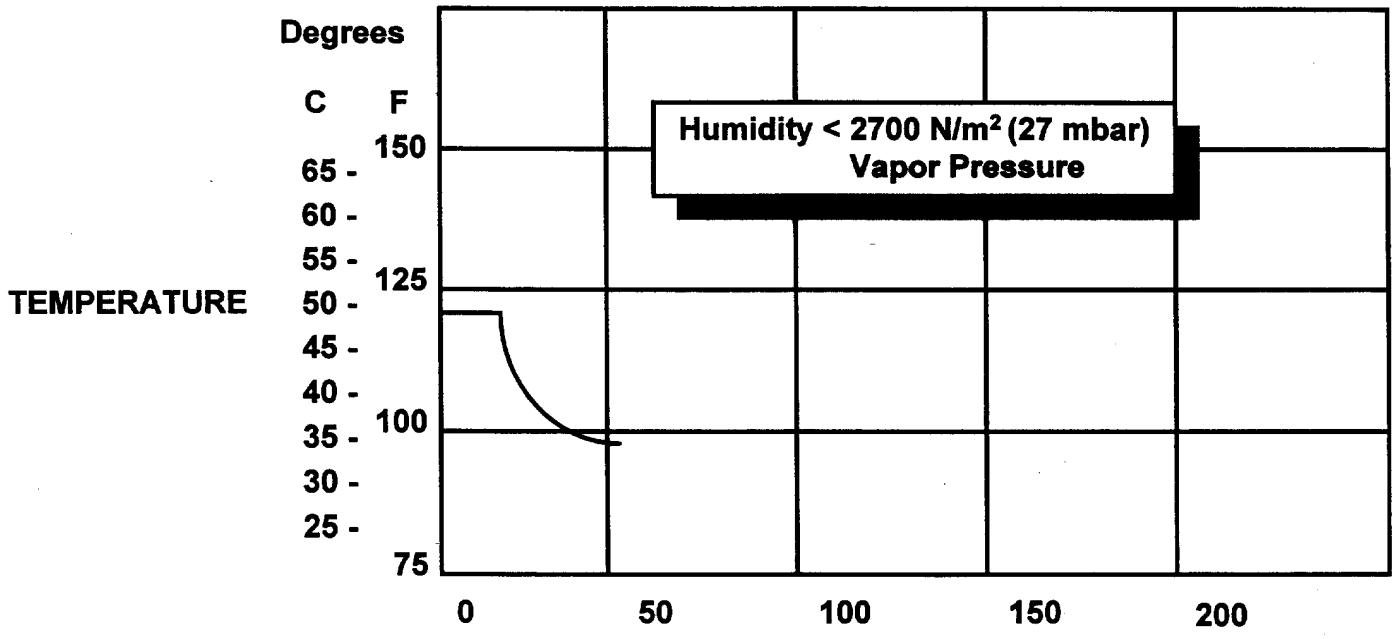
5. Oxygen Equipment and Supply

(a) A continuous flow oxygen system must be provided for the passengers.

(b) A quick donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

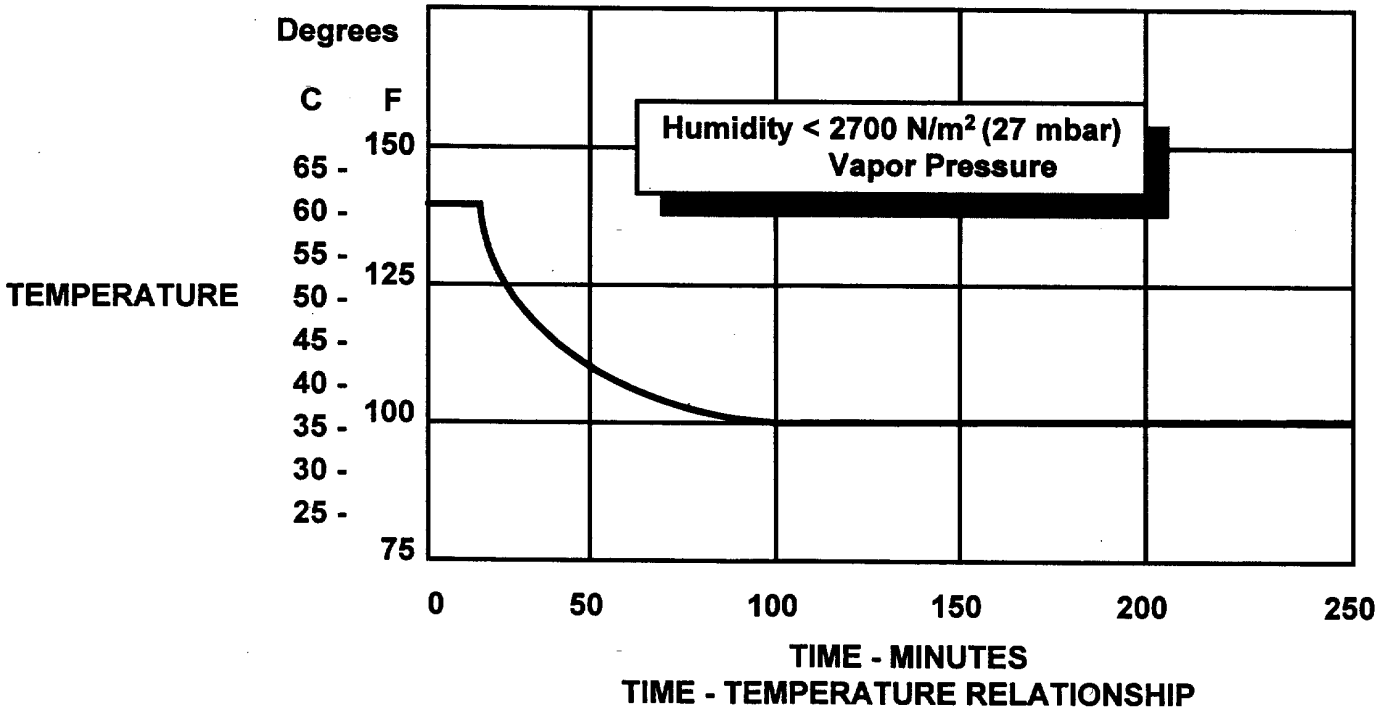
BILLING CODE 4910–13–M

Figure 1



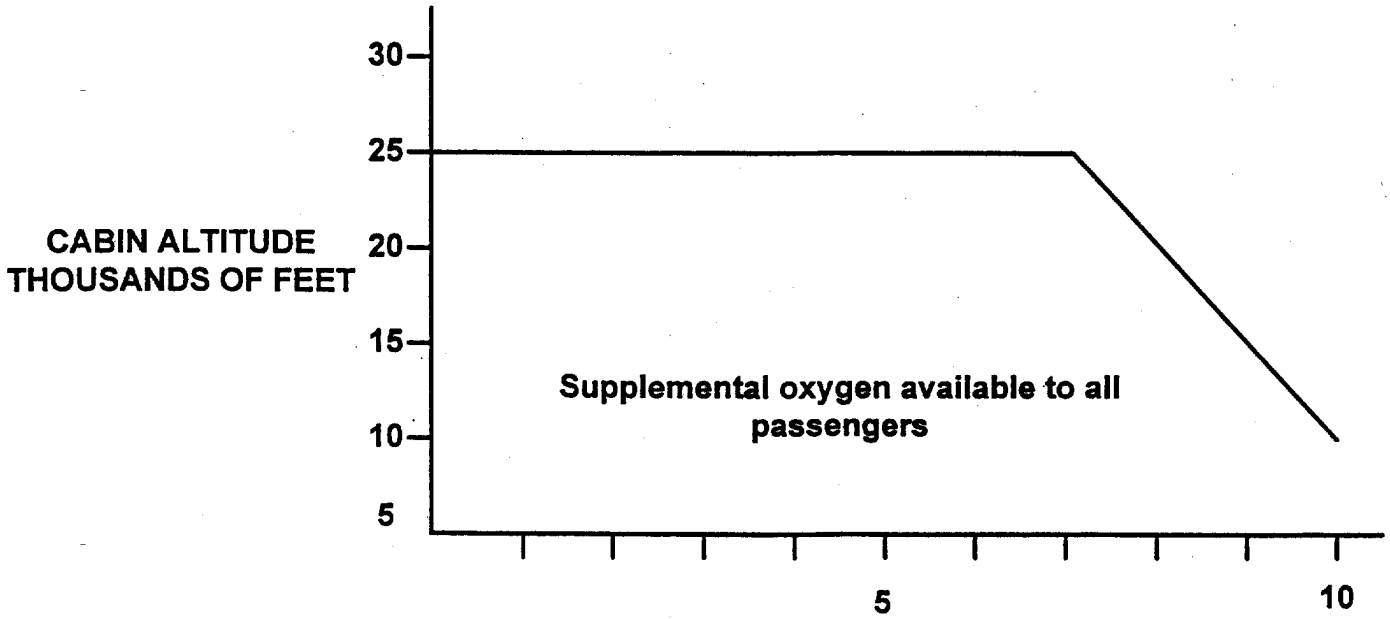
TIME - TEMPERATURE RELATIONSHIP

Figure 2



TIME - TEMPERATURE RELATIONSHIP

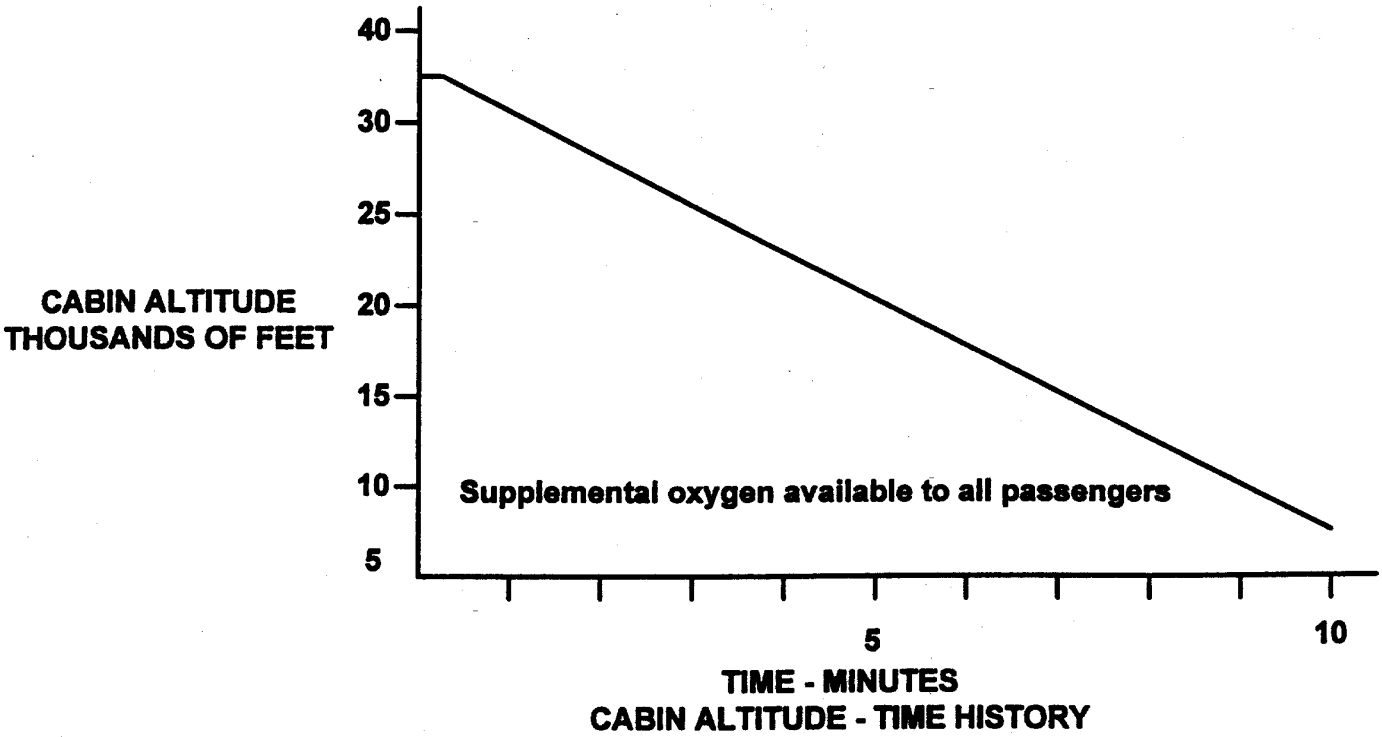
Figure 3



CABIN ALTITUDE - TIME HISTORY

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Figure 4



NOTE: For figure 4 , time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

BILLING CODE 4910–13–C

Issued in Renton, Washington, on October 5, 1995.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–25676 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 950928239–5239–01]

RIN 0694–AB33

Correcting Amendments; General Software Note, Commerce Control List Interpretations 24, 25, and 26

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: This final rule makes two corrections to the Export Administration Regulations. First, this rule amends the General Software Note to correctly reflect that Country, Groups S and Z, Iran, and Syria are not eligible to receive exports of mass-marketed software under General License GTDR without written assurance (also referred to as General License GTDU). This is not a regulatory change, but a correction to the Code of Federal Regulations, which erroneously omitted the appropriate amendatory language regarding Country Groups S and Z, Iran and Syria after it was published in the Federal Register on September 14, 1992 (57 FR 41854).

Second, this rule removes Commerce Control List interpretations Nos. 24, 25, and 26. BXA intended to remove these interpretations on July 15, 1992. However, due to a typographical error, this change was inadvertently omitted from the Export Administration Regulations.

EFFECTIVE DATE: This rule is effective October 17, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Office of Exporter Services, Regulatory Policy Division, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

This final rule makes two corrections to the Export Administration Regulations (EAR) (15 CFR Parts 730–799). First, this rule amends the General Software Note found in Supplement No. 2 to § 799.1 of the EAR to correctly reflect that Country Groups S and Z, Iran, and Syria are not eligible to receive exports of mass-marketed software under General License GTDR without written assurances (also referred to as General License GTDU). This is not a regulatory change.

The amendatory language concerning Country Groups S and Z, Iran and Syria was originally published in the Federal Register on September 14, 1992 (57 FR 41854), along with corresponding language in § 779.4(a) of the EAR. The amendments to § 779.4(a) and the General Software Note were included in the loose-leaf version of the EAR, but the amendment to the General Software Note was inadvertently omitted from the CFR.

Supplement No. 2 to § 799.1 was removed and reserved in error in the January 1, 1995, version of the CFR. On July 18, 1995, a CFR correction was published in the Federal Register (60 FR 36638) to reinstate Supplement No. 2 to § 799.1. However, the July 1995 correction did not include the amendatory language regarding Country Groups S and Z, Iran and Syria that was published in 1992. This final rule corrects the text of Supplement No. 2 to § 799.1 in Title 15 of the CFR to reflect the language originally published in the Federal Register on September 14, 1992.

This rule also removes interpretations Nos. 24, 25, and 26 from Supplement No. 1 to § 799.2. BXA intended to remove these interpretations on July 15, 1992 (57 FR 31309). However, due to a typographical error, this change was inadvertently omitted from the EAR.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, and Notice of August 15, 1995 (60 FR 42767).

Rulemaking Requirements

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control number.

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0007.

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

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

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. 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.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 the Export Administration Regulations (15 CFR Parts 730–799) is amended, as follows:

1. The authority citation for 15 CFR Part 799 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; 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; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); 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. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994); E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994), and Notice of August 15, 1995 (60 FR 42767).

PART 799—[AMENDED]

2. Supplement No. 2 to Section 799.1 is amended by revising the introductory text of the second note to read as follows:

Supplement No. 2—General Technology and Software Notes

* * * * *

2. *General Software Note.* General License GTDR, without written assurance, is available to all destinations, except Country Groups S and Z, Iran, and Syria, for release of software that is generally available to the public by being:

* * * * *

Supplement No. 1 to § 799.2 [Amended]

3. In Supplement No. 1 to § 799.2 (Interpretations), interpretations Nos. 24, 25, and 26 are removed.

Dated: October 12, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 95–25742 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DT–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging Requirements; Exemption of Certain Iron Containing Dietary Supplement Powders

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to exempt from child-resistant packaging requirements those dietary supplement powders that have no more than the equivalent of 0.12 percent weight-to-weight elemental iron. The Commission issues this exemption because there are no known poisoning incidents with these products, and the dry powdered form deters children from ingesting them in harmful amounts.

DATES: The exemption is effective on October 17, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Bogumill, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400 ext. 1368.

SUPPLEMENTARY INFORMATION:

A. Background

In 1978, the Consumer Product Safety Commission (''the Commission'') required child-resistant packaging (''CRP'') for drugs and dietary supplements that contain iron. 16 CFR 1700.14(a) (12) and (13). The Commission issued these rules under the Poison Prevention Packaging Act (''PPPA''), 15 U.S.C. 1471–1476, which authorizes the Commission to require CRP to protect children under 5 years of age from poisoning hazards posed by harmful household substances.

Specifically, CRP is required for dietary supplements ''that contain an equivalent of 250 milligrams or more of elemental iron, from any source, in a single package in concentrations of 0.025 percent or more on a weight-to-volume basis for liquids and 0.05 percent or more on a weight-to-weight basis for nonliquids.'' 16 CFR 1700.14(a)(13). This requirement does not apply if iron is present only as a colorant. *Id.*

On May 11, 1994, Nutritech, Inc. (''Nutritech''), petitioned the Commission to exempt unflavored, unsweetened iron powders from CRP requirements for dietary supplements containing iron. Nutritech manufactures an unsweetened, unflavored vitamin, mineral, and amino acid powder intended to be mixed with fruit juice. The petitioner stated several reasons why CRP is unnecessary for this dietary supplement. (1) [1] The Commission published a notice in the Federal Register on August 4, 1994, soliciting comments on the petition, 59 FR 39747, and received no responses.

B. Proposed Rule and Comment

On April 7, 1995, the Commission published a notice granting Nutritech's petition to initiate rulemaking and proposing to exempt certain powdered iron-containing dietary supplements from CRP requirements. 60 FR 17660. The Commission proposed that the exemption would apply to dietary supplement powders, both flavored and unflavored, with no more than the equivalent of 0.12 percent w/w elemental iron.

In response to the proposed rule, the Commission received one comment. The comment, submitted on behalf of an organization called SI Metric, objected that the proposed regulation did not use proper SI metric terminology. The Commission has considered the comment and has made some changes in the preamble to ensure that measurements are presented in metric terminology. However, the Commission declines to make some changes suggested by the commenter—for example, using the term mass rather than weight. The Commission also believes that its expression of the percentage of concentration of iron for liquids and non-liquids as weight-to-volume (''w/v'') or weight-to-weight (''w/w'') measurements is appropriate. Based on the United States Pharmacopeia guidelines, the percent w/v refers to the number of grams of a constituent in 100 milliliters of solution, and the percent w/w is the number of grams of a constituent in 100 grams of solution or mixture. The Commission believes that its use of terminology is consistent with use throughout the Federal government. Moreover, the terminology is consistent with other regulations under the PPPA.

C. Toxicity Data

The minimum toxic and lethal doses of iron are not well defined. Generally, doses of elemental iron from 20 to 60 milligrams per kilogram of body weight (''mg/kg'') may produce mild symptoms of poisoning, 60 mg/kg is the minimal dose for serious toxicity, and approximately 180 to 250 mg/kg is considered a lethal dose. However, fatalities of young children have been reported at lower doses. (2)(3)

According to the relevant scientific and medical literature, where information on the formulation was available, the majority of pediatric poisoning incidents involved solid iron—in the form of tablets or capsules—with the remaining cases involving liquid preparations. Among the reported ingestion incidents, fatalities and serious cases of toxicity usually involve ingestion of adult preparations (such as prenatal vitamins) that contain 60 mg or more of elemental iron per tablet. The literature search did not identify a single case of pediatric poisoning involving powdered iron formulations. (2)(3)(5)

When the Food and Drug Administration (''FDA'') published proposed labeling and packaging requirements for iron-containing dietary supplements and drugs, 59 FR 51030 (October 6, 1994), it decided to limit the proposed rules to products in solid oral dosage forms (capsules and tablets) and not include liquid or powder products. (2)

The Commission's own 1994 study of pediatric iron poisonings and fatalities found that the majority of serious outcomes involved products in solid or capsule forms. The report showed that all 36 of the in-depth investigations of iron ingestion deaths of children under 5 years old occurring between 1986 and 1993 involved solid capsule or tablet formulations. In 1993, 57 hospital emergency room cases documented through NEISS involved ingestion of iron capsules or tablets by children under 5 years old, and one involved liquid iron. As noted, there were no known pediatric poisonings that involved powdered formulations. This study was based on data from the Commission's National Electronic Injury

[1] Numbers in parentheses identify documents listed at the end of this notice.

Surveillance System (''NEISS''), in-depth investigations, the National Center for Health Statistics (''NCHS'') and the American Association of Poison Control Centers (''AAPCC''). (2)(5)

Due to the subcategories that AAPCC uses to classify iron ingestion incidents, the data do not specifically address powdered iron-containing formulations. However, for these AAPCC cases, powdered formulations can be ruled out of all iron related fatalities involving children under 5 years old, and 98.4 percent of cases with serious symptoms, that were reported to the AAPCC between 1989 and 1992. (The remaining 1.2% of cases did not specify the physical form of the ingested product.) The formulations of the iron-containing products involved in pediatric deaths is unavailable from NCHS death certificate data. (2)

For powdered dietary supplements containing 18 mg of elemental iron per tablespoon (0.12% weight-to-weight), a 10 kg child would have to consume 11, 33, and 100 tablespoons to reach the respective minimal (20 mg/kg), serious (60 mg/kg), and lethal (180 mg/kg) toxicity levels. This assumes none of the product is spilled during consumption. (2)(5)

D. Human Factors Data

Poisoning incidents involving ingestion of large amounts of any powdered substance are relatively rare. Children are more likely to ingest large quantities in the form of liquids or solids, such as tablets and capsules. One reason for this distinction is the physical difficulty children have handling and swallowing powders. Eating a dry powder is difficult and time-consuming. Only small amounts can be eaten at a time to allow the powder to absorb sufficient saliva so the powder can be swallowed. Attempts to swallow too much at once or to swallow too soon will likely result in aspirating the powder and stimulate coughing, which would limit the amount ingested. Because of the time it takes to ingest a powder, it is questionable that a young child could eat a full tablespoon of powder at one time. The length of time required to successfully ingest powders may increase the opportunity for an adult to intervene. (2)(3)(5)

Children's motivation is also a factor in poisoning incidents. Curiosity is the most common motivation among young children. Those less than 3 years old explore through manipulative and oral activity. The youngest at-risk children (less than 24 months) reportedly ingest substances like dirt or powdered detergent by grasping a handful of the substance and then opening their hands and using their palms to push the substance into their mouths. This often results in spilling much of the substance. (3)

Exploratory behavior among children 3 to 4 years old may be somewhat more controlled than for younger children. For example, in a study examining powdered aspirin, children 42 to 51 months of age had difficulty picking up the fine aspirin powder, and when asked to taste it, they did so by putting their fingers in the powder and licking their fingers or by licking the powder directly on the table. This behavior may tend to limit the amount ingested. (3)

In role-playing activities, children may use a powdered substance in imitation of adult behavior. They may mix it with a liquid and drink it or use the powder to substitute for some other food item (e.g., cake mix). However, incomplete mixing of the product will result in a grainy or lumpy mixture which may cause gagging. Repeated ingestion is unlikely following such an experience. It is unlikely that a child could effectively dissolve and ingest toxic amounts of powder with 0.12 percent weight-to-weight iron. (3)

Hunger is another potential motivation. The primary risk of poisoning from these iron-containing supplements would be to a starved, unattended child with no other available source of nutrition. However, it is unlikely that a child would have the time and perseverance to ingest a quantity of iron (11 tablespoons) that would be potentially toxic (20 mg/kg). This is especially true since these products are expensive, purchased by a select population of nutrition enthusiasts, and are probably stored near other foods that would be more appealing to children.(3)

The relative palatability of a substance may influence toxic ingestions. Although flavor plays little or no role in determining whether a product is ingested, it does influence the quantity ingested. The unpleasant taste of the petitioner's product may deter ingestion of toxic levels. Flavored products may pose a somewhat greater risk. However, the other factors discussed above would likely limit the toxic dose ingested of both flavored and unflavored powdered iron supplements.(3)

E. Economic Data

According to the Food and Drug Administration, a dietary supplement is ''a food, not in conventional form, that supplies a component to supplement the diet by increasing the total dietary intake of that component,'' Dietary Supplement Health and Education Act of 1994, P.L. 103–417. These are distinct from fortified foods, such as infant formulas and meal replacements, which are intended to serve as the sole item of a meal. The ingredients in dietary supplements and fortified foods may be similar, but the marketing emphasis and health claims are different.(4)

The petitioner markets two unsweetened, unflavored protein powder supplements that are sold in individual serving packets or in canisters. Each recommended serving of 1 tablespoon contains 18 mg of iron and is mixed with juice for consumption. The following table shows the available container sizes and the total iron content of each.

Size	Servings	Total iron content (mg)
150 g	10	180
450 g	30	540
1 kg .	66	1188
354 g	25	450 (18 mg per packet)

Sweetened or flavored supplements make up the major part of the powdered dietary supplement market. Many are marketed as ''sports nutritionals'' for fitness enthusiasts. These products are packaged in cartons, canisters, packets, jugs, and pails in various sizes and strengths of iron. Unit and dollar sales of powdered nutritional products are not available. A spokesperson for the Council for Responsible Nutrition (''CRN''), an industry group, estimates the retail market for protein powders (including both supplements and fortified foods) at $2 billion. CRN attributes the larger market share (percent unknown) to flavored powders marketed as sports nutritionals and diet supplements.(4)

F. Action on the Petition

As discussed above and in the notice of proposed rulemaking, the relevant literature and data show no cases of child poisonings due to iron-containing powders. In addition, it is unlikely that young children would ingest toxic amounts of iron-containing supplement powders which are difficult for children to handle without spilling or to swallow without gagging. A child would have to ingest approximately 11 tablespoons of petitioner's product (20 mg/kg in a 10 kg child) in order to produce a minimally toxic dose. Approximately 100 tablespoons would be required for a lethal dose. Most of the factors that make toxic ingestions of petitioner's unflavored product unlikely would also apply to flavored supplement powders.

The Commission preliminarily concluded that the degree and nature of the hazard to children presented by the

availability of dietary supplement powders with no more than the equivalent of 0.12 percent weight-to-weight elemental iron are such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, or ingesting such substance. Accordingly, the Commission voted to grant the petition and proposed to amend 16 CFR 1700.14(a)(13) to exempt from requirements for child resistant packaging those dietary supplement powders with no more than the equivalent of 0.12 percent weight-to-weight elemental iron. 60 FR 17660 (April 7, 1995).

After considering all available and relevant information, the Commission determines to issue the proposed exemption on a final basis.

G. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), when an agency issues proposed and final rules, it must examine the rules' potential impact on small businesses. The Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis if a proposed rule would have a significant impact on a substantial number of small businesses, small organizations, and small governmental jurisdictions.

When the Commission proposed to exempt powdered iron-containing dietary supplements from CRP requirements, it found that the exemption would not have any significant economic impact on a substantial number of small entities. The exemption will give manufacturers of these products the option of packaging products using any packaging they choose. As far as CPSC is aware, powdered iron-containing dietary supplements are not currently packaged in CRP. The Commission's Compliance staff is exercising its enforcement discretion regarding these products pending completion of this rulemaking. Thus, the exemption will bring no change in the current packaging of products subject to the exemption. The Commission is not aware of any information that would alter its conclusion that this exemption will not have any significant economic effect on a substantial number of small entities.

H. Environmental Considerations

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules exempting products from child-resistant packaging requirements under the PPPA normally have little or no potential for affecting the human environment. The Commission did not foresee any special or unusual circumstances surrounding the proposed rule and found that exempting these products from the PPPA requirements would have little or no effect on the human environment. For this reason, when the Commission issued the proposed exemption, it concluded that no environmental assessment or impact statement is required in this proceeding. That conclusion remains unchanged.

I. Effective Date

Because this rule provides for an exemption, no delay in the effective date is required. 5 U.S.C. 553(d)(1). Accordingly, the rule shall become effective upon publication of the final rule in the Federal Register.

List of Subjects in 16 CFR Part 1700

Consumer protection, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission amends Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: 15 U.S.C. 1471–1476. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

2. Section 1700.14(a)(13) is revised to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(13) *Dietary supplements containing iron.* Dietary supplements, as defined in § 1700.1(a)(3), that contain an equivalent of 250 mg or more of elemental iron, from any source, in a single package in concentrations of 0.025 percent or more on a weight-to-volume basis for liquids and 0.05 percent or more on a weight-to-weight basis for nonliquids (e.g., powders, granules, tablets, capsules, wafers, gels, viscous products, such as pastes and ointments, etc.) shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

(i) Preparations in which iron is present solely as a colorant; and

(ii) Powdered preparations with no more than the equivalent of 0.12 percent weight-to-weight elemental iron.

* * * * *

Dated: October 6, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Washington, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

1. Briefing Memorandum with attached briefing package, March 14, 1995.
2. Memorandum from Sandra E. Inkster, Ph.D., HSPS, to Jacqueline N. Ferrante, Ph.D., HSPS, ''Review of Iron Toxicity: Relevance to a Petition Requesting Exemption for Powdered, Iron-Containing Dietary Supplements,'' February 15, 1995.
3. Memorandum from Catherine A. Sedney, EPHF, to Jacqueline N. Ferrante, Ph.D., HSPS, ''Petition to Exempt Iron-Containing Supplement Powders from PPPA Requirements,'' February 16, 1995.
4. Memorandum from Marcia P. Robins, EPSS, to Jacqueline N. Ferrante, Ph.D., HSPS, ''Preliminary Market Information: Petition for Exemption from Child-Resistant Packaging Requirements for Powdered Iron-Containing Dietary Supplements,'' March 10, 1995.
5. Briefing Memorandum with attached briefing package, September 19, 1995.
6. Memorandum from Marcia P. Robins, EPSS, to Jacqueline N. Ferrante, Ph.D., HSPS, Final Regulatory Flexibility Act Issues: Petition for Exemption from Child-Resistant Packaging Requirements for Powdered Iron-Containing Dietary Supplements,'' July 5, 1995.

[FR Doc. 95–25322 Filed 10–16–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Decoquinate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Rhone-Poulenc, Inc. The supplemental NADA provides for use of decoquinate Type A medicated articles to make Type C medicated feeds for young sheep for the prevention of certain forms of coccidiosis.

EFFECTIVE DATE: October 17, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary

Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc, Inc., 500 Northridge Rd., suite 620, Atlanta, GA 30350, filed supplemental NADA 39–417, which provides for use of Deccox® (decoquinate) Type A medicated article to make a Type C medicated feed for young sheep for the prevention of coccidiosis caused by *Eimeria bakuensis*, *E. crandallis*, *E. ovinoidalis*, and *E. parva*.

The supplemental NADA is approved as of August 28, 1995, and the regulations are amended in 21 CFR 558.195 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning August 28, 1995, because the supplemental NADA contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to approval and conducted or sponsored by the applicant. Marketing exclusivity applies only to the use for which the supplemental NADA is approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.195 is amended in paragraph (d) in the table by numerically adding a new entry to read as follows:

§ 558.195 Decoquinate.

* * * * *

(d) * * *

Decoquinate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
13.6 (0.0015 pct)	.....	Young sheep; for the prevention of coccidiosis caused by *Eimeria ovinoidalis*, *E. crandallis*, *E. parva*, *E. bakuensis*.	Feed Type C feed at a rate to provide 22.7 mg per 100 lb of body weight (0.5 mg per kg) per day. Feed at least 28 days during periods of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to sheep producing milk for food.	011526
*	*	*	*	*

Dated: October 5, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–25623 Filed 10–16–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 573

[Docket No. 86F–0060]

Food Additives Permitted In Feed and Drinking Water of Animals; Selenium

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim rule; opportunity for comment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal food additive regulations concerning the approved use of selenium as a food additive to suspend those amendments resulting from promulgation of a September 13, 1993, stay. This suspension conforms to certain provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1994, and the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. This interim rule amends the selenium food additive regulation to provide for the conditions set forth in these laws.

DATES: This interim regulation is effective October 17, 1995. Submit written comments by January 16, 1996.

ADDRESSES: Submit 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: Sharon A. Benz, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1724.

SUPPLEMENTARY INFORMATION:

I. Background

A. 1987 Amendments

In the Federal Register of April 6, 1987 (52 FR 10887), and corrected on June 4, 1987 (52 FR 21001), FDA issued a final rule amending the selenium food additive regulation (21 CFR 573.920) to increase the maximum amount of selenium supplementation permitted in animal feeds. The action was based on

a food additive petition (FAP 2201) filed by the American Feed Industry Association, Inc. (AFIA), 1701 North Fort Myer Dr., Arlington, VA 22209. In issuing the 1987 amendments FDA determined, based on an environmental impact analysis report submitted by AFIA, that the amended uses would not have a significant impact on the human environment.

B. 1993 Stay of 1987 Amendments

In the Federal Register of September 13, 1993 (58 FR 47962), FDA published a final rule which provided for a stay of the 1987 amendments to the selenium food additive regulations (hereinafter referred to as the 1993 final rule). The action was taken in part in response to objections to, and requests for a hearing on or a stay of the 1987 amendments by a number of organizations because of alleged inadequacies found in FDA's finding of no significant impact and in the petitioner's environmental assessment. FDA concluded that the finding and the assessment were inadequate and that there was no genuine or substantial issue of fact as to their inadequacy. FDA has also concluded that the information that was available, if accepted as accurate, would not be sufficient to permit an adequate environmental analysis, and that the information that was necessary to do an adequate environmental analysis was unavailable. As a result of the stay of the 1987 amendments, the maximum permitted use levels of selenium in animal feeds returned to those levels permitted before FDA issued the 1987 amendments. FDA also stayed a 1989 amendment (54 FR 14214, April 10, 1989), to the regulation that provided for the use of a bolus for selenium supplementation at the increased levels, because the environmental assessment for the use of the bolus relied on the 1987 environmental analysis.

II. Current Status

The 103d Congress passed two laws affecting selenium supplementation of animal food. The first, signed on September 30, 1994, was included in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1994 (Pub. L. 103–330). Specifically, Title VI provided for suspension of the stay published in the 1993 final rule of the 1987 food additive regulation relating to selenium (§ 573.920) (21 CFR 573.920)) until December 31, 1995.

The second law was signed on October 13, 1994, as a part of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354). The law, under Subtitle G—Food Safety Section 262, titled ''Conditions For Implementation of Alteration in the Level of Additives Allowed in Animal Diets,'' prohibits the implementation or enforcement of the 1993 final rule that stayed the 1987 amendments unless certain determinations are made by the Commissioner of Food and Drugs. Specifically, the determinations are set out as:

(1) Selenium additives are not essential at levels authorized in the absence of such final rule, to maintain animal nutrition and protect animal health;

(2) selenium at such levels is not safe to the animals consuming the additive;

(3) selenium at such levels is not safe to individuals consuming edible portions of animals that receive the additive;

(4) selenium at such levels does not achieve its intended effect of promoting normal growth and reproduction of livestock and poultry; and

(5) the manufacture and use of selenium at such levels cannot reasonably be controlled by adherence to current good manufacturing practice requirements.

Both laws provide for suspension of FDA's 1993 stay until certain conditions are met. Pub. L. 103–330 provides for a suspension until December 31, 1995, and Pub. L. 103–354 provides for a suspension until certain determinations are made by the Commissioner of Food and Drugs. Therefore, selenium may be administered in animal feed as sodium selenite or sodium selenate in the complete feed for chickens, swine, turkeys, sheep, cattle, and ducks as provided for by the 1987 amendments to § 573.920, until further notice. The published regulation provides for the currently acceptable levels of selenium supplementation of feed; that is, levels not to exceed 0.3 parts per million (ppm) in feed supplementation of chickens, swine, turkeys, sheep, cattle, and ducks; in feed supplements for sheep not to exceed 0.7 milligram (mg) per head per day and in beef cattle not to exceed 3 mg per head per day; and in free-choice salt-mineral mixes for sheep up to 90 ppm but not to exceed 0.7 mg per head per day and for beef cattle up to 120 ppm in a mixture for free-choice feeding not to exceed an intake of 3 mg per head per day. In addition, the orally administered, osmotically controlled, and constant release bolus for beef and dairy cattle provided for on April 10, 1989 (54 FR 14214), is also available until further notice.

III. Authority for This Regulation

Under the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(B) and FDA's administrative practices and procedures regulation at 21 CFR 10.40(e), the Commissioner finds for good cause that prior notice and comment on this interim rule are unnecessary. The rule does not involve any exercise of discretion by the Commissioner. It merely repeats the terms of Pub. L. 103–354. As provided in FDA's administrative practices and procedures regulation at 21 CFR 10.40(e), FDA is providing an opportunity for public comment on whether the interim rule should be modified or revoked.

IV. Request for Comments

Interested persons may, on or before January 16, 1996, submit to the Dockets Management Branch (address above) written comments regarding this interim rule. 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.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

2. Section 573.920 is amended by redesignating the introductory text and paragraphs (a) through (f) as paragraphs (a) through (g) respectively, and by revising newly redesignated paragraph (a) to read as follows:

§ 573.920 Selenium.

(a) Public Law 103–354 enacted October 13, 1994 (the 1994 Act), states that FDA shall not implement or enforce the final rule issued on September 13, 1993 (58 FR 47962), in which FDA stayed the 1987 amendments and any modification of such rule issued after enactment of the 1994 Act; unless the Commissioner of Food and Drugs makes a determination that:

(1) Selenium additives are not essential at levels authorized in the absence of such final rule, to maintain animal nutrition and protect animal health;

(2) selenium at such levels is not safe to the animals consuming the additive;

(3) selenium at such levels is not safe to individuals consuming edible portions of animals that receive the additive;

(4) selenium at such levels does not achieve its intended effect of promoting normal growth and reproduction of livestock and poultry; and

(5) the manufacture and use of selenium at such levels cannot reasonably be controlled by adherence to current good manufacturing practice requirements.

(6) Paragraphs (b) through (g) of this section provide the currently acceptable levels of selenium supplementation.

* * * * *

Dated: October 10, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–25622 Filed 10–16–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Administration of Timber Export and Substitution Restrictions

AGENCY: Forest Service, USDA.

ACTION: Final rule; suspension of compliance and reopening of comment period.

SUMMARY: On September 8, 1995, the final rule for Sale and Disposal of National Forest System Timber—Administration of Timber Export and Substitution Restrictions was published in the Federal Register with request for additional comment on any functioning of the regulation that may be necessary for more efficient implementation (60 FR 46890). The rule was effective September 8, 1995, and the comment period was specified to close October 10, 1995. The Department has decided to suspend compliance with 36 CFR 223.190(k) and 223.193 through 223.199 of the final rule until February 14, 1996. This action will provide time for a more orderly and planned implementation by the forest products industry and the Forest Service. During this suspension period, all other provisions of the final rule remain in effect and provisions of the timber sale contract relating to these matters will remain in effect. In addition, the comment period is hereby reopened until December 18, 1995.

DATES: The suspension of compliance with 36 CFR 223.190(k) and 223.193 through 223.199 of the final rule published at 60 FR 46922 is effective September 8, 1995, through February 14, 1996. Comments on the final rule must be received in writing by December 18, 1995.

ADDRESSES: Send written comments to Director, Timber Management Staff (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this final rule in the Office of the Director, Timber Management Staff, Forest Service, USDA, Wing 3NW, Auditors Building, 201 14th Street, SW., Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. Parties wishing to view comments are encouraged to call ahead (202–205–0893) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–0855.

Dated: October 10, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 95–25653 Filed 10–16–95; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5315–1]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Louisiana's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Louisiana's hazardous waste program revision subject to the authority retained by EPA in accordance with Hazardous and Solid Waste Amendments of 1984. Louisiana's application for the program revision is available for public review and comment.

DATES: This authorization for Louisiana shall be effective January 2, 1996, unless EPA publishes a prior Federal Register (FR) action withdrawing this immediate final rule. All comments on Louisiana's program revision application must be received by the close of business December 1, 1995.

ADDRESSES: Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, phone (504) 765–0617 and U.S. EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone (214) 665–6444. Written comments, referring to Docket Number LA–95–4, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States authorized under section 3006(b) of the Resource Conservation and Recovery Act (''RCRA or the Act''), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268, and 270.

B. Louisiana

Louisiana initially received final authorization on February 7, 1985 (see 50 FR 3348), to implement its base hazardous waste management program. Louisiana received authorization for revisions to its program on January 29, 1990 (see 54 FR 48889), October 25, 1991 (see 56 FR 41958), and Corrections at (56 FR 51762), effective January 23, 1995 (see 59 FR 55368–55371), and Corrections at (60 FR 18360) and March 8, 1995 (see 59 FR 66200). On July 24, 1995, Louisiana submitted a final complete program revision application for additional program approvals. Today, Louisiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

In 1983, the Louisiana legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes 30:1051 et seq., the Environmental Affairs Act. This Act created the Louisiana Department of Environmental Quality (LDEQ), which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State.

EPA reviewed Louisiana's application and made an immediate final decision that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant authorization for the additional program modifications to Louisiana. The public may submit written comments on EPA's proposed final decision until December 1, 1995. Copies of LDEQ's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of LDEQ's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Louisiana's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264, 265, 266, and 270 that were published in the Federal Register from July 1, 1987 and July 1, 1989 through June 30, 1990. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Exception Reporting for Small Quantity Generators of Hazardous Waste, (52 FR 35894–35899) September 23, 1987. (Checklist 42).	Louisiana Revised Statutes (LRS) 30: § 2180 et seq., as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §§ 1111.C.1 and 1111.C.2 as amended October 20, 1994; effective October 20, 1994.
2. HSWA Codification Rule 2; Permit Application Requirements Regarding Corrective Action, (52 FR 45788) December 1, 1987. (Checklist 44A).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 520 as amended November 20, 1992; effective November 20, 1992, and §§ 516.A, 516.A.1–6, 516.B and 516.C, as amended July 20, 1991; effective July 20, 1991.
3. HSWA Codification Rule 2; Corrective Action Beyond Facility Boundary, (52 FR 45788) December 1, 1987. (Checklist 44B).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR §§ 3321.E, 3321.E.1 and 3321.E.2, as amended July 20, 1991; effective July 20, 1991, and § 3322.C, September 20, 1994; effective September 20, 1994.
4. HSWA Codification Rule 2; Permit Modification, (52 FR 45788) December 1, 1987. (Checklist 44D).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 323.b.2.c.iii, as amended October 20, 1994; effective October 20, 1994.
5. HSWA Codification Rule 2; Permit as a Shield Provision, (52 FR 45788) December 1, 1987. (Checklist 44E).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 307.A, as amended March 20, 1995; effective March 20, 1995.
6. HSWA Codification Rule 2; Permits Conditions to Protect Human Health and the Environment, (52 FR 45788) December 1, 1987. (Checklist 44F).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 303.Q, as amended September 20, 1994; effective September 20, 1994.
7. Technical Correction to Checklist 23, Small Quantity Generators, (53 FR 27162–27163) July 19, 1988. (Checklist 47).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 3911 and § 3913, as amended October 20, 1994; effective October 20, 1994.
8. Farmer Exemptions; Technical Corrections, (53 FR 27164–27165) July 19, 1988. (Checklist 48).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR §§ 1101.A and 1101.C, as amended September 20, 1994; effective September 20, 1994, § 1501.C.4, as amended November 20, 1992; effective November 20, 1992, § 4307, as amended March 20, 1994; effective March 20, 1994, and § 305.C.3, as amended October 20, 1994; effective October 20, 1994.
9. Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, (53 FR 34079–34079) September 2, 1988. (Checklist 52).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 109, as amended October 20, 1994; effective October 20, 1994, § 3515, as amended July 20, 1994; effective July 20, 1994, §§ 1901.A, 1901.B, and 1907.F.3, as amended December 20, 1992; effective December 20, 1992, §§ 4377.B.2, and 4385, as amended July 20, 1990; effective July 20, 1990, §§ 4431.A.1 and 4431.A.2, as amended December 20, 1992; effective December 20, 1992, §§ 4437.F.3 and 4437.G.3.iii, as amended July 20, 1992; effective July 20, 1992, and § 4441, as amended March 20, 1989; effective March 20, 1989.
10. Mining Waste Exclusion I, (54 FR 36592) September 1, 1989. (Checklist 65).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 109. Hazardous Waste.2.a, as amended March 20, 1995; effective March 20, 1995, § 109.Hazardous Waste.2.c, as amended March 20, 1995; effective March 20, 1995, §§ 105.D.17, 105.D.17.a–e, and 105.D.17.f–t, as amended September 20, 1994; effective September 20, 1994.

Federal citation	State analog
11. Testing and Monitoring Activities, (54 FR 40260) September 29, 1989. (Checklist 67).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 303.A, as amended September 20, 1994; effective September 20, 1994, § 323.A,B, as amended October 20, 1994; effective October 20, 1994, § 703.C, as amended March 20, 1984; effective March 20, 1984, § 717.A, as amended May 20, 1991; effective May 20, 1991, Ch.49.App.A.Tbl 9, as amended October 20, 1994; effective October 20, 1994, and Ch.49.App.A.Tbl 10, as amended March 20, 1995; effective March 20, 1995.
12. Changes to Part 124 not Accounted for by Present Checklists, (48 FR 14146–14295) April 1, 1983, (48 FR 30113–30115) June 30, 1983, (53 FR 28118–28157) July 26, 1988, (53 FR 37396–37414) September 26, 1988, and (54 FR 246–258) January 4, 1989. (Checklist 70).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 303.A.1–4, as amended September 20, 1994; effective September 20, 1994, §§ 323.A, 323.B.2, 323.B.2.b and 323.B.3.a, as amended October 20, 1994; effective October 20, 1994, § 703.C.3, as amended March 20, 1984; effective March 20, 1984, and § 717.A.2–5, as amended May 20, 1991; effective May 20, 1991.
13. Testing and Monitoring Activities; Technical Corrections, (55 FR 8948) March 9, 1990. (Checklist 73).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 303.A, as amended September 20, 1994; effective September 20, 1994, § 323.A,B, as amended October 20, 1994; effective October 20, 1994, § 703.C, as amended March 20, 1984; effective March 20, 1984, § 717.A, as amended May 20, 1991; effective May 20, 1991, Ch.49.App.A.Tbl 9, as amended October 20, 1994; effective October 20, 1994, and Ch.49.App.A.Tbl 10, as amended March 20, 1995; effective March 20, 1995.
14. HSWA Codification Rule, Double Liners; Correction, (55 FR 19262–19264) May 9, 1990. (Checklist 77).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2903.J, and 2503.L, as amended March 20, 1995; effective March 20, 1995.
15. Organic Air Emission Standards for Process Vents and Equipment Leaks, (55 FR 25454–25519) June 21, 1990. (Checklist 79).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR §§ 4115.A, 4115.B.3, and 4115.C, as amended November 20, 1992; effective November 20, 1992, § 1519.B.7, as amended October 20, 1994; effective October 20, 1994, § 1509.B.4, as amended March 20, 1995; effective March 20, 1995, § 1529.B.6, September 20, 1994; effective September 20, 1994, § 1529.B.6, as amended March 20, 1995; effective March 20, 1995, § 1529.B.9, as amended March 20, 1995; effective March 20, 1995, § 1529.E.3, as amended September 20, 1994; effective September 20, 1994, § 1701, as amended July 20, 1991; effective July 20, 1991, § 1705.A–B, as amended September 20, 1994; effective September 20, 1994, §§ 1703, and 1707.A–D, as amended July 20, 1991; effective July 20, 1991, §§ 1709.A.1–L, 1711.A–F, and 1713.A.1–F, as amended September 20, 1994; effective September 20, 1994, § 1715.A–B, as amended July 20, 1991; effective July 20, 1991, § 1717.A–E, as amended September 20, 1994; effective September 20, 1994, §§ 1719.A.1–F, 1721.A–I.2, 1723.A–C, 1725.A–C, 1727.A.1–C, 1729.A–H.3, 1731.A–D, 1733.A–E, 1735, 1737.A–D, and 1739.A.1–B.4, as amended July 20, 1991; effective July 20, 1991, § 1741.A–I, as amended September 20, 1994; effective September 20, 1994, § 1743.A.1–M, as amended July 20, 1992; effective July 20, 1992, § 1745.A–B, as amended July 20, 1991; effective July 20, 1991, § 4313, as amended March 20, 1995; effective March 20, 1995, § 4357.B.3, as amended September 20, 1994; effective September 20, 1994, § 4357.B.6, March 20, 1995, § 4365.D, as amended July 20, 1991; effective July 20, 1991, § 4549.A–B.2, as amended September 20, 1994; effective September 20, 1994, § 4551; as amended July 20, 1991; effective July 20, 1991, § 1707.A–D, as amended July 20, 1991; effective July 20, 1991, §§ 517.G, 517.J.6–J.7, 517.J.9, 530–530.D.5, and 536–536.E.5, as amended November 20, 1992; effective November 20, 1992, § 4561.D, as amended September 20, 1994; effective September 20, 1994, and § 4563, as amended July 20, 1991; effective July 20, 1991.

C. Decision

I conclude that Louisiana's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Louisiana is granted final authorization to operate its hazardous waste program as revised. Louisiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments. Louisiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize Louisiana's program and for incorporation by reference of those provisions of Louisiana's Statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart T until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Louisiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure,

Confidential business information, Hazardous waste transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 6, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 95–25650 Filed 10–16–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–5314–9]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Louisiana's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Louisiana's hazardous waste program revision subject to the authority retained by EPA in accordance with Hazardous and Solid Waste Amendments of 1984. Louisiana's application for the program revision is available for public review and comment.

DATES: This authorization for Louisiana shall be effective January 2, 1996, unless EPA publishes a prior Federal Register (FR) action withdrawing this immediate final rule. All comments on Louisiana's program revision application must be received by the close of business December 1, 1995.

ADDRESSES: Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, (504) 765–0617 and U.S. EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone (214) 665–6444. Written comments, referring to Docket Number LA–95–3, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (PD–G), U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States authorized under section 3006(b) of the Resource Conservation and Recovery Act (''RCRA or the Act''), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268, and 270.

B. Louisiana

Louisiana initially received final authorization on February 7, 1985 (see 50 FR 3348), to implement its base hazardous waste management program. Louisiana received authorization for revisions to its program on January 29, 1990 (see 54 FR 48889), October 25, 1991 (see 56 FR 41958), and Corrections at (56 FR 51762), effective January 23, 1995 (see 59 FR 55368–55371), and Corrections at (60 FR 18360) and March 8, 1995 (see 59 FR 66200). On June 7, 1995, Louisiana submitted a final complete program revision application for additional program approvals. Today, Louisiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

In 1983, the Louisiana legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes 30:1051 et seq., the Environmental Affairs Act. This Act created the Louisiana Department of Environmental Quality (LDEQ), which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State.

EPA reviewed Louisiana's application and made an immediate final decision that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant authorization for the additional program modifications to Louisiana. The public may submit written comments on EPA's proposed final decision until December 1, 1995. Copies of LDEQ's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of LDEQ's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Louisiana's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264, 265, 266, and 270 that were published in the Federal Register from July 1988 through June 30, 1990. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption, (53 FR 27290–27302) July 19, 1988. (Checklist 49).	Louisiana Revised Statutes (LRS) 30: § 2180 et seq., as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) § 109, as amended October 20, 1994, effective October 20, 1994, §§ 105.D.37 and 105. D. 38 as amended September 20, 1994, effective September 20, 1994.

Federal citation	State analog
2. Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, (53 FR 34079–34087) September 2, 1988. (Checklist 52).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 109 as amended October 20, 1994, § 3515 as amended July 20, 1990, effective July 20, 1990, § 1901.A, and B, as amended December 20, 1992; effective December 20, 1992, § 1907.F.3, as amended July 20, 1990; effective July 20, 1990, § 4377.B.2 as amended March 20, 1995; effective March 20, 1995, § 4385, as amended July 20, 1990; effective July 20, 1990, § 4431.A, A.2 as amended December 20, 1992; effective December 20, 1992, §§ 4437.F.3, G.3.iii and 4441, as amended July 20, 1992; effective July 20, 1992.
3. Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities, (53 FR 39720–39731) October 11, 1988. (Checklist 55).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 3303.A.1, A.2, as amended November 20, 1992; effective November 20, 1992, § 3305.A, as amended July 20, 1990; effective July 20, 1990, §§ 3315.A.1–3. G–J, 3317.C, D, F–K, and 3319.C. D, F–L, as amended July 20, 1990; effective July 20, 1990.
4. Standards for Generators of Hazardous Waste, (53 FR 45089–45093) November 8, 1988. (Checklist 58).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 903.D, as amended April 20, 1991; effective April 1991, and § 1107.A, as amended October 20, 1994; effective October 20, 1994.
5. Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators, (54 FR 615–617) January 9, 1989. (Checklist 59).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 517.G, M, as amended November 20, 1992; effective November 20, 1992.
6. Amendment to Requirements for Hazardous Waste Incinerator Permits, (54 FR 4286–4288) January 30, 1989. (Checklist 60).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 3115.D, as amended November 20, 1992; effective November 20, 1992.
7. Mining Waste Exclusion II, (55 FR 2322–2354) January 23, 1990. (Checklist 71).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 109, as amended October 20, 1994; effective October 20, 1994, and § 105.D.17.A–T, as amended September 20, 1994, and § 1107.D.6, as amended October 20, 1994; effective October 20, 1994.
8. Modification of F019 Listing, (55 FR 5340–5342) February 14, 1990. (Checklist 72).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 4901.B Table 1, as amended September 20, 1994; effective September 20, 1994.
9. Criteria for Listing Toxic Wastes; Technical Amendment, (55 FR 18726) May 4, 1990. (Checklist 76).	LRS 30: 2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR § 4907.A.3., as amended May 20, 1991; effective May 20, 1991.

Louisiana is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that Louisiana's application for a program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Louisiana is granted final authorization to operate its hazardous waste program as revised. Louisiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize Louisiana's program and for incorporation by reference of those provisions of Louisiana's Statutes and regulations that EPA will enforce under section 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart T until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Louisiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 6, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 95–25651 Filed 10–16–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5314–8]

New Mexico: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of New Mexico has applied for authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) reviewed New Mexico's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve New Mexico's hazardous waste program revision subject to the authority retained by EPA

in accordance with Hazardous and Solid Waste Amendments of 1984. New Mexico's application for the program revision is available for public review and comment.

DATES: This authorization for New Mexico shall be effective January 2, 1996, unless EPA publishes a prior Federal Register (FR) action withdrawing this immediate final rule. All comments on New Mexico's program revision application must be received by the close of business December 1, 1995.

ADDRESSES: Copies of the New Mexico program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses: New Mexico Environment Department, 1190 St Francis Drive, Santa Fe, New Mexico 87502, and U.S. EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone (214) 665–6444. Written comments, referring to Docket Number NM–95–2, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States authorized under section 3006(b) of the Resource Conservation and Recovery Act (''RCRA or the Act''), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268, and 270.

B. New Mexico

New Mexico received authorization January 25, 1985, (see 50 FR 1515) to implement its base hazardous waste management program. New Mexico received authorization for revisions to its program on April 10, 1990 (see 55 FR 4604), July 25, 1990 (see 55 FR 28397), December 4, 1992 (see 57 FR 45717), August 23, 1994 (see 59 FR 29734), December 21, 1994 (see 59 FR 51122) and April 25, 1995 (see 60 FR 20238). The authorized New Mexico RCRA program was incorporated by reference to the Code of Federal Regulations (CFR), effective December 13, 1993 (see 58 FR 52677). On September 11, 1995, New Mexico submitted a final complete program revision application for additional program approvals. Today, New Mexico is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

On August 24, 1994, New Mexico promulgated 20 New Mexico Administrative Code (NMAC) 4.1 which adopts the July 1, 1993, version of 40 CFR part 261. Specifically, 20 NMAC 4.1, which became effective 30 days after filing on September 23, 1994, incorporates by reference 40 CFR part 261 at 20 NMAC 4.1.201. This is the version that is referred to in the Attorney General's Statement submitted with this program revision. Also, 20 NMAC 4.1.201 is inclusive of the identification and listing amendments to 40 CFR part 261 promulgated June 13, 1991, at 56 FR 27332; August 18, 1992, at 57 FR 37284; October 15, 1992, at 57 FR 47376; and December 24, 1992, at 57 FR 61492. New Mexico Statutes Annotated (NMSA) 1978, §§ 74–4–4A(1) and 74–4–4E (Replacement Pamphlet 1993) provides New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

New Mexico has statutory and regulatory authority to require corrective action for releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a permit, regardless of when the waste was placed in the unit. New Mexico incorporates 40 CFR 264 and 270 by reference, with few exceptions, at 20 NMAC 4.1.501, .502 and .901. The New Mexico citations are inclusive of the amendments to 40 CFR 264 and 270 promulgated July 15, 1985, at 50 FR 28702. NMSA 1978, §§ 74–4–4(A)(5)(h) and 74–4–4(E) provide New Mexico with the authority to adopt federal regulations by reference, including standards for taking corrective action. New Mexico has additional authority to require an owner or operator seeking a hazardous waste permit to take such corrective action pursuant to § 74–4–4.2 (B)(C). Section 74–4–10(E) provides New Mexico with authority to issue an order requiring corrective action for a facility seeking a permit where there is or has been a release of hazardous waste into the environment from a facility.

EPA reviewed New Mexico's application and made an immediate final determination that New Mexico's hazardous waste program revision satisfies all of the requirements necessary to qualify for authorization. Consequently, EPA intends to grant authorization for the additional program modifications to New Mexico. The public may submit written comments on EPA's proposed final decision until December 1, 1995. Copies of New Mexico's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of New Mexico's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

New Mexico's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264, 265, 266, and 270 that were published in the Federal Register through June 30, 1993. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. HSWA Codification Rule; Corrective Action, (50 FR 28702) July 15, 1985. Checklist 17L).	New Mexico Statutes Annotated (NMSA) 1978, §§ 74–4–4 (A) (5) (h), 74–4–4 (E), 74–4–4.2 (B) (C), §§ 74–4–4(a) (5) (i), 74–4–10.1 and 74–4–10 (E) (Replacement Pamphlet 1993); Hazardous Waste Management, New Mexico Environmental Improvement Board, 20 New Mexico Administrative Code (NMAC) 4.1.501, Subparts V, and IX, .501, .502 and .901 as amended September 23, 1994, effective September 23, 1994.
2. HSWA Codification Rule 2; Permit Application Requirements Regarding Corrective Action, (52 FR 45788) December 1, 1987. (Checklist 44A).	NMSA 1978, §§ 74–4–4 (A) (6) and 74–4–4 (E) and 74–4–4.2 (A) (Repl. Pamp. 1993); 20 NMAC 4.1.901 Subpart IX, as amended September 23, 1994, effective September 23, 1994.
3. HSWA Codification Rule 2; Corrective Action Beyond Facility Boundary, (52 FR 45788) December 1, 1987. (Checklist 44B).	NMSA 1978, §§ 74–4–4 (A) (5) (i), 74–4–4 (E), 74–4–4.2 (B), and 74–4–10 (E) (Repl. Pamp. 1993); 20 NMAC 4.1.501 Subpart V and .502, as amended September 23, 1994, effective September 23, 1994.
4. HSWA Codification Rule 2; Corrective Action for Injection Wells, (52 FR 45788) December 1, 1978. (Checklist 44C).	NMSA 1978, §§ 74–4–4 (A) (5) (f), (h) and (i), 74–4–4 (E) and 74–4–4.2(B) (Repl. Pamp. 1993); 20 NMAC 4.1.901, as amended December 1, 1987, effective December 1, 1987.

New Mexico is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that New Mexico's application for program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, New Mexico is granted authorization to operate its hazardous waste program as revised. New Mexico now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments. New Mexico also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize New Mexico's program and for incorporation by reference of those provisions of New Mexico's Statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart GG until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 6, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 95–25652 Filed 10–16–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 171

[CGD 94–010]

RIN 2115–AE75

Standards for Damage Stability of New Domestic Passenger Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the rules, on standards for damage stability, that it adopted on December 10, 1992. Amended rules are necessary to relieve certain vessels of an unforeseen regulatory burden. The amended rules will relieve those vessels of that burden and yet reduce the potential for capsizing and other casualties caused by inadequate damage stability.

DATE: This rule is effective on April 15, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA, 3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR Robert Holzman, Marine Technical and Hazardous Materials Division (G–MTH–3), room 1308, Coast Guard Headquarters; telephone (202) 267–2988, telefax (202) 267–4816.

SUPPLEMENTARY INFORMATION:

Drafting Information: The principal persons involved in the drafting of this final rule are LCDR Robert Holzman, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Patrick Murray, Project Counsel, Office of Chief Counsel.

Background and Purpose

Regulatory History

On February 13, 1990, the Coast Guard published (55 FR 5120) a notice of proposed rulemaking (NPRM) entitled Stability Design and Operational Regulations. During the 60-day comment period, the Coast Guard received 28 letters. Only 2 of the 28 included comments on the standards for damage stability of new domestic passenger vessels.

On September 11, 1992, the Coast Guard published (57 FR 41812) a final rule, also entitled Stability Design and Operational Regulations. This adopted standards from the proposed rule.

On December 10, 1992, the final rule went into effect. Soon afterward, the Coast Guard received inquiries on the appropriateness of the standards—then in 46 CFR 171.080 (e), now in (f)—for certain new domestic passenger vessels.

On July 7, 1993, the Coast Guard published (58 FR 36374) a notice to announce a public meeting on August 5, 1993. This meeting was to discuss what if any problems were being encountered in complying with the standards and what if any measures might be appropriate.

On August 5, 1993, at the public meeting, discussions occurred on the application of the standards to certain new domestic passenger vessels, especially those operating in protected and partially-protected waters. Comments indicated that some designers were encountering unexpected difficulties.

The Coast Guard believes that compliance with the current standards is feasible, and achievable with minimal changes in design. But it also believes that it can relax those standards on certain waters without degrading safety. This is consistent with the Coast Guard's goal of eliminating any differential induced by the Coast Guard between requirements that apply to U.S. vessels in international trade and those that apply to similar vessels in international trade that fly the flags of responsible foreign nations.

On August 27, 1993, therefore, in response to requests that it reconsider the standards to apply on certain waters, the Coast Guard published [58 FR 45264] a notice temporarily suspending § 171.080(e), for all vessels without SOLAS Passenger Ship Certificates, and reopening the comment period for 90 days. The delay would also allow further research by the Coast Guard into the application of the standards to new domestic passenger vessels.

On February 25, 1994, in response to the comments received, the Coast Guard published [59 FR 9099] a notice of intent to issue an NPRM and in definitely extended the temporary suspension of § 171.080(e), for all vessels without SOLAS Passenger Ship Certificates.

On August 10, 1994, the Coast Guard published [59 FR 40855] a second NPRM, with a request for comments and a notice of a public hearing, entitled Standards for Damage Stability of New Domestic Passenger Vessels. On September 30, 1994, the first public hearing occurred. During the 60-day comment period, the Coast Guard received one letter, which sought both a longer comment period and a second public hearing. The Coast Guard granted both requests.

On November 4, 1994, the Coast Guard published [59 FR 55232] a notice announcing the second public hearing and reopening the comment period. On December 1, 1994, the second public hearing occurred. During the 120-day comment period, the Coast Guard received 14 more letters for a total of 15.

Fourteen persons attended the first public hearing, where five of them delivered spoken comments. Four persons attended the second public hearing, where none of them delivered spoken comments.

Reasons for Reconsidering Standards for Damage Stability

Even as recently as February 13, 1990, the sudden growth in the number of excursion vessels and gambling vessels on protected and partially-protected waters, especially western rivers, was unforeseen. By December 10, 1992, therefore, when the current standards came into effect, further research into and investigation of the impact of the standards on these vessels had become necessary.

The Coast Guard extended its work with the Volpe Transportation Systems Center of the Department of Transportation (''Volpe Center'') to examine at least six more vessels as we had examined a number earlier in the regulatory process. The six vessels submitted for examination ply mainly protected and partially-protected waters; they include gambling vessels, a type not examined closely in the earlier study. The Coast Guard released a detailed analysis of the failures, design changes, and economic impact in September 1994, and a copy is available in the regulatory docket.

Discussion of Comments and Changes

The Coast Guard considered both written and spoken comments in the development of this final rule. There were 15 written comments submitted to the docket, and there were spoken comments from 5 people at the two public hearings.

Two commenters asked for an increase in the grace period for this rule, to protect designs currently on the drawing board. The standards in this rule have been before the public, with every prospect of getting adopted, for more than four years; this is generally more than enough time for prudent designers to integrate them into new designs. However, because they have changed over those four years, the Coast Guard here doubles the grace period from three months after publication to six months.

Two commenters still had some concern with clarifying the definitions of *watertight* and *weathertight* for use under this rule. As a result, the Coast Guard clarified them in new 46 CFR 171.080(d) (3) and (4). These definitions are consistent with current policy and rules.

Another commenter asked that vessels unable, because of the shallow depth of their operating areas, to sink or capsize be exempted from these standards. The Coast Guard generally agrees, but this type of allowance is the proper business of an equivalency ruling by the Coast Guard Marine Safety Center that will consider the particular features of every vessel.

One commenter said he did not like the designation, by rule, of areas as protected, partially-protected, and exposed, which is generally a matter for the Officer in Charge, Marine Inspection (OCMI). He stated that, since these designations can vary between ports, he would have to consult the OCMI ahead of the design to determine which areas the vessel would be plying. The Coast Guard agrees that the definitions of areas can vary from port to port. However, with his or her local knowledge the OCMI is the one best able to designate areas. And, regardless, a designer already must know his vessel's prospective route to meet the other standards in current rules.

Eight commenters expressed varying concerns with the vagueness of the proposed standard on passenger heeling moment. These concerns ranged from a belief that the same standard on heeling moment, applied to the same vessel, could make a vessel both pass and fail, to a belief that the wind heeling and passenger heeling moments should be applied simultaneously, not separately. The Coast Guard finds much merit in the commenters' concerns with the wording of this paragraph. The best solution is to remove the interpretive language from this section. In removing this language the Coast Guard has employed a liberal constant; this maintains the new formulation of the reworded paragraph in general agreement with the intent of the interpretive language. The reworded paragraph reduces the passenger heeling moment in paragraph (f)(4)(i) for all vessels used in the research by the Volpe Center (''Volpe study'').

One commenter asked for a further reduction of the heeling moments for specific types of vessels operating 20 or fewer miles from land. The Coast Guard

does not believe any further reduction of this standard is warranted. This position is borne out by the Volpe study as well as by comments from those who checked the proposed standards against designs of existing vessels.

Two commenters noted concerns with the application of passenger heeling moment to vessels that, because of their arrangements, do not have either port or starboard egress for passenger evacuation. These vessels generally do have either forward or aft egress, use of which would subject the vessel not to the transverse heeling moment but rather to a longitudinal trimming moment. The Coast Guard agrees that vessels with neither port nor starboard egress should be exempted from the requirement of transverse heeling moment and should be subject instead to one of longitudinal trimming moment. Therefore, a new paragraph (f)(5) gives vessels that fit this criterion the option of being exempt from the requirement of transverse heeling moment in (f)(4)(i) if they show enough longitudinal trimming moment during an equivalent forward or aft egress.

One commenter questioned the origin of the value of 7 degrees for the angle of equilibrium. As far as we can determine, this value was incorporated into domestic regulations and international standards more than fifty years ago, based on experience. It seems to have been a judgment call to define an acceptable safety margin and minimize passenger discomfort and panic that, through many years of satisfactory use, has proved acceptable.

One commenter asked why the value of righting area in paragraph (f)(6)(iii)(A) was 0.035 m-rad instead of 0.0175 m-rad, the latter value agreeing with the value in the load-line rules in 46 CFR subpart 42.20. The value in 46 CFR subpart 42.20 does not have the same basis as the one here and applies to a wider range of vessels with varying services. An increase of 8 degrees in the allowable angle of equilibrium for a passenger vessel, due to an increase in the righting area of only 0.0025 m-rad from the standard 0.015 m-rad, is unacceptable. The increase of 0.020 m-rad is acceptable, and is equivalent for the increase of 8 degrees in the allowable angle of equilibrium. Still, the Coast Guard does acknowledge merit in a requirement that a vessel with an increase of only 2 degrees in the final angle of equilibrium has to achieve only an equivalent increase in the righting-arm area rather than an increase of the full 0.20 rad. So the Coast Guard has changed this paragraph to allow a corresponding increase in the area for those vessels with an increase in the final angle of equilibrium.

One commenter opposed the values for righting area and range of stability—given in paragraph (f)(8), for intermediate stages of flooding—on the grounds that these values are much more stringent than those for the final stage of flooding. The Coast Guard generally checks intermediate stages of flooding only for those vessels whose stability is marginal or whose stability, because of their arrangement, may be critical during intermediate stages of flooding. The Coast Guard agrees that these values should reflect the reduced value used in paragraph (f)(1), and has changed the values in (f)(9) to correspond with those in (f)(1).

One commenter expressed concern over the standards for oceanographic vessels sailing on international voyages but not carrying SOLAS Certificates. The Coast Guard has clarified the wording to show that these vessels would have to meet the requirements in paragraph (f).

One commenter ventured that the proposed rule might adversely affect safety in a material way. The Coast Guard disagrees and has determined that the current (suspended) standards can be relaxed without degrading safety. Those standards provided no increased increment of safety for vessels operating on protected and partially protected waters, and imposed unnecessary cost.

One commenter argued that the Coast Guard used the current (suspended) rule as a datum against which to measure costs and that the Coast Guard should not have. The commenter is right in the first part but wrong in the second. The Coast Guard had already justified the costs of the current (suspended) rule. The proposed rule, made final here, stands much closer to the current (suspended) rule than to the predecessor of that rule. So that rule, rather than its predecessor, represents the proper point of departure for evaluating this rule.

One commenter alleged that the proposed rule would affect vessels under contract with a value of $334.5m; that, therefore, its effect on the economy would exceed $100m; and that, therefore, it constituted a ''significant regulatory action'' within the terms of Executive Order 12866. But the correct measure is the marginal effect of the rule, not the value of the property affected. Otherwise, the Office of Management and Budget (OMB) would have to accord full scrutiny to the most minor of changes to regulations simply because they affect property with a high value.

One commenter criticized as ''incomprehensible'' the ''choice'' of the Coast Guard not to review the proposed rule under Executive Order 12866. But, when the preamble stated [at 59 FR 40857] that the proposed rule had ''not been reviewed under E.O. 12866'', it meant just that the rule—not being a ''significant regulatory action'' under the terms of the Order itself—had not been reviewed by the OMB.

Three commenters offered sound advice toward improvements to the rule, using, for example, roll dynamics. However, because this project is at the stage of final rule, we cannot accomplish these improvements (without reopening the rulemaking for public comment, again). These comments will be considered for possible future rulemaking.

Three commenters also addressed the general application and implications of these rules. Remarks ranged from opposition to any reduction of standards to an objection to the imposition of any standards. Each of these remarks possessed more or less merit. However, the Coast Guard, having entertained all responses to the proposed rule, considers that the final rule embodies hard-fought, necessary, legal, achievable, and acceptable standards for the damage stability of new passenger vessels.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the OMB. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation [DOT Order 2100.5 (May 22, 1980)]. Nonetheless, a Regulatory Evaluation is available in the docket for inspection or copying where indicated under **ADDRESSES**.

The marine industry will realize an estimated annual benefit of $250,000 as a result of this rule. There is no cost associated with this rule, which reduces the number of vessels affected by current rules.

Small Entities

The Coast Guard has determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule will not increase the paperwork burden on the public. The only paperwork involves ship-design calculations used in the development of stability information, and this information is already subject to review by the Coast Guard under 46 CFR 170.110. The Coast Guard previously sought approval for its collection of this information, developed from these and other calculations, from OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*); and the OMB granted approval. The applicable control numbers from OMB are 2115–0095, 2115–0114, 2115–0130, and 2115–0131.

Federalism

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

This rule will establish standards for damage stability of new domestic passenger vessels. The authority to establish these standards in all navigable waters of the United States is committed to the Coast Guard by Federal statutes. Furthermore, since passenger vessels often move from port to port in the national and international marketplace, standards for them should be of at least national scope to avoid unreasonably burdensome variances. Therefore, the Coast Guard intends this rule to preempt State action addressing these standards.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.c of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule requires minimal standards for damage stability of new domestic passenger vessels. It will not govern how potential pollutants or hazardous materials are carried on board these vessels, though stabler vessels should reduce the number of uncontrolled releases of pollutants or hazardous materials into the environment. It does not result in any—

1. Significant cumulative impacts on the human environment;
2. Substantial controversy or substantial change to existing environmental conditions;
3. Impacts more than minimal on properties protected under sub-§ 4(f) of the DOT Act as superseded by Public Law 97–449, or under § 106 of the National Historic Preservation Act; or
4. Inconsistencies with any Federal, State, local, or tribal laws or administrative determinations relating to the environment.

A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under **ADDRESS**.

List of Subjects in 46 CFR Part 171

Marine safety, Passenger vessels.

For the reasons set out in this preamble, the Coast Guard proposes to amend 46 CFR part 171 as follows:

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

1. The citation of authority for Part 171 is revised to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. In section 171.080, paragraph (f) is redesignated as paragraph (h), paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), new paragraphs (d) and (g) are added, and newly designated paragraphs (e) introductory text and (f) are revised to read as follows:

§ 171.080 Damage stability standards for vessels with Type I or Type II subdivision.

* * * * *

(d) *Definitions.* For the purposes of paragraphs (e) and (f) of this section, the following definitions apply:

(1) *New vessel* means a vessel—

(i) For which a building contract is placed on or after April 15, 1996;

(ii) In the absence of a building contract, the keel of which is laid, or which is at a similar stage of construction, on or after April 15, 1996;

(iii) The delivery of which occurs on or after January 1, 1997;

(iv) Application for the reflagging of which is made on or after January 1, 1997; or

(v) That has undergone—

(A) A major conversion for which the conversion contract is placed on or after April 15, 1996;

(B) In the absence of a contract, a major conversion begun on or after April 15, 1996; or

(C) A major conversion completed on or after January 1, 1997.

(2) *Existing vessel* means other than a new vessel.

(3) *Watertight* means capable of preventing the passage of water through the structure in any direction under a head of water for which the surrounding structure is designed.

(4) *Weathertight* means capable of preventing the penetration of water, even boarding seas, into the vessel in any sea condition.

(e) *Damage survival for all existing vessels except those vessels authorized to carry more than 12 passengers on an international voyage requiring a SOLAS Passenger Ship Safety Certificate.* An existing vessel is presumed to survive assumed damage if it meets the following conditions in the final stage of flooding:

* * * * *

(f) *Damage survival for all new vessels except those vessels authorized to carry more than 12 passengers on an international voyage requiring a SOLAS Passenger Ship Safety Certificate.* A new vessel is presumed to survive assumed damage if it is shown by calculations to meet the conditions set forth in paragraphs (f) (1) through (7) of this section in the final stage of flooding and to meet the conditions set forth in paragraphs (f) (8) and (9) of this section in each intermediate stage of flooding. For the purposes of establishing boundaries to determine compliance with the requirements in paragraphs (f) (1) through (9), openings that are fitted with weathertight closures and that are not submerged during any stage of flooding will not be considered downflooding points.

(1) Each vessel must have positive righting arms for a minimum range beyond the angle of equilibrium as follows:

Vessel service	Required range (degrees)
Exposed waters, oceans, or Great Lakes winter	15
Partially protected waters or Great Lakes summer	10
Protected waters	5

(2) No vessel may have any opening through which downflooding can occur within the minimum range specified by paragraph (f)(1) of this section.

(3) Each vessel must have an area under each righting-arm curve of at least 0.015 meter-radians, measured from the angle of equilibrium to the smaller of the following angles:

(i) The angle at which downflooding occurs.

(ii) The angle of vanishing stability.

(4) Except as provided by paragraph (f)(5) of this section, each vessel must have within the positive range the greater of a righting arm (GZ) equal to or greater than 0.10 meter or a GZ as calculated using the formula:

$$GZ(m) = C\left(\frac{\text{Heeling Moment}}{\Delta} + 0.04\right)$$

where—
C=1.00 for vessels on exposed waters, oceans, or Great Lakes winter;
C=0.75 for vessels on partially protected waters or Great Lakes summer;
C=0.50 for vessels on protected waters;
Δ=intact displacement; and
Heeling moment=greatest of the heeling moments as calculated in paragraphs (f)(4) (i) through (iv) of this section.

(i) The passenger heeling moment is calculated using the formula:

Passenger Heeling Moment=0.5 (n w b)
where—
n=number of passengers;
w=passenger weight = 75 kilograms; and
b=distance from the centerline of the vessel to the geometric center on one side of the centerline of the passenger deck used to leave the vessel in case of flooding.

(ii) The heeling moment due to asymmetric escape routes for passengers, if the vessel has asymmetric escape routes for passengers, is calculated assuming that—

(A) Each passenger weighs 75 kilograms;

(B) Each passenger occupies 0.25 square meter of deck area; and

(C) All passengers are distributed, on available deck areas unoccupied by permanently affixed objects, toward one side of the vessel on the decks where passengers would move to escape from the vessel in case of flooding, so that they produce the most adverse heeling moment.

(iii) The heeling moment due to the launching of survival craft is calculated assuming that—

(A) All survival craft, including davit-launched liferafts and rescue boats, fitted on the side to which the vessel heels after sustained damage, are swung out if necessary, fully loaded and ready for lowering;

(B) Persons not in the survival craft swung out and ready for lowering are distributed about the centerline of the vessel so that they do not provide additional heeling or righting moments; and

(C) Survival craft on the side of the vessel opposite that to which the vessel heels remain stowed.

(iv) The heeling moment due to wind pressure is calculated assuming that—

(A) The wind exerts a pressure of 120 Newtons per square meter;

(B) The wind acts on an area equal to the projected lateral area of the vessel above the waterline corresponding to the intact condition; and

(C) The lever arm of the wind is the vertical distance from a point at one-half the mean draft, or the center of area below the waterline, to the center of the lateral area.

(5) Each vessel whose arrangements do not generally allow port or starboard egress may be exempted, by the Commanding Officer, Marine Safety Center, from the transverse passenger heeling moment required by paragraph (f)(4)(i) of this section. Each vessel exempted must have sufficient longitudinal stability to prevent immersion of the deck edge during forward or aft egress.

(6) Each vessel must have an angle of equilibrium that does not exceed—

(i) 7 degrees for flooding of one compartment;

(ii) 12 degrees for flooding of two compartments; or

(iii) A maximum of 15 degrees for flooding of one or two compartments where—

(A) The vessel has positive righting arms for at least 20 degrees beyond the angle of equilibrium; and

(B) The vessel has an area under each righting-arm curve, when the equilibrium angle is between 7 degrees and 15 degrees, in accordance with the formula:

$$A \geq 0.0025(\theta - 1)$$

where—
A=Area required in m-rad under each righting-arm curve measured from the angle of equilibrium to the smaller of either the angle at which downflooding occurs or the angle of vanishing stability.
θ=actual angle of equilibrium in degrees

(7) The margin line of the vessel must not be submerged when the vessel is in equilibrium.

(8) Each vessel must have a maximum angle of equilibrium that does not exceed 15 degrees during intermediate stages of flooding.

(9) Each vessel must have a range of stability and a maximum righting arm during each intermediate stage of flooding as follows:

Vessel service	Required range (degrees)	Required maximum righting arm
Exposed waters, oceans, or Great Lakes winter	7	0.05 m
Partially-protected waters or Great Lakes summer	5	0.035 m
Protected waters	5	0.035 m

Only one breach in the hull and only one free surface need be assumed when meeting the requirements of this paragraph.

(g) *Damage survival for vessels authorized to carry more than 12 passengers on an international voyage requiring a SOLAS Passenger Ship Safety Certificate.* A vessel is presumed to survive assumed damage if it is shown by calculations to comply with the damage stability required for that vessel by the International Convention for the Safety of Life at Sea, 1974, as amended, chapter II–1, part B, regulation 8.

* * * * *

Dated: October 4, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–25711 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 101195B]

Groundfish of the Gulf of Alaska; Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod for the inshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 11, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for the inshore component in the Central Regulatory Area was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8470, February 14, 1995) as 41,085 metric tons (mt). The inshore component fishery was previously closed (60 FR 15521, March 24, 1995). That closure was terminated on September 1, 1995 (60 FR 46067, September 5, 1995).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allocation of Pacific cod total allowable catch for the inshore component in the Central Regulatory Area soon will be reached. The Regional Director established a directed fishing allowance of 39,585 mt, with consideration that 1,500 mt will be taken as incidental catch in directed fishing for other species in the Central Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by operators of vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: October 11, 1995.

Richard W. Surdi,

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

[FR Doc. 95–25641 Filed 10–11–95; 5:09 pm]

BILLING CODE 3510–22–F

50 CFR Part 677

[Docket No. 950929240–5240–01; I.D. 092195B]

North Pacific Fisheries Research Plan; Amendment to Final 1995 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final specifications for 1995; amendment.

SUMMARY: NMFS issues an amendment to the North Pacific Fisheries Research Plan (Research Plan) final specifications for 1995. The specifications are used to calculate fees to be paid by participants in the Gulf of Alaska groundfish fishery, Bering Sea and Aleutian Islands (BSAI) management area groundfish fishery, BSAI area king and Tanner crab fisheries, and Pacific halibut fishery in convention waters off Alaska (Research Plan fisheries). This action clarifies the standard ex-vessel price used to calculate the 1995 fee assessment for all BSAI blue king crab fisheries.

EFFECTIVE DATE: October 11, 1995.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION: The 1995 Research Plan final specifications were published in the Federal Register on December 1, 1994 (59 FR 61556). Standard ex-vessel prices for species harvested in Research Plan fisheries are included in the specifications and are used to calculate Research Plan fees. The final specifications for 1995 include a standard ex-vessel price for St. Matthew Island blue king crab but do not include a standard ex-vessel price for Pribilof Island blue king crab. When the final specifications were published, a Pribilof Island blue king crab fishery opening was not anticipated. The Alaska Department of Fish & Game, the managing agency for BSAI king and Tanner crab, recently notified the crab industry of a September 15, 1995, Pribilof red and blue king crab fishery opening. This action clarifies that the blue king crab 1995 standard ex-vessel price for St. Matthew Island blue king crab also applies to other BSAI blue king crab fisheries. This price will be used in accordance with regulations at 50 CFR 677.6(b)(iii) to calculate a Research Plan fee. The amended 1995 standard ex-vessel prices for BSAI king crab are:

King crab species	Price per pound, round weight ($/lb)
Bristol Bay red	5.00
Adak red	5.00
Pribilof red	6.80
Norton Sound red	2.20
Blue	4.30
Dutch Harbor brown	3.00
Adak brown	3.00
Lithodes cousei	2.00

Classification

The Assistant Administrator for Fisheries, NMFS, for good cause finds, under 5 U.S.C. 553(b)(B), that prior notice and an opportunity for public comment are unnecessary because this rule merely clarifies that an existing specification, issued pursuant to such procedures, applies throughout the fishery. Further, due to the fact that the Pribilof Island blue crab fishery opened on September 15, the need to provide industry with clear instructions that reflect the 1995 fee collection program authorized under the Research Plan, constitutes good cause to waive the 30-day delay in effective date under 5 U.S.C. 553(d)(2).

This action is taken under authority of 50 CFR 677.11, as published at 59 FR 46126, September 6, 1994, and is exempt from review under E.O. 12866.

Dated: October 10, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 95–25613 Filed 10–11–95; 5:09 pm]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 200
Tuesday, October 17, 1995

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AH17

Separate Maintenance Allowance for Duty at Johnston Island

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations that would change the method for setting separate maintenance allowance (SMA) rates for duty at Johnston Island. Under the proposed method, SMA rates for Johnston Island would be set at the same amount and adjusted at the same time as SMA rates established by the Department of State for employees who receive an SMA in foreign areas.

DATES: Comments must be received on or before December 18, 1995.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415 or FAX: (202) 606–0824.

FOR FURTHER INFORMATION CONTACT: Roger M. Knadle, (202) 606–2858.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing proposed regulations at the request of the Department of Defense to change the method for setting separate maintenance allowance (SMA) rates. An SMA is paid to employees assigned to Johnston Island to help meet the additional expense of maintaining family members elsewhere who would normally reside with the employee.

Johnston Island is a possession of the United States in the Pacific Ocean. It is a non-foreign post of duty located 717 nautical miles southwest of Honolulu, Hawaii. It is about 3 kilometers long and 0.8 kilometer wide. Much of the island is devoted to chemical weapon storage and disposal facilities. Because of hazardous conditions (toxic waste) and the lack of facilities, family members are not allowed on the island.

Civilian employees assigned to *foreign* areas who are precluded from establishing a residence because of local living conditions or Federal policy are authorized an SMA established by the Department of State that is periodically updated based on the Consumer Price Index (CPI) and budgetary considerations. The proposed regulations would abolish the current SMA rates established by OPM regulations and would provide that SMA rates for Johnston Island be set and adjusted at the same time and in the same amount as SMA rates established by the *Standardized Regulations (Government Civilians, Foreign Areas)* of the Department of State for employees in foreign areas. This would maintain equity between civilian employees assigned to foreign and non-foreign areas. The proposed regulations would apply only to Federal civilian employees assigned to Johnston Island.

The revised SMA rates would be adjusted on the first day of the first pay period beginning on or after the effective date of the final OPM regulations. Subsequently, the SMA rates would be adjusted on the first day of the first pay period beginning on or after the effective date of SMA rate adjustments under the Department of State's *Standardized Regulations (Government Civilians, Foreign Areas).* The proposed change in methodology for setting SMA rates would not be retroactive.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would 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.
James B. King,
Director.

Accordingly, OPM is amending part 591 of title 5 of the Code of Federal Regulations as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Supart D—Separate Maintenance Allowance for Duty at Johnston Island

1. The authority citation for subpart D of part 591 is revised to read as follows:

Authority: 5 U.S.C. 5942a(b), 5942a note; E.O. 12822, 57 FR 54289, 3 CFR, 1992 Comp., p. 325.

2. In § 591.401, paragraph (a) is revised to read as follows:

§ 591.401 Purpose and applicability.

(a) *Purpose.* This subpart prescribes the regulations required by section 5942a of title 5, United States Code, to authorize payment of a separate maintenance allowance to assist an employee assigned to Johnston Island to meet the additional expenses of maintaining family members elsewhere who would normally reside with him or her because they cannot accompany the employee to Johnston Island. This subpart provides rules for determining which employees are eligible to receive the separate maintenance allowance, who qualifies as family members under the program, the method of payment, and payment amounts.

* * * * *

3. Section 591.402 is revised to read as follows:

§ 591.402 Definitions.

Adult, a term used in the Department of State *Standardized Regulations (Government Civilians, Foreign Areas*), means a family member who is 21 years of age or older.

Family member means one or more of the following relatives of an employee who would normally reside with the employee except for circumstances warranting the granting of a separate maintenance allowance, but who does not receive from the Government an allowance similar to that granted to the employee and who is not deemed to be a family member of another employee for the purpose of determining the amount of a separate maintenance allowance or similar allowance:

(1) Children who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support, including natural children, step and adopted children, and those under legal guardianship or custody of the employee or the spouse when they are

expected to be under such legal guardianship or custody at least until they reach 21 years of age and when dependent upon and normally residing with the guardian;

(2) Parents (including step and legally adoptive parents) of the employee or of the spouse when such parents are at least 51 percent dependent on the employee for support;

(3) Sisters and brothers (including step or adoptive sisters and brothers) of the employee or of the spouse, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support; or

(4) Spouse, excluding a spouse independently entitled to and receiving a similar allowance.

Johnston Island, also called Johnston Atoll, is a possession of the United States located 717 nautical miles southwest of Honolulu, Hawaii.

Separate maintenance allowance means an allowance to assist an employee assigned to Johnston Island who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at Johnston Island, or for the convenience of the Government, to meet the additional expense of maintaining family members at a location other than Johnston Island.

4. Section 591.403 is revised to read as follows:

§ 591.403 Amount of payment.

(a) The annual rate of the separate maintenance allowance paid to an employee shall be determined by the number of individuals, including a spouse and/or one or more other family members, that are maintained at a location other than Johnston Island.

(b) The annual rates for the separate maintenance allowance paid to employees assigned to Johnston Island shall be the same as the annual rates for the separate maintenance allowance established by the Department of State in its *Standardized Regulations (Government Civilians, Foreign Areas)*. The annual rates shall not vary by location of the separate household.

(c) The annual rates of the separate maintenance allowance shall be adjusted on the first day of the first pay period beginning on or after [*insert effective date of final regulations*] and, subsequently, on the first day of the first pay period beginning on or after the effective date established for adjustment of annual rates for the separate maintenance allowance in the *Standardized Regulations (Government Civilians, Foreign Areas)*.

5. Section 591.405 is revised to read as follows:

§ 591.405 Responsibilities of agencies.

Agencies with employees stationed at Johnston Island may require reasonable verification of relationship and dependency.

[FR Doc. 95–25647 Filed 10–16–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Office of Finance and Management

7 CFR Parts 3015, 3016, and 3050

Audit Requirements for OMB Circular A–128

AGENCY: Office of Finance and Management, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule simplifies USDA audit requirements for State, local, and Indian Tribal governments that receive USDA financial assistance or cost-type contracts and defines USDA responsibilities for implementing and monitoring those requirements.

DATES: Comments must be submitted on or before December 18, 1995.

ADDRESSES: Comments may be mailed to Lennetta Elias, Audit Liaison Team, Federal Assistance and Fiscal Policy Division, Office of Finance and Management, Room 3031 South Building, 14th and Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Lennetta Elias on (202) 720–0979.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule was reviewed under Executive Order 12866 and it was determined that it is not a significant regulatory action. This proposed rule will not have an annual effect on the national economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Executive Order 12612

USDA evaluated this proposed rule under Executive Order 12612, pertaining to Federalism. This proposed rule will affect State, local, and Indian Tribal governments receiving financial assistance. This proposed rule will increase their administrative discretion with regard to the conduct of audits. For this reason, USDA has determined that this proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12778

The following information is given in compliance with Executive Order 12778. All State and local laws and regulations that are in conflict with this proposed rule are preempted. No retroactive effect is to be given to this. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Flexibility Act

This proposed rule was reviewed with regard to the requirements of Public Law (Public Law 96–354. The Department of Agriculture (USDA) certifies that this proposed rule will not, under the criteria of the Regulatory Flexibility Act, have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the covered programs, but rather simplifies and consolidates administrative and procedural requirements.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), any applicable reporting and recordkeeping provisions required by this proposed rule must be submitted to the Office of Management and Budget (OMB) and will not be effective until OMB approves them. USDA certifies that this proposed rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

Background

This proposed rule amends title 7, Code of Federal Regulations (CFR), parts 3015 and 3016. The single audit requirements found in §§ 3015.70 through 3015.76 of subpart I, part 3015, are moved to 7 CFR part 3050, Audits of State, local, and Indian Tribal governments. Sections 3015.70 through 3015.76 of Subpart I are reserved for future use. Section 3015.1 is revised to delete the audit provisions. As identified in OMB Circular A–133

''Audits of Institutions of Higher Education and Other Nonprofit Institutions of Higher Education and Other Nonprofit Institutions,'' USDA proposes to include in the coverage of this rule Federal cost-type contracts used to buy services or goods for the use of the Federal Government. A reference is added to 7 CFR 3016.26, subpart C, citing USDA's regulations that implement OMB Circular A–128, Audits of State and local governments, dated April 12, 1984.

USDA issued its final rule to implement the Single Audit Act (7 CFR part 3015, subpart I) on January 14, 1986 (51 FR 1485). Since that time, there have been concerns expressed that USDA's rule was unduly complicated and difficult to interpret. Although the requirements set forth in 7 CFR part 3015, subpart I, remain the same, this proposed rule simplifies the language for easier implementation by State, local, and Indian Tribal governments. This proposed rule also moves the audit requirements from 7 CFR part 3015, subpart I to 7 CFR part 3050. Until this proposed rule becomes final, the audit requirements for State, local and Indian Tribal governments set forth in 7 CFR part 3015, Subpart I, shall continue to be observed.

List of Subjects

7 CFR Part 3015

Accounting, Grant programs—Agriculture, Indians, Insurance, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surety bonds.

7 CFR Part 3016

Accounting, Grant programs—Agriculture, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

7 CFR Part 3050

Accounting, Indians, Intergovernmental relations, Grant program—Agriculture.

Issued at Washington, D.C.
Approved: September 21, 1995.

Anthony A. Williams,
Chief Financial Officer.

Dan Glickman,
Secretary of Agriculture.

For the reasons set forth in the preamble, title 7, chapter XXX of the Code of Federal Regulations is proposed to be amended as follows:

PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS

1. The authority citation for part 3015 continues to read as follows:

Authority: 5 U.S.C. 301.

2. Subpart I, consisting of § 3015.70 through 3015.76 and Appendixes A and B is removed and reserved.

3–4. Section 3015.1, paragraphs (a)(2) and (b), are revised to read as follows:

Subpart A—General

§ 3015.1 Purpose and scope of this part.

(a) * * *

(2) Additionally, this subpart establishes intergovernmental review provisions required by Executive Order 12372 for any programs listed in the Federal Register as covered and policy on competition in awarding discretionary grants and cooperative agreements.

* * * * *

(b) These rules supersede and take precedence over individual USDA agency regulations and directives dealing with the administration of grants and cooperative agreements to the extent such regulations and directives are inconsistent with this part, unless such inconsistency is based on a statutory provision or an exception has been obtained from OMB. (See § 3015.3) Definitions for the terms used are set forth in Appendix A in this part.

* * * * *

PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

5. The authority citation for part 3016 continues to read as follows:

Authority: 5 U.S.C. 301.

2. Section 3016.26 is revised to read as follows:

§ 3016.26 Non-Federal audit.

(a) *Basic rule.* Recipients and subrecipients are responsible for obtaining audits in accordance with USDA's implementing regulations set forth in 7 CFR parts 3050 and 3051.

(b) Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State, local, and Indian Tribal governments are not required to have a single audit performed. State, local and Indian Tribal governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds.

6. A new part 3050 is added to read as follows:

PART 3050—AUDITS OF STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS

Sec.
3050.1 Purpose.
3050.2 Policy.
3050.3 Scope.
3050.4 Definitions.
3050.5 Basic requirements.
3050.6 Assignment of responsibilities.
Appendix A to Part 3050—OMB Circular A–128, Audits of State and Local Governments

Authority: 5 U.S.C. 301 and 31 U.S.C. 7505.

§ 3050.1 Purpose.

This part establishes audit requirements for State, local, and Indian Tribal governments that receive from USDA direct (receipient) or indirect (subrecipient) financial assistance or cost-type contracts used to buy service or goods for the use of the Federal Government, and assigns USDA agency responsibilities for implementing and monitoring those requirements. Additionally, this part implements the audit requirements and policies contained in OBM Circular A–128, ''Audits of State and Local Governments.''

§ 3050.2 Policy.

USDA requires audits from those governmental entities that receive financial assistance or cost-type contracts from USDA awarding agencies and that are subject to the requirements of OMB Circular A–128, included herein as appendix A of this part.

§ 3050.3 Scope.

This part applies whenever USDA provides financial assistance or cost-type contracts directly or indirectly to State, local, and Indian Tribal governments. USDA Office of Finance and Management (OFM) must approve any proposed exception to or deviation from this part. Any approved exceptions to this part based on statute, or other approved deviations, will be promulgated through USDA agency-specific program regulations. The required audits will expand on the traditional financial statement audit by requiring additional work on internal control systems, compliance testing, and reporting on the Federally assisted programs.

§ 3050.4 Definitions

Exclusive of the definitions contained in appendix A of this part, the following definitions apply.

Agency means an organizational entity of USDA (e.g., the Forest Service) that reports to the Secretary of Agriculture, is recognized by the USDA

Office of Personnel as an agency, and is included on USDA's list of agencies.

Awarding agency means the USDA agency awarding financial assistance or cost-type contracts to a recipient.

Financial assistance means assistance provided by a USDA awarding agency in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food stamps and food commodities, interest subsidies, insurance, direct appropriations or cost-type contracts, but does not include direct Federal cash assistance to individuals.

General oversight means where an audit agency has not been assigned cognizance, the Office of Inspector General (OIG) for Federal Agencies with the predominant amount of Federal funding shall provide technical assistance to the State, local, and Indian Tribal governments. Where there is no direct funding, OIG for Federal Agencies having the predominant indirect funding provide the general oversight responsibilities.

Lead agency means either the USDA awarding agency providing the majority of financial assistance or cost-type contracts to State, local, or Indian Tribal governments or a specific USDA awarding agency with a special program interest or other established relationship.

Recipient means a State, local, or Indian Tribal government that receives financial assistance or cost-type contracts directly from USDA.

§ 3050.5 Basic requirements.

(a) USDA requires an audit from State, local Indian Tribal government under the following conditions:

(1) *Mandatory.* State, local Indian Tribal governments that receive $100,000 or more of total financial assistance or cost-type contracts during a fiscal year shall have an audit in accordance with the requirements of appendix A of this part.

(2) *Optional.* State, local Indian Tribal governments that receive between $25,000 and $100,000 of total financial assistance or cost-type contracts during a fiscal year shall have either an audit in accordance with this part or a program-specific audit performed in accordance with the relevant USDA awarding agency laws and regulations governing individual programs. Program-specific audits shall be performed in accordance with the Government Auditing Standards covering financial audits issued by the Comptroller General of the United States. In addition, the program-specific audit shall be performed in accordance with any applicable USDA audit guide, compliance tests contained in the OMB Compliance Supplement for the specific program involved, and any program-specific audit regulations. If the program is not covered by paragraphs (a)(1) through (a)(3) of this section, the auditor shall design appropriate compliance tests to review program operations in accordance with the Government Auditing Standards.

(3) *Exclusion.* State, local Indian Tribal governments that receive less than $25,000 in total financial assistance or cost-type contracts in a fiscal year are exempt from compliance with Federal audit requirements. However, records must be available for review by appropriate officials of USDA, the General Accounting Office (GAO), or a subgranting entity. These entities shall be governed by the audit requirements prescribed by State, local, or Indian Tribal government laws or regulations.

(b) Nothing in this part exempts State, local, or Indian Tribal governments from maintaining records of financial assistance or cost-type contracts and/or from providing access to such records to Federal Agencies, as provided for in Federal law, program regulations, or in 7 CFR part 3016.

(c) It is not intended that audits required by this part be separate and apart from audits performed in accordance with State, local, or Indian Tribal government laws. To the extent feasible, the audit work required by this part should be done in conjunction with those audits.

(d) An audit made in accordance with this part shall be in lieu of any financial audit required under individual USDA awards. To the extent that an audit made in accordance with this part provides USDA agencies with the information and assurances they need to carry out their overall responsibility, they shall rely upon and use such information. However, a USDA agency shall make any additional audits or reviews necessary to carry out responsibilities under Federal law and regulation. Any additional USDA audits or reviews shall be planned and carried out in such a way as to build upon work performed by the independent auditor.

§ 3050.6 Assignment of responsibilities.

(a) OFM shall:

(1) Assure USDA awarding agency implementation and compliance with this part; and

(2) Coordinate, consolidate, and prepare any reports on the effectiveness of implementing this part.

(b) Each USDA awarding agency shall:

(1) Assure that governmental entities implement and comply with this part.

(2) Require as a term of any USDA financial assistance or cost-type contracts to State, local, and Indian Tribal governments that single audits be conducted in a timely manner in accordance with the requirements of this part, and be submitted to a designated official in the USDA awarding agency and the OMB assigned cognizant agency, if one has been assigned, and OIG. The audit report shall be due within 30 days after the completion of the audit. The audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to between the cognizant or awarding agency and the recipient.

(3) Require that the recipient maintain records to identify the source and amounts of financial assistance or cost-type contracts received by using the Catalog of Federal Domestic Assistance numbers.

(4) Provide a copy of this part to recipients or subrecipients, upon request.

(5) Ensure required audits are conducted and audit reports are received from recipients or subrecipients, upon request.

(6) Determine if an audit report adequately addresses the agency's needs. If not, determine if a followup audit is necessary and advise OIG.

(7) Ensure that appropriate action is taken on all audit findings and recommendations pursuant to the Supplemental Appropriations and Rescission Act of 1980 (Public Law 96–304, 94 Stat. 857); OMB Circular A–50, ''Audit Followup;'' and Departmental Regulation 1720–1 which prescribes USDA's internal process for audit followup, management decisions, and final action.

(8) Coordinate with the recipient to seek corrective action on system deficiencies and resolution of other cross-cutting issues identified in the audit. Seek the views of affected Federal Agencies before entering into negotiations and obtain their concurrence before entering into a final agreement.

(9) Take appropriate action when the recipient either neglects to resolve findings or the report does not meet the requirements of OMB Circular A–128, including the imposition of sanctions. If USDA awarding agencies incur costs, the recipient shall not charge USDA for the cost of any audit that did not meet USDA requirements. However, if there was an indirect cost plan with audit costs included, the following year's indirect cost plan will offset the cost.

(10) Establish and maintain appropriate records as to the effectiveness of State, local, and Indian Tribal governments in carrying out the provisions of this part.

(11) Where State, local, and Indian Tribal governments receive financial assistance or cost-type contracts of less than $100,000, and do not obtain audits that meet the requirements of appendix A of this part, ensure that Federal funds were spent in accordance with applicable laws and regulations. Any of the following can be used to determine recipient compliance with Federal requirements:

(i) Audits obtained by recipients conducted in accordance with the Government Auditing Standards issued by the Comptroller General of the United States.

(ii) Any other reasonably acceptable programmatic audit performed on the recipient's operations in that fiscal year.

(iii) Evaluations of recipient operations by USDA awarding agency officials.

(iv) Project audits by Federal auditors or audits obtained by recipients.

(12) Coordinate the responses on audit reports from other USDA awarding agencies if assigned as the lead agency.

(c) OIG shall:

(1) Provide technical advice and liaison to State, local, and Indian Tribal government audit officials; independent auditors; and other financial assistance or cost-type contract officials.

(2) Coordinate with other Federal Agencies to determine general oversight responsibility if a cognizant agency has not been designated by OMB. When the USDA OIG has general oversight responsibility, OIG shall provide technical advice, as appropriate, and may assume additional responsibilities such as conducting quality reviews of reports and the auditor's work. Any requests received from recipients or subrecipients for USDA to provide general oversight should be forwarded to the appropriate USDA OIG Regional Office.

(3) If assigned as the cognizant agency, determine whether audits have been performed by independent auditors in accordance with the requirements of appendix A of this part.

(4) Perform or arrange for quality reviews of selected audits and provide the results to other affected organizations. Determine whether to perform quality reviews of the report and/or the auditor's work in cases where audit quality or acceptability appear questionable.

(5) If assigned as the cognizant agency, advise the recipient and awarding agency of any audit not in compliance with appendix A of this part. Work with the recipient and auditor to effect appropriate corrective action. If corrective action is not taken, notify the recipient and other awarding agencies. Major inadequacies or repetitive substandard performance by independent auditors shall be referred by OIG to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits performed by or for Federal Agencies that are in addition to the audits required by this part to ensure that the additional audits build upon previous audits performed.

(7) If assigned as the cognizant agency, promptly inform other affected Federal Agencies and appropriate Federal law officials of any reported illegal acts or irregularities. Also, inform State and local law enforcement and prosecuting authorities, if not otherwise advised by the recipient, of any violation of law within their jurisdiction.

(8) When requested by a USDA awarding agency, work with the awarding agency to arrange for additional audit coverage, as appropriate.

(9) Maintain appropriate records regarding assigned cognizant State, local, and Indian Tribal governments in carrying out the provisions of this part.

(10) Assess the handling of audit reports within USDA for compliance with this part.

(11) Where USDA has been assigned as the cognizant agency, provide coordination for USDA agencies and other Federal Agencies.

(d) State, local, and Indian Tribal governments shall:

(1) Follow the audit arrangements and requirements set forth in this part including the following:

(i) Use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in appendix A of this part.

(ii) Include provisions in audit contracts requiring the audit organization to retain audit working papers and reports in accordance with appendix A of this part.

(iii) Ensure that their independent auditor is responsible for:

(A) Reviewing their systems for monitoring subrecipients and obtaining and considering the impact of the subrecipient audit reports. Also, include a review of the recipient's system for determining whether the subrecipient audit reports comply with Government Auditing Standards and generally accepted auditing standards.

(B) Testing to determine whether systems are functioning in accordance with prescribed procedures.

(C) Commenting on monitoring procedures, if warranted by the circumstances.

(D) Considering whether subrecipient audits require adjustment of their financial statements, footnote disclosure, or modification of the auditor's report.

(2) Establish a system for assuring that subrecipients meet the requirements of this part.

(3) Evaluate the acceptability of subrecipient audits.

(4) Follow-up on the results of subrecipient audits.

(i) Ensure that subrecipient audit reports are transmitted to the recipient. The recipient shall retain all subrecipient audit reports on file for 5 years and make them available to OIG and GAO officials or their designees upon request.

(ii) Take appropriate action on subrecipient audits and incorporate the results of these audits into their financial records and related reports. Questioned costs at the subrecipient level may be contingent liabilities as far as the recipient is concerned and should be reported as such, when appropriate.

(iii) Establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

Appendix A to Part 3050—OMB Circular A–128, Audits of State and Local Governments

Executive Office of the President,
Office of Management and Budget,
Washington, DC 20603.

Circular No. A–128

April 12, 1985.

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, P.L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, ''Audit Requirements,'' of Circular A–102, ''Uniform requirements for grants to State and local governments.''

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the

Director shall designate ''cognizant'' Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, ''Uniform requirements for grants to State or local governments.''

5. *Definitions.* For the purpose of this Circular the following definitions from the Single Audit Act apply:

a. ''Cognizant agency'' means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. ''Federal financial assistance'' means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. ''Federal agency'' has the same meaning as the term 'agency' in section 551(1) of Title 5, United States Code.

d. ''Generally accepted accounting principles'' has the meaning specified in the generally accepted government auditing standards.

e. ''Generally accepted government auditing standards'' means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. ''Independent auditor'' means:

(1) a State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) a public accountant who meets such independence standards.

g. ''Internal controls'' means the plan of organization and methods and procedures adopted by management to ensure that:

(1) resource use is consistent with laws, regulations, and policies;

(2) resources are safeguarded against waste, loss, and misuse; and

(3) reliable data are obtained, maintained, and fairly disclosed in reports.

h. ''Indian tribe'' means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. ''Local government'' means any unit or local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. ''Major Federal Assistance Program,'' as defined by P.L. 98–502, is described in the Attachment to this Circular.

k. ''Public accountants'' means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. ''Subrecipient'' means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, ''Uniform requirements for grants to universities, hospitals, and other nonprofit organizations.''

d. The auditor shall determine whether:

(1) the financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) the organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) the organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the

newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—the amounts reported as expenditures were for allowable services, and

—the records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—amounts claimed or used for matching were determined in accordance with OMB Circular A–87, ''Cost principles for State and local governments,'' and Attachment F of Circular A–102, ''Uniform requirements for grants to State and local governments.''

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments,* issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A–110, ''Uniform requirements for grants to universities, hospitals, and other nonprofit organizations,'' have met that requirement;

b. determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption ''other Federal assistance.''

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—a statement of positive assurance with respect to those items tested for

compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
—negative assurance on those items not tested;
—a summary of all instances of noncompliance; and
—an identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. if corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution*. As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports*. Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs*. The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A–87, ''Cost principles for State and local governments.''

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions*. The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:
—Withholding a percentage of assistance payments until the audit is completed satisfactorily,
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection*. In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A–102, ''Uniform requirements for grants to State and local governments.'' The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms*. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting*. Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations*. Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date*. This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A–102 shall continue to be observed.

23. *Inquiries*. All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395–3993.

24. *Sunset review date*. This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,

Director.

Circular A–128 Attachment

Definition of Major Program as Provided in P.L. 98–502

''Major Federal Assistance Program,'' for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of federal financial assistance for all programs		Major federal assistance program means any program that exceeds
more than	but less than	
$100 million	1 billion	$3 million.
1 billion	2 billion	4 million.
2 billion	3 billion	7 million.
3 billion	4 billion	10 million.
4 billion	5 billion	13 million.
5 billion	6 billion	16 million.
6 billion	7 billion	19 million.
over 7 billion		20 million.

[FR Doc. 95–25120 Filed 10–16–95; 8:45 am]
BILLING CODE 3410–90–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–8]

Proposed Establishment of Class E Airspace; Mammoth Lakes, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Mammoth Lakes, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 27 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Mammoth Lakes Airport, Mammoth Lakes, CA.

DATES: Comments must be received on or before November 15, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–8, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWP–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulation (14 CFR part 71) to establish Class E airspace at Mammoth Lakes, CA. The development of a GPS SIAP has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 27 SIAP at Mammoth Lakes Airport, Mammoth Lakes, CA. Class E airspace designations are published in Paragraphs 6002 and 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certifed that this proposal rule will

not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AWP CA E2 Mammoth Lakes, CA [New]

Mammoth Lakes Airport, CA
(Lat. 37°37′26″ N, long. 118°50′19″ W)

Within a 4.1-mile radius of the Mammoth Lakes Airport and within 1.8 miles each side of the 099° bearing from the Mammoth Lakes Airport, extending from the 4.1-mile radius to 5.6 miles southwest of the Mammoth Lakes Airport. This Class E airspace area is effective during the specific dates and times established in advancd by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Mammoth Lakes, CA [New]

Mammoth Lakes Airport, CA
(Lat. 37°37′26″ N, long. 118°50′19″ W)

That airspace extending upward from 700 feet above the surface within a 4.1-mile radius of the Mammoth Lakes Airport and within 1.8 miles each side of the 099° bearing from the Mammoth Lakes Airport, extending from the 4.1-mile radius to 5.6 miles southwest of the Mammoth Lakes Airport. That airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning a lat. 37°49′00″ N, long. 118°58′00″ W; to lat. 37°49′00″ N, long. 119°13′00″ W; to lat. 38°10′00″ N, long. 119°13′00″ W; to lat. 38°10′00″ N, long. 118°34′00″ W; thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on October 2, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–25675 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 92P–0403]

Chlorofluorocarbon Propellants in Self-Pressurized Containers; Addition to List of Essential Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to grant the petition of Boehringer Ingelheim Pharmaceuticals, Inc. (BIPI), to add metered-dose albuterol sulfate and ipratropium bromide in combination for oral inhalation to the list of products containing a chlorofluorocarbon (CFC) propellant for an essential use. Essential use products are exempt from FDA's ban on the use of CFC propellants in FDA-regulated products and the Environmental Protection Agency's (EPA's) ban on the use of CFC's in pressurized dispensers. This document proposes to amend FDA's regulations governing use of CFC's to include metered-dose albuterol sulfate and ipratropium bromide in combination for oral inhalation as an essential use.

DATES: Written comments by November 16, 1995.

ADDRESSES: Submit 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: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION:

I. Background

Under § 2.125 (21 CFR 2.125), any food, drug, device, or cosmetic in a self-pressurized container that contains a CFC propellant for a nonessential use is adulterated or misbranded, or both, under the Federal Food, Drug, and Cosmetic Act. This prohibition is based on scientific research indicating that CFC's may reduce the amount of ozone in the stratosphere and thereby increase the amount of ultraviolet radiation reaching the earth. An increase in ultraviolet radiation may increase the incidence of skin cancer, change the climate, and produce other adverse effects of unknown magnitude on humans, animals, and plants. Section 2.125(d) exempts from the adulteration and misbranding provisions of § 2.125(c) certain products containing CFC propellants that FDA determines provide unique health benefits that would not be available without the use of a CFC. These products are referred to in the regulation as essential uses of CFC's and are listed in § 2.125(e).

Under § 2.125(f), any person may petition the agency to request additions to the list of uses considered essential. To demonstrate that the use of a CFC is essential, the petition must be supported by an adequate showing that: (1) There are no technically feasible alternatives to the use of a CFC in the product; (2) the product provides a substantial health, environmental, or other public benefit unobtainable without the use of the CFC; and (3) the use does not involve a significant release of CFC's into the atmosphere or, if it does, the release is warranted by the consequence if the use were not permitted.

EPA regulations implementing provisions of the Clean Air Act contain a general ban on the use of CFC's in pressurized dispensers, such as metered-dose inhalers (MDI's) (40 CFR 82.64(c) and 82.66(d)). These regulations exempt from the general ban ''medical devices'' that FDA considers essential and that are listed in § 2.125(e). Section 601(8) of the Clean Air Act (42 U.S.C. 7671(8)) defines ''medical device'' as any device (as defined in the Federal Food, Drug, and Cosmetic Act), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system, if such device, product, drug, or drug delivery system uses a class I or class II ozone-depleting substance for which no safe and effective alternative has been developed (and where necessary, approved by the Commissioner of Food and Drugs (the Commissioner)); and if such device, product, drug, or drug delivery system has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA (the

Administrator). Class I substances include CFC's, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (HCFC's) (see 40 CFR part 82, appendix B to subpart A).

II. Petition Received by FDA

BIPI submitted a petition under § 2.125(f) and 21 CFR part 10 requesting an addition to the list of CFC uses considered essential. The petition is on file under the docket number appearing in the heading of this document and may be seen in the Dockets Management Branch (address above). The petition requested that metered-dose albuterol sulfate and ipratropium bromide in combination for oral inhalation be included in § 2.125(e) as an essential use of CFC's. The petition contained a discussion supporting the position that there are no technically feasible alternatives to the use of CFC's in the product. The petition included information showing that no alternative delivery systems (e.g., the dry powder inhaler) or other substitute propellants (e.g., compressed gases) can dispense the drug for effective inhalation therapy as safely and uniformly, in all situations, as CFC propellants. Also, the petition stated that the product provides a substantial health benefit that would not be obtainable without the use of CFC's. In this regard, the petition contained information to support the use of this product as a combination bronchodilator. The petition asserted that metered-dose albuterol sulfate and ipratropium bromide in combination potentially reduces the amount of CFC's released into the atmosphere attributable to patients using one MDI for the combination product, rather than two MDI's, one for each of the two active ingredients.

III. FDA'S Review of the Petition

The agency has tentatively decided that for some chronic obstructive pulmonary disease patients, the use of metered-dose albuterol sulfate and ipratropium bromide in combination provides a special benefit that would be unavailable without the use of CFC's, and that the use of the drugs in combination has the potential to reduce the amount of CFC's released into the atmosphere. In this regard, FDA notes that albuterol sulfate and ipratropium bromide are currently listed separately (i.e., not in combination) in § 2.125(e) as essential uses of CFC's. Based on the evidence currently before it, FDA also agrees that the use of a metered-dose delivery system for this product does not involve a significant release of CFC's into the atmosphere. Therefore, FDA is proposing to amend § 2.125(e) to include metered-dose albuterol sulfate and ipratropium bromide in combination for oral inhalation in the list of essential uses of CFC propellants.

A copy of this document has been provided to the Administrator.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the agency is not aware of any adverse impact of this proposed rule will have on any small entities, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Opportunity for Comments

Interested persons may, on or before November 16, 1995, 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.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Devices, Drugs, Foods.

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 2 be amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 continues to read as follows:

Authority: Secs. 201, 301, 305, 402, 408, 409, 501, 502, 505, 507, 512, 601, 701, 702, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 357, 360b, 361, 371, 372, 374); 15 U.S.C. 402, 409.

2. Section 2.125 is amended by adding new paragraph (e)(14) to read as follows:

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

* * * * *

(e) * * *

(14) Metered-dose ipratropium bromide and albuterol sulfate, in combination, administered by oral inhalation for human use.

* * * * *

Dated: October 10, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–25619 Filed 10–16–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 84

[CGD 95–037]

Adequacy of Barge and Tug Navigation Lights

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard will conduct a public meeting to obtain information from members of the regulated community and the general public on lighting requirements for towing vessels and vessels being towed under Navigation Rule 24. This action is in response to concerns expressed by the marine community, both commercial and recreational, that current lighting requirements are not adequate.

DATES: The meeting will be held on November 11, 1995, from 9:15 a.m. to 12 noon. Written material must be received not later than December 18, 1995.

ADDRESSES: The meeting will be held at the Holiday Inn Downtown/Convention Center, 811 North Ninth Street, St. Louis, MO 63101. Written comments

may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Vessel Traffic Services Division (G–NVT), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593, telephone (202) 267–0415.

SUPPLEMENTARY INFORMATION: The Inland Navigation Rules (Navigation Rules) are set forth in 33 U.S.C. 2001 *et seq.* Lighting requirements for towing vessels and vessels under tow are contained in Rule 24, 33 U.S.C. 2024. Under 33 U.S.C. 2701, the Secretary of Transportation may issue regulations to implement and interpret the Navigation Rules. The Secretary is also directed to establish technical annexes. The technical annex for lighting requirements is contained in 33 CFR Part 84. This annex specifies placement requirements for lights, including placement of lights on towing vessels and vessels under tow.

Safety concerns associated with towing operations and small craft traffic have been raised in recent years in several publications, including the American Boat and Yacht Council Newsletter, U.S. Coast Guard Boating Safety Circulars, America's Inland and Coastal Tug and Barge Operators pamphlet ''Life Lines'', and various yachting magazines. The safety aspects of barge lighting were discussed at the May 1994 meeting of the National Boating Safety Advisory Council (NBSAC). At its November 1994 meeting, the Navigation Safety Advisory Council (NAVSAC) was asked to consider whether current tug and tow lighting requirements under Navigation Rule 24 are adequate.

After considerable discussion, NAVSAC concluded that additional information was needed to determine whether there was an actual problem, and, if so, possible solutions. The Council unanimously passed a resolution requesting that the Coast Guard solicit public comments on whether towing vessels and vessels being towed are sufficiently lighted while underway.

On May 9, 1995, the Coast Guard published a Request for Comments in the Federal Register (60 FR 24598). The Coast Guard received 64 comments from offshore commercial operators, inland tug and tow operators, and recreational boaters. The comments were mixed on whether the lighting required on barges is adequate, but all three user groups cited the following key problem areas:

(1) Lack of understanding of the Rules of the Road;

(2) Flaws in the Rules of the Road (i.e. lighting for sail vessels, vessels under oar, and vessels being towed are the same); and

(3) Poor equipment (i.e. dim lights, positioning of lights, use of household bulbs for navigation lights, use of portable lights which are not required to meet vertical sector requirements, and tug lights obscured by barges).

The Coast Guard is interested in receiving your comments, especially on the three key problem areas cited by previous comments. Comments should clearly describe your experiences and any problems associated with barge lighting and, if possible, provide potential solutions. The Coast Guard is particularly interested in recommendations that would not require amendment of the Navigation Rules and that conform with the International Rules. In adopting the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS), the United States not only agreed that its vessels would abide by those regulations when in international waters, but also that any special rules adopted by the United States for use on waterways connected with the high seas and navigable by seagoing vessels would ''conform as closely as possible to these rules'' (72 COLREGS, Rule 1).

To assist NAVSAC in their review of this issue, the public meeting will be part of the Council's November meeting in St. Louis, MO. All written and oral comments, including those received in response to the previously published notice, will be considered by the Coast Guard and NAVSAC.

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting.

Dated: October 11, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation, Safety and Waterway Services.

[FR Doc. 95–25714 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 187

[CGD 89–050]

RIN 2115–AD35

Vessel Identification System

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; reopening of comment period and notice of public hearings.

SUMMARY: On April 25, 1995, the Coast Guard published an interim final rule (IFR) regarding the establishment of a vessel identification system. The IFR provided a 90-day comment period that closed on July 24, 1995. The Coast Guard is reopening the comment period for an additional 75 days.

DATES: Comments must be received on or before December 31, 1995. Two public hearings will be held on November 13 and December 11, 1995, from 9 a.m. to 5 p.m. on each of those days.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, (G–LRA–2/3406) [CGD 89–050], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard headquarters.

The hearings will be held at U.S. Coast Guard Headquarters, room 2415, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: LCDR Richard Ferraro, Office of Marine Safety, Security and Environmental Protection, Information Resources Division (G–MIR), (202) 267–0386.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identifying this

rulemaking [CGD 89–050] and the specific section of the proposal or related documents to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments currently in the public docket, including comments received after the initial comment period was closed, and all additional comments received during this comment period. The rule may be changed in view of the comments.

Notice of Hearings

The hearings will be open to the public. With advance notice, and at the Coast Guard's discretion, members of the public may make oral presentations during the hearings. Persons wishing to make oral presentations should notify the point of contact listed above under **FOR FURTHER INFORMATION CONTACT**, no later than the day before the hearing.

Drafting Information

The principal persons involved in drafting this document are LCDR Richard Ferraro, Project Manager, Office of Marine Safety, Security and Environmental Protection and Nick Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

On April 25, 1995, the Coast Guard published an IFR regarding the establishment of a vessel identification system (VIS) [60 FR 20310]. The VIS rule would establish a vessel identification system required by legislation, guidelines for State vessel titling systems, procedures for certifying compliance with those guidelines, and rules for participation in the VIS system for undocumented vessels. The Coast Guard has received two requests to reopen the comment period and recognizes the value of information obtainable from interested parties. Therefore, the Coast Guard is reopening the comment period and scheduling hearings in order to encourage meaningful participation by all interested parties.

Dated: October 11, 1995.

G.N. Naccara,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–25715 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5315–2]

State of California; Request for Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards From Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of a Complete Application from the State of California; Notice of Public Comment Period.

SUMMARY: The California Air Resources Board (CARB) has applied for approval of its Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning Operations (dry cleaning ATCM) under section 112(l) of the Clean Air Act (CAA). In addition, CARB is also requesting approval of California's authorities and resources to implement and enforce all CAA section 112 programs and rules, with the exception of the accidental release prevention program to be promulgated pursuant to CAA section 112(r). The Environmental Protection Agency (EPA) has reviewed CARB's requests for approval and has found that these requests for approval satisfy all of the requirements necessary to qualify as complete applications. Thus, EPA is hereby taking public comment on whether California's dry cleaning ATCM should be implemented and enforced in place of the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, 40 CFR Part 63, Subpart M; and whether California's authorities and resources are adequate to implement and enforce all CAA section 112 programs and rules.

DATES: Comments on California's requests for approval must be received on or before November 16, 1995.

ADDRESSES: Written comments should be mailed concurrently to the addresses below:

Daniel A. Meer, Chief, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Robert Fletcher, Chief, Emissions Assessment Branch, Stationary Source Division, California Air Resources Board, 2020 ''L'' Street, P.O. Box 2815, Sacramento, CA 95812–2815.

Copies of California's requests for approval are available for public inspection at EPA's Region IX office during normal business hours. Copies of the requests for approval are also available for inspection at the following location: California Air Resources Board, Stationary Source Division, 2020 ''L'' Street, P.O. Box 2815, Sacramento, CA 95812–2815.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. California's Dry Cleaning Rule

A. Background

Under CAA section 112(l), EPA is authorized to delegate to State agencies the authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants (NESHAPs). The Federal regulations governing EPA's approval of State rules or programs under section 112(l) are located at 40 CFR Part 63, Subpart E. Under these regulations, a State has the option to request EPA's approval to substitute a State rule for the comparable NESHAP. Upon approval the State is given the authority to implement and enforce its rule in lieu of the NESHAP. This ''rule substitution'' option, requires EPA to ''make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements'' of 40 CFR section 63.93 [see 58 FR 62274]. A rule will be approved if EPA finds: (1) The State authorities are ''no less stringent'' than the corresponding Federal NESHAP, (2) adequate authorities and resources exist, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the State program is otherwise in compliance with Federal guidance.

On September 22, 1993, EPA promulgated the NESHAP for perchloroethylene dry cleaning facilities (see 58 FR 49354), which has been codified in 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (dry cleaning NESHAP). On July 10, 1995, EPA received CARB's request for approval to implement and enforce its dry cleaning ATCM in lieu

of the dry cleaning NESHAP. CARB's request for approval was submitted pursuant to the provisions of 40 CFR § 63.93 and was found to be complete on August 9, 1995.

B. Major Dry Cleaning Sources

Under the dry cleaning NESHAP, dry cleaning facilities are divided between major sources and area sources. CARB's request for approval includes only those provisions of the dry cleaning NESHAP that apply to area sources. Thus, dry cleaning facilities that are major sources, as defined by the dry cleaning NESHAP, remain subject to the dry cleaning NESHAP and the Title V operating permit program.

C. Equivalent Emission Control Technology

Under the dry cleaning NESHAP, any person may petition the EPA Administrator for a determination that the use of certain equipment or procedures is equivalent to the standards contained in the dry cleaning NESHAP (see 40 CFR 63.325). As a supplement to its request for approval of the dry cleaning ATCM, CARB has also requested approval of the authority to determine equivalent emission control technology. Given the form of CARB's application, EPA is treating this supplement as a separate and independent request for approval.

II. California's Authorities and Resources To Implement and Enforce CAA Section 112 Standards

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and 40 CFR Part 63, Subpart E. To streamline the approval process for future applications, a State may submit for approval a demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. Approval of this demonstration will obviate the need for the State to resubmit in each subsequent request for approval its prior demonstration that it has adequate authorities and resources to implement and enforce the section 112 standard.

As part of its dry cleaning ATCM application, CARB is also requesting approval of California's authorities and resources to implement and enforce all CAA section 112 programs and rules, with the exception of the accidental release prevention program to be promulgated pursuant to CAA section 112(r). Although approval of California's authorities and resources will not result in delegation of the section 112 standards, it will obviate the need for California to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of section 112 standards, regardless of whether the State requests approval of rules that are identical to or differ from the Federal standards as promulgated.

Since the above demonstration is also required under 40 CFR Part 70, EPA will evaluate this demonstration as it applies to Part 70 sources when it evaluates the Part 70 program applications submitted by the California air pollution control or air quality management districts.

III. Public Comment

EPA is seeking comment on all aspects of California's requests for approval, i.e., the dry cleaning ATCM as a substitute for the dry cleaning NESHAP, the request for approval of the authority to determine equivalent emission control technology, and the adequacy of California's authorities and resources. EPA will consider all public comments submitted during the public comment period. Issues raised by the comments will be carefully reviewed and considered in the decision to approve or disapprove CARB's requests. EPA expects to make a final decision on whether or not to approve California's requests on or around February 5, 1996, and will provide notice of its decision in the Federal Register. The notice will include a summary of the reasons for the final decision and a summary of all major comments.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Title III of the Clean Air Act as amended, 42 U.S.C. 2399.

Dated: September 25, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–25649 Filed 10–16–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 81

[AD–FRL–5316–3]

Clean Air Act Reclassification; Pennsylvania—Liberty Borough Nonattainment Area; PM–10; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a document published on September 19, 1995 (60 FR 48439). In the September 19 document, EPA proposed to find that the Liberty Borough, Pennsylvania nonattainment area for particulate matter of nominal aerodynamic diameter smaller than 10 micrometers (PM–10) did not attain national ambient air quality standards for that pollutant by the statutory attainment date. At the request of the Allegheny Health Department, EPA is extending the comment period through November 20, 1995. EPA is declining the County's requests to extend the comment period through December 18, 1995 or to extend the period indefinitely.

DATES: Comments must be received on or before November 20, 1995.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Thomas A. Casey, U.S. EPA Region III, (215) 597–2746.

Dated: October 12, 1995.

Al Morris,

Acting Regional Administrator, Region III.

[FR Doc. 95–25846 Filed 10–16–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM–207E, Notice No. 95–14]

RIN 2137–AC70

Hazardous Materials Pilot Ticketing Program; Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: On August 21, 1995, RSPA published a notice of proposed rulemaking (NPRM) in the Federal Register which invited public comment on a proposal to implement a pilot program for ticketing of certain hazardous materials transportation violations [Docket HM–207E, Notice 95–10, 60 FR 43430]. Under the program, RSPA would issue tickets for violations that do not have substantial impacts on safety. RSPA has received a request

from the Hazardous Materials Advisory Council (HMAC) seeking an extension of the comment period in order to have more time to evaluate the proposals contained in the NPRM. RSPA concurs with this request and is extending the comment period by 30 days.

DATES: Comments must be received by November 20, 1995.

ADDRESSES: Address comments to Dockets Unit (DHM–30), Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and notice number and five copies should be submitted, when possible. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW, Washington, D.C 20590–0001. Office hours are 8:30 am to 5:00 pm, Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell, Jr., Director, Office of Hazardous Materials Enforcement, (202) 366–4700; or Edward H. Bonekemper, III, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION: On August 21, 1995, RSPA published a notice of proposed rulemaking (NPRM) in the Federal Register which invited public comment on a proposal to implement a pilot program for ticketing of certain hazardous materials transportation violations [Docket HM–207E, Notice 95–10, 60 FR 43430]. Under the program, RSPA would issue tickets for violations that do not have substantial impacts on safety. These violations may include, among others, operating under an expired exemption, failing to register, failing to maintain training records, and failing to file incident reports. Procedures under this pilot program would be less complicated than current procedures for civil penalty actions, and penalties would be substantially reduced for persons who elect to pay the amounts assessed in the tickets.

HMAC, in its request for extension of the comment period, cited the broad effect of this proposal upon industry and how it would directly impact the enforcement process if implemented. HMAC believed a 30-day extension of the comment period would provide industry a reasonable amount of time to more fully consider the implications of the proposal. RSPA agrees additional time should be allowed and is granting an extension of 30 days for submitting comments.

Issued in Washington, DC on October 11, 1995, under authority delegated in 49 CFR part 106, appendix A.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–25680 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 950929242–5242–01; I.D. 091295A]

RIN 0648–AH74

Coral and Coral Reefs Off the Southern Atlantic States; Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs off the Southern Atlantic States (FMP). Amendment 3 would: Establish an aquacultured live rock permit system applicable to the exclusive economic zone (EEZ) off the southern Atlantic states; prohibit chipping of aquacultured live rock; prohibit octocoral harvest north of Cape Canaveral, FL; and prohibit anchoring of fishing vessels in the Oculina Bank habitat area of particular concern (HAPC). In addition, NMFS proposes changes to correct and clarify certain regulations, or conform them to current standards. The intended effect is to establish a management program for live rock aquaculture and to protect fishery habitat.

DATES: Written comments must be received on or before November 27, 1995.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 3, which includes a regulatory impact review, a social impact assessment, and an environmental assessment, should be sent to the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699, telephone: 803–571–4366, FAX: 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Upon implementation of Amendment 3, if approved, the title of the FMP would be changed to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region. This title change reflects the Council's intent to manage and protect essential live/hard bottom habitats as well as coral resources.

Aquacultured Live Rock Permits

Amendment 3 proposes to adopt in the EEZ off the southern Atlantic states (South Atlantic EEZ) the aquacultured live rock permit system implemented for the Gulf of Mexico (Gulf) EEZ under Amendment 2 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic, with two special conditions: (1) Aquaculture substrates must be geologically distinguishable from the naturally occurring substrate, and (2) no chipping of aquacultured live rock is permitted.

Under Amendment 2, the Gulf of Mexico Fishery Management Council and the South Atlantic Council agreed to allow and facilitate live rock aquaculture to replace the wild harvest that is being phased out. Amendment 2 established an aquacultured live rock permit for the harvest and possession of live rock from aquaculture operations in the Gulf EEZ, under specific criteria designed to protect natural hard bottom areas, as specified in § 638.27. The aquaculture permit also authorizes an exception to the prohibition on taking and possession of prohibited corals; a permitted individual harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral with regards to the prohibited coral attached to the aquacultured live rock. Otherwise, an aquaculturalist would be prevented from harvesting the aquaculture product if small polyps of such species were detected on the aquaculture substrates.

Under the criteria for issuance of aquacultured live rock permits, established under Amendment 2 for the Gulf EEZ, materials deposited on the aquaculture site must be geologically or

otherwise distinguishable from the naturally occurring substrate or be indelibly marked or tagged. Amendment 3 proposes to require in the South Atlantic EEZ that the rock be geologically distinguishable, without exception, to eliminate the possibility of marking wild live rock and selling it as aquacultured product.

Prohibition on Chipping Aquacultured Live Rock

Chipping means breaking up rocks into fragments, usually with a chisel and hammer. Amendment 3 proposes to prohibit chipping of aquacultured live rock in the South Atlantic EEZ to prevent harvest of naturally occurring corals under the guise of aquaculture. Otherwise, the Council anticipates that individuals might claim prohibited corals in their possession were chipped from aquacultured live rock when, in fact, they were taken from natural substrates. This would confine harvesters to loose, rubble rock only.

Restriction on Octocoral Harvest

The existing regulations provide an annual quota of 50,000 allowable octocoral colonies. In the South Atlantic EEZ, allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the sea fans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate within 1 inch (2.54 cm) of the allowable octocoral. Live octocorals are sold for display in marine aquaria.

Amendment 3 proposes to prohibit the taking of octocorals north of Cape Canaveral, FL. No landings have been reported from this area. The Council intends to prevent a shift of effort from south Florida, where landing of about 20,000 colonies of octocorals are reported annually, to northeast Florida, Georgia, South Carolina, and North Carolina. Octocoral/sponge assemblages are the primary component of live bottom communities in the area south of Cape Hatteras, NC, to Cape Canaveral, FL, and an essential element of the available fisheries habitat, according to the Council's Coral Advisory Panel.

Prohibition on Anchoring in the Oculina Bank HAPC

The FMP established HAPCs to provide special protection to environmentally significant coral areas. The Oculina Bank HAPC is a 4 x 23 nautical mile (nm) (7.4 x 42.6 km) area in the South Atlantic EEZ off central Florida characterized by extensive tree-like colonies of *Oculina* spp. The FMP prohibits fishing with bottom longlines, traps, pots, dredges, or bottom trawls in the Oculina Bank HAPC. Amendment 3 proposes to add a prohibition on anchoring of fishing vessels. Anchors can break fragile coral colonies, dislodge reef framework, and scar corals, thereby opening lesions for infection.

Additional background and rationale for the measures discussed above are contained in Amendment 3, the availability of which was announced in the Federal Register on September 21, 1995 (60 FR 48960).

Additional Changes Proposed by NMFS

NMFS proposes to change the title of part 638 from Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic to Coral and Coral Reefs of the Gulf of Mexico and off the Southern Atlantic States in order to more correctly indicate the geographical scope of the regulations. NMFS also proposes changes to the regulations to correct errors in existing cross-references and to restructure the regulations for consistency and clarity. A note has been added to the definition of ''Allowable octocoral'' to clarify the distinction between allowable octocoral and live rock.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an amendment and regulations. At this time, NMFS has not determined that Amendment 3 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. All participants in the live rock fishery are considered small entities for purposes of the Regulatory Flexibility Act. The proposed rule would establish an aquaculture live rock permit system that is a minor modification of the permit system already in place in the Gulf of Mexico EEZ. Aquaculture is expected to benefit live rock fishermen by providing an alternative to the wild live rock harvest that is being phased out under a previous FMP amendment because of its damage to natural fishery habitats. No adverse economic effects are expected from the prohibition on taking of octocorals north of Cape Canaveral, Florida, since currently there are no reported landings in this area. The proposed prohibition on the anchoring of fishing vessels in the Oculina Bank HAPC off east central Florida is expected to have only minimal impact on fishermen in this area since anchoring while fishing for snapper-grouper is already prohibited under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 10, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is proposed to be amended as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND OFF THE SOUTHERN ATLANTIC STATES

1. The authority citation for part 638 continues to read as follows:

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

2. The title of part 638 is revised to read as set forth above.

§ 638.1 [Amended]

3. In § 638.1, in paragraph (a), the phrase ''Fishery Management Plan for Coral and Coral Reefs off the Southern Atlantic States'' is removed and ''Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region'' is added in its place.

4. In § 638.2, a note is added to the end of paragraph (2) of the definition for ''Allowable octocoral'', to read as follows:

§ 638.2 Definitions.

* * * * *

Allowable octocoral * * * (2) * * * Note: An erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, with attached substrate exceeding 1 inch (2.54 cm) or 3 inches (7.62 cm) in or from the EEZ off the southern Atlantic states or the Gulf of Mexico, respectively, is considered to be live rock and not allowable octocoral.

* * * * *

5. In § 638.4, the last sentence in paragraph (a)(1)(v) is revised to read as follows:

§ 638.4 Permits and fees.

(a) * * *

(1) * * *

(v) * * * A person who has been issued an aquacultured live rock permit is exempt from the requirement to obtain a permit for prohibited coral that is attached to aquacultured live rock.

* * * * *

6. In § 638.7, in paragraph (k), the reference to ''(c)'' is removed and ''(c)(1)'' is added in its place; in paragraph (q), the reference to ''§ 635.26(c)'' is removed and ''§ 638.26(c)'' is added in its place; and new paragraphs (x), (y), and (z) are added to read as follows:

§ 638.7 Prohibitions.

* * * * *

(x) Harvest allowable octocoral in the EEZ off the southern Atlantic states, north of Cape Canaveral, FL (28° 35.1′ N. lat.—due east of the NASA Vehicle Assembly Building) or possess allowable octocoral in or from that area, as specified in § 638.21(b).

(y) Anchor a fishing vessel, or use an anchor and chain or grapple and chain on board a fishing vessel, in the Oculina Bank HAPC, as specified in § 638.23(c)(2).

(z) Harvest aquacultured live rock by chipping in the EEZ off the southern Atlantic states; possess chipped aquacultured live rock in or from that area; remove allowable octocoral or prohibited coral from aquacultured live rock; or, while in possession of aquacultured live rock, possess prohibited coral not attached to aquacultured live rock or allowable octocoral, as specified in § 638.27(c).

7. Section 638.21 is revised to read as follows:

§ 638.21 Harvest limitations.

(a) *Incidental harvest*. Except as authorized by a permit issued pursuant to § 638.4, prohibited coral, allowable octocoral, and live rock taken as incidental catch must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral, allowable octocoral, and live rock are exempt from the requirement for a Federal permit and may be landed; however, no person may sell, trade, or barter or attempt to sell, trade, or barter such prohibited coral, allowable octocoral, or live rock.

(b) *Allowable octocoral harvest*. Harvest of allowable octocoral in the EEZ off the southern Atlantic states, north of Cape Canaveral, FL (28° 35.1′ N. lat.—due east of the NASA Vehicle Assembly Building) or possession of allowable octocoral in or from that area is prohibited. See the note included in the definition of ''Allowable octocoral'' for clarification of the distinction between allowable octocoral and live rock.

8. In § 638.23, in paragraphs (a)(1) and (b)(1), the references to ''§ 634.4'' are removed and ''§ 638.4'' is added in both places; and paragraph (c) is revised to read as follows:

§ 638.23 Habitat areas of particular concern.

* * * * *

(c) *Oculina Bank*. The Oculina Bank is located approximately 15 nautical miles east of Fort Pierce, FL, at its nearest point to shore, and is bounded on the north by 27° 53′ N. lat., on the south by 27° N. lat., on the east by 79° 56′ W. long., and on the west by 80° 00′ W. long. The following restrictions apply in the HAPC:

(1) Fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited. See § 646.26(d) of this chapter for prohibitions on fishing for snapper-grouper in the Oculina Bank HAPC.

(2) Anchoring of fishing vessels, or using an anchor and chain or grapple and chain on board a fishing vessel, is prohibited.

9. In § 638.27, in the first sentence of paragraph (a), the phrase ''from the Gulf of Mexico EEZ'' is removed; paragraph (b)(2) is revised; and two sentences are added at the end of paragraph (c) to read as follows:

§ 638.27 Aquacultured live rock.

* * * * *

(b)* * *

(2) Material deposited on the aquaculture site—

(i) May not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas;

(ii) Must be free of contaminants;

(iii) Must be nontoxic;

(iv) Must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely;

(v) Must be placed from a vessel that is anchored;

(vi) In the Gulf of Mexico EEZ must be distinguishable, geologically or otherwise (for example, be indelibly marked or tagged), from the naturally occurring substrate; and

(vii) In the EEZ off the southern Atlantic states must be geologically distinguishable from the naturally occurring substrate and, in addition, may be indelibly marked or tagged.

* * * * *

(c) * * * In addition, the following activities are prohibited off the southern Atlantic states: Chipping of aquacultured live rock in the EEZ; possession of chipped aquacultured live rock in or from the EEZ; removal of allowable octocoral or prohibited coral from aquacultured live rock in or from the EEZ; and possession of prohibited coral not attached to aquacultured live rock or allowable octocoral, while aquacultured live rock is in possession. See the note included in the definition of ''Allowable octocoral'' for clarification of the distinction between allowable octocoral and live rock.

* * * * *

[FR Doc. 95–25721 Filed 10–12–95; 5:02 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 200
Tuesday, October 17, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Government Owned Invention Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention disclosed in U.S. Patent Application Serial No. 08/502,516. ''Apricot cv. Robada (K106–2)'' is owned by the U.S. Government as represented by the Department of Agriculture, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development. Plant breeders rights are being sought in selected countries to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention maybe obtained by writing to: June Blalock, Technology Licensing Coordinator, USDA, ARS, room 415, Bldg. 005, BARC-West, Beltsville, Maryland 20705; Phone 301–504–5989 or Fax 301–504–5060.

June Blalock,
Technology Licensing Coordinator.

[FR Doc. 95–25709 Filed 10–16–95; 8:45 am]

BILLING CODE 3410–03–M

Government Owned Invention Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Agriculture, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: Andrew Watkins, Deputy Assistant Administrator, USDA, ARS, Room 416, Bldg. 005, BARC-West, Beltsville, Maryland 20705; Phone 301–504–5989 or Fax 301–504–5060.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: ARS–2620, ''Birdsfoot trefoil'' (Lotus corniculatus L.) cultivar, also known as ''rhizomatous trefoil'', released in cooperation with the Missouri Agricultural Experiment Station on March 14, 1995. Application for Plan Variety Protection for this cultivar has been made.

Andrew Watkins,
Deputy Assistant Administrator.

[FR Doc. 95–25710 Filed 10–16–95; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after October 18, 1995. The list of newspapers will remain in effect until another notice is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Stephen Solem; Regional Appeals Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.
Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review.
Regional Forester decisions in North Dakota—Bismarck Tribune
Regional Forester decisions in South Dakota—Rapid City Journal
Beaverhead—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribune
Custer—Billings Gazette (Montana); Bismarck Tribune (North Dakota); Rapid City Journal (South Dakota)
Deerlodge—Montana Standard
Flathead—Daily Interlake
Gallatin—Bozeman Chronicle
Helena—Independent Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Interlake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: October 11, 1995.

John M. Hughes,
Deputy Regional Forester.

[FR Doc. 95–25645 Filed 10–16–95; 8:45 am]

BILLING CODE 3410–11–M

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet on November 2, 1995, at the Discovery Inn

Landmark Room, 1340 No. State Street, Ukiah, California. The meeting will begin at 8 a.m. and continue until 4 p.m. Agenda items to be covered include: (1) Open public forum; (2) Forest Highway 7 informational presentation; (3) Report from PAC Coordinating Subcommittee on Fiscal Year 1996 watershed restoration project proposals; (4) Report from PAC Subcommittee on public/private partnership opportunities; (5) Agency updates on implementing the Northwest Forest Plan; (6) Range management on federal lands; (7) Redwood National and State Parks Fiscal Year 1995 and 1996 restoration projects; and (8) Schedule future meetings and build agenda for next meeting. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (916) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (916) 934–3316.

Dated: October 11, 1995.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 95–25700 Filed 10–16–95; 8:45 am]

BILLING CODE 3410–FK–M

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on November 2, 1995, at the Holiday Inn-Airport, 8439 NE Columbia Blvd, Portland, OR 97220. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:00 a.m. on November 2 and continue until 4:30 p.m. the same day. The main agenda items expected to be covered include discussions on members' key interests and progress to date; discussion of a proposal for reviewing new information that may effect the Northwest Forest Plan; discussions on integrating Northwest Forest Plan economic assistance and forest management processes more closely; and other topics relative to the Northwest Forest Plan. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: October 11, 1995.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 95–25644 Filed 10–16–95; 8:45 am]

BILLING CODE 3410–11–M

ARMS CONTROL AND DISARMAMENT AGENCY

Performance Review Board; Membership

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of membership of performance review board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Arms Control and Disarmament Agency announces the appointment of Performance Review Board members.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Aderholdt, Director of Personnel, U.S. Arms Control and Disarmament Agency, Washington, DC 20451 (202) 647–2034.

The following are the names and present titles of the individuals appointed to the register from which Performance Review Boards will be established by the U.S. Arms Control and Disarmament Agency during the period beginning on the effective date of this notice and ending when a new register is published and becomes effective in approximately one year. Specific Performance Review Boards will be established as needed from this register.

These appointments supersede those in the announcement published in 1994.

Name	Title
Ralph Earle, II	Deputy Director.
Lisa Farrell	Chief of Staff.
Victor Alessi	Executive Assistant.
Donald Gross	Senior Policy Analyst.
Thomas Graham, Jr.	Special Representative-NPT.
James Sweeney	Special Representative-CSA.
Robert Sherman	Executive Director, SPAC.
Amy Sands	Assistant Director, Intelligence, Verification and Information Management Bureau.
O. James Sheaks	Deputy Assistant Director, Intelligence, Verification and Information Management Bureau.
Sarah Mullen	Chief, Intelligence Technology and Analysis, Intelligence, Verification and Information Management Bureau.
Lawrence Scheinman	Assistant Director, Nonproliferation and Regional Arms Control Bureau.
Norman Wulf	Deputy Assistant Director, Nonproliferation and Regional Arms Control Bureau.
Robert Rochlin	Chief Scientist, Nonproliferation and Regional Arms Control Bureau.
Michael Rosenthal	Chief, Nuclear Safeguards and Technology Division, Nonproliferation and Regional Arms Control Bureau.
Lori Esposito Murray	Assistant Director, Multilateral Affairs Bureau.
Donald Mahley	Deputy Assistant Director, Multilateral Affairs Bureau.
Michael Guhin	Associate Assistant Director, Multilateral Affairs Bureau.
William Staples	Chief, Chemical and Biological Policy Division, Multilateral Affairs Bureau.
Pierce Corden	Chief, International Security and Nuclear Policy Division, Multilateral Affairs Bureau.
Michael Nacht	Assistant Director, Strategic and Eurasian Affairs Bureau.
R. Lucas Fischer	Deputy Assistant Director, Strategic and Eurasian Affairs Bureau.
Karin Look	Chief, Strategic Negotiations and Implementation Division, Strategic and Eurasian Affairs Bureau.
David Wollan	Chief, Theater and Strategic Defenses Division, Strategic and Eurasian Affairs Bureau.
Cathleen Lawrence	Director of Administration, Office of Administration.
Ivo Spalatin	Director of Congressional Affairs, Office of Congressional Affairs.

Name	Title
Mary Elizabeth Hoinkes	General Counsel, Office of the General Counsel.
Joerg Menzel	Principal Deputy of the On-Site Inspection Agency.
Stanley Riveles	U.S. Standing Consultative Commissioner.

Cathleen Lawrence,

Director of Administration.

[FR Doc. 95–25726 Filed 10–16–95; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Noninterview Adjustment Evaluation.

Form Number(s): DG–1340B.

Type of Request: New collection – EMERGENCY REVIEW.

Burden: 173 hours.

Number of Respondents: 519.

Avg Hours Per Response: 20 minutes.

Needs and Uses: A major goal of the 1995 census test program was to develop and test a new coverage measurement methodology, Integrated Coverage Measurement (ICM). In 1995, the goal of ICM was to measure the error in coverage (overcount or undercount) of the test censuses in three areas: Oakland, CA; Paterson, NJ; and six parishes in northwest Louisiana. A parallel goal of ICM was to test two methods of estimating census coverage: the census plus method and the previously used estimation methodology, dual system estimation (DSE). The decision regarding which method to use in the 2000 census has to be made by the end of 1995, as it leads to further research and development plans that encompass the remaining time before the 2000 census. Toward that end, we plan to conduct a Noninterview Adjustment Evaluation in which we will interview some selected households to determine their correct status. Results of this evaluation will allow us to see if we imputed noninterviewed cases correctly during 1995 ICM testing and will assist in the decision of which estimation methodology––DSE or Census Plus––to use for the 2000 Census. We need OMB clearance by October 18 in order to conduct the evaluation and make this decision by the end of 1995.

Affected Public: Individuals or households.

Frequency: One–time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 13, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–25807 Filed 10–13–95; 10:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by one respondent and the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy. The review period is August 1, 1993, through July 31, 1994. This review covers one company, Ausimont, S.p.A. As a result of the review, the Department has preliminarily determined that dumping margins exist for this respondent. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 17, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1994, the Department published in the Federal Register a notice of ''Opportunity to Request Administrative Review'' (59 FR 39543) of the antidumping duty order on granular PTFE resin from Italy (53 FR 33163, August 30, 1988). Respondent, Ausimont S.p.A., and petitioner, E. I. Dupont de Nemours & Company, requested an administrative review in accordance with 19 CFR 353.22(a)(1993). On September 16, 1994, the Department published a notice of initiation of this review (59 FR 47609). The period of review is August 1, 1993, through July 31, 1994. The Department is now conducting this review pursuant to section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The antidumping duty order covers granular PTFE resins, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States (see Granular Polytetrafluoroethylene Resin from Italy; Final Determination of Circumvention of Antidumping Duty Order (58 FR 26100)). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule (HTS). We are providing this HTS number for convenience and Customs purposes only. The written description of the scope remains dispositive.

The review covers one manufacturer/exporter of granular PTFE resin,

Ausimont S.p.A. The period of review is August 1, 1993, through July 31, 1994.

United States Price

The Department based United States price (USP) on exporter's sale price (ESP) as defined in section 772(c) of the Tariff Act because all sales to unrelated parties were made after importation of the subject merchandise into the United States. We based ESP on the packed, delivered prices to unrelated purchasers in the United States. We made deductions, where applicable, for billing adjustments and rebates, foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. inland freight from port to warehouse, and U.S. inland freight from warehouse to customer, in accordance with section 772(d)(2)(a) of the Tariff Act. We also made deductions, where applicable, for credit expense, warranties, technical service expenses and indirect selling expenses in accordance with section 772(e) of the Tariff Act. For sales of granular PTFE resin finished in the United States from PTFE wet raw polymer imported from Italy, we also deducted, pursuant to section 772(e)(3) of the Tariff Act, the value added in the United States, which consisted of the costs of further processing in the United States and that portion of the profit on sales of further processed merchandise attributable to the additional processing.

When comparisons were made to home market sales in which a value-added tax (VAT) was added or a VAT was included, we made an addition to USP for the VAT which was not collected, or which was rebated, on export in accordance with our practice as set forth in Silicomanganese From Venezuela; Preliminary Determination of Sales at Less Than Fair Value (Silicomanganese), 59 FR 31204 (June 17, 1994).

Foreign Market Value

Based on a comparison of the volume of home market and third country sales, we determined that the home market was viable. Therefore, in accordance with section 773(a)(1)(A) of the Tariff Act, we based FMV on the packed, delivered price to unrelated purchasers in the home market.

We calculated FMV on a monthly weighted-average basis. Where possible, we compared U.S. sales to sales of identical merchandise in Italy. For U.S. sales in which identical merchandise was not sold during the relevant contemporaneous period, we used as FMV contemporaneous home market sales of the product that was most similar to the merchandise involved in the U.S. sale, in accordance with section 771(16) of the Tariff Act. Whereas filled and unfilled resins generally are not similar in terms of their physical characteristics, we compared, whenever possible, home market sales of filled resins to U.S. sales of filled resins, and home market sales of unfilled resins with U.S. sales of unfilled resins. We matched filled resins sold in the two markets according to the amounts and types of fillers, and the percentages of fillers, in the products sold as provided in Ausimont's supplemental questionnaire response dated June 9, 1995.

Where applicable, we made adjustments to home market prices for rebates. To adjust for differences in circumstances of sale between the home market and the United States, we deducted post-sale inland freight, inland insurance and credit expense from FMV in accordance with 19 CFR 353.56(a). Where applicable, we made adjustments for differences in the physical characteristics of the merchandise. In accordance with 19 CFR 353.56(b)(2), we deducted home market indirect selling expenses in an amount not to exceed the amount of indirect selling expenses incurred in the United States.

In order to adjust for differences in packing between the two markets, we deducted home market packing costs from FMV and added U.S. packing costs. We also adjusted for the amount of Italian VAT in accordance with our decision in Silicomanganese.

We compared U.S. sales of further manufactured resins to FMV based on constructed value (CV) when Ausimont did not have contemporaneous home market sales of PTFE reactor bead, the product from which PTFE resin is processed in the United States. We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, labor, general expenses, profit and packing. To calculate CV we used: (1) The greater of actual general expenses or the statutory minimum of 10 percent of materials and labor; (2) the greater of actual profit or the statutory minimum of eight percent of materials, labor and general expenses; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. We deducted home market direct selling expenses, and home market indirect selling expenses not to exceed the amount of indirect selling expenses incurred in the United States in accordance with section 353.56(b)(2).

Preliminary Results of Review

As a result of our comparison of USP with FMV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Ausimont S.p.A.	08/01/93–07/31/94	6.91

Interested parties may submit written comments on these preliminary results. Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held approximately 44 days from the date of publication. Case briefs and other written comments from interested parties may be submitted not later than 30 days from the date of publication. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days from the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 46.46

percent, the ''all others'' rate established in the LTFV investigation (50 FR 26019, June 24, 1985). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 2, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–25753 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 7, 1994, the Department of Commerce (the Department) issued the preliminary results of its 1992–93 administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy (59 FR 51166; October 7, 1994). The review covers one manufacturer/exporter for the period August 1, 1992, through July 31, 1993. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, we have not changed the preliminary results. The final margin for Ausimont S.p.A. (Ausimont) is listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: October 17, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1994, the Department published in the Federal Register the preliminary results of its 1992–93 administrative review of the antidumping duty order on granular PTFE resin from Italy (59 FR 51166). There was no request for a hearing. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by this review are shipments of granular PTFE resins, filled or unfilled, and shipments of wet raw polymer. The order explicitly excludes PTFE dispersions in water and PTFE fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.90 of the Harmonized Tariff Schedule (HTS). We are providing this HTS number for convenience and Customs purposes only. The written description of the scope remains dispositive.

The review covers one manufacturer/exporter of granular PTFE resin, Ausimont. The review period is August 1, 1992, through July 31, 1993.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a case brief from petitioner, E.I. Du Pont de Nemours & Company (Du Pont), and a rebuttal brief from Ausimont.

Comment 1: Du Pont contends that the Department has artificially raised Ausimont's U.S. price by deducting losses attributable to the further manufacturing of wet raw polymer in the United States. According to Du Pont, Ausimont's losses relative to U.S. finishing costs are such that they create an unreliable measure of the ''increased value'' of the U.S. further manufacturing that is to be deducted from the U.S. price.

Du Pont argues that Ausimont's losses in this review present the same type of problem which the Department confronted in the circumvention inquiry of the antidumping duty order, at which time Du Pont argued that an allocation of losses would lower artificially the value of the imported wet raw polymer. See Granular Polytetrafluoroethylene Resin from Italy; Final Affirmative Determination of Circumvention of Antidumping Order, 58 FR 26100 (April 30, 1993) (Determination of Circumvention).

Furthermore, citing the Statement of Administrative Action implementing the Uruguay Round of the General Agreements on Tariffs and Trade (GATT), Du Pont points out that the Department recognizes it is directed not to deduct losses attributable to further manufacturing as an adjustment made to the U.S. price. While acknowledging that the Department is not bound by the GATT agreements for the purposes of this review, Du Pont claims that under present law the Department has the discretion to make sure that its assessment of the ''increased value'' of U.S. further manufacturing and its calculation of the U.S. price are reliable, and that it should exercise that discretion in this case by not deducting from the U.S. price Ausimont's losses attributable to finishing wet raw polymer into granular PTFE resin in the United States.

In response, Ausimont cites Final Determination of Sales at Less Than Fair Value: New Minivans From Japan, 57 FR 21937, 21939 (May 26, 1992), to argue that the Department has consistently interpreted section 772(e)(3) of the Tariff Act as requiring the allocation of profits and losses to the additional materials and labor added in the United States. Ausimont notes further that the Court of International Trade (CIT) has held that it would be ''patently unfair'' to allocate profits, but not losses, to the U.S. price in connection with further manufacturing. See *Timken Co.* v. *United States* (Timken), 14 CIT 753 (1990).

In addition, Ausimont argues that in the Determination of Circumvention (at 26107), the Department allocated both profits and losses ''in order to avoid making an inappropriate comparison (of value) to cost.'' Finally, Ausimont notes that by Du Pont's own admission, the Department is not bound by the Statement of Administrative Action implementing the Uruguay Round of the GATT in this review.

Department's Position: We disagree with Du Pont. Du Pont's claim that the Department's calculation of Ausimont's further manufacturing costs in the context of determining ESP creates an unreliable measure of the value added by Ausimont in the United States is unfounded. Du Pont incorrectly relies

upon the Department's circumvention determination earlier in this proceeding. In so doing, Du Pont fails to acknowledge that the purpose of the circumvention provision of the statute, section 781(a), is fundamentally different from that of the ESP provision, section 772(e)(3). Hence, as demonstrated below, what constitutes a reliable measure of the increased value in the ESP context differs from the determination of the difference in value between the finished product and the imported product in a circumvention inquiry.

In making adjustments to ESP for further manufacturing pursuant to section 772(e)(3), we deduct from the selling price manufacturing expenses incurred in the United States, as well as a portion of the profit or loss incurred on the U.S. sale of the finished product. The purpose of this analysis is to obtain a reliable calculation of the respondent's pricing behavior in the United States. Therefore, we have found it appropriate to use the respondent's actual expenses incurred in the United States. We also allocate actual profits or losses associated with each sale. See, *e.g.*, Final Results of the Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan, 58 FR 64720, 64729 (December 9, 1993); Final Results of Antidumping Administrative Review; Color Picture Tubes From Japan, 55 FR 37915 (1990); and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan; Final Results of Antidumping Duty Administrative Review, 56 FR 41508, 41516 (August 21, 1991). As noted by Ausimont, the Department's approach has been upheld by the CIT. See *Timken*, 14 CIT at 756.

By contrast, in conducting inquiries pursuant to section 781(a) to determine whether circumvention is occurring, the Department's chief concern is with evaluating the further manufacturing necessary to transform the imported parts or components into the finished merchandise sold in the United States. Under the statute, the Department is required to determine whether the difference in value between the two is ''small.'' The Department has determined that in order to better insure the reliability of this calculation, it is sometimes appropriate to disregard the actual costs associated with producing the product in the United States (as well as any profits or losses associated with those costs) in favor of costs incurred in the home market for a similar manufacturing operation. Determination of Circumvention, 58 FR at 26107. The CIT has now upheld this interpretation of the statute, as well. See *Ausimont* v. *United States*, Slip Op. 95–15 (CIT February 1, 1995).

We also reject Du Pont's argument that a different result is warranted in this review because a different approach may be applied under the statute as amended by the Uruguay Round Agreements Act, which became effective January 1, 1995. The Department is conducting reviews initiated prior to January 1, 1995, as here, in accordance with the statute and regulations as they existed on December 31, 1994.

For these reasons, we have continued to allocate Ausimont's losses to the U.S. further manufacturing for purposes of calculating ESP in this administrative review.

Comment 2: Du Pont argues that the Department should follow its normal preference for price-to-price comparisons over constructed value (CV) in establishing foreign market value (FMV). In order to avoid using CV as the basis for FMV, Du Pont argues that the Department's hierarchy for establishing FMV in this case should be extended to include: (1) An expanded window for identical, similar or second-choice merchandise up to and including a period of review (POR)-based home market average price, and (2) the use of finished resin as similar merchandise, with difference-in-merchandise (difmer) adjustments, for calculating the FMV for purposes of comparison to the imported wet raw polymer.

With respect to its contention that wet raw polymer should be compared to finished resin, Du Pont contends that the ratio of the difmer to total cost of manufacturing (COM) of the U.S. merchandise would be very close to the Department's 20-percent limit and that in this instance a modest relaxation of the Department's 20-percent limit would allow the use of price-to-price comparisons, which Du Pont asserts is the Department's preferred basis for establishing FMV. Du Pont claims that, while Ausimont reported the variable cost of manufacturing (VCOM) for wet raw polymer in the home market sales listing, Ausimont did not report VCOM for imported wet raw polymer in its U.S. sales listing. Du Pont contends that if the U.S. VCOM is no greater than that for wet raw polymer sold in the home market, the difmer adjustment would be near the 20-percent limit, but that the Department cannot know whether the actual ratio is within 20 percent because neither the VCOM nor the total COM of the imported product was reported.

With respect to the first point, Ausimont argues, for reasons that it claims are business proprietary, that using POR-based average home market prices in place of monthly average prices would not be appropriate in this instance.

Ausimont contends that the Department properly used CV as the basis for FMV when the difmer between sales of PTFE reactor bead (wet raw polymer) and finished granular PTFE resin exceeded the Department's established limit. Ausimont notes that Du Pont acknowledges by its own calculation that the difmer in this instance exceeds the Department's established limit of 20 percent. Ausimont also argues that Du Pont's calculation is erroneous, because Du Pont compared the difmer adjustment to the total cost of production of PTFE reactor bead, rather than the total COM. When calculated using total COM, Ausimont claims that the ratio is not as close to the 20-percent limit as claimed by Du Pont.

Department's Position: We disagree with Du Pont on both points. With regard to the use of POR-based home market prices, section 773(a)(1) of the Tariff Act requires that FMV ''shall be the price, at the time such merchandise is first sold in the United States.'' We normally fulfill this requirement by comparing U.S. prices to FMV based on home market or third country sales which occurred in the same month as the U.S. sale, or in a single month not more than three months before nor two months after the month of the U.S. sale. Only in rare cases, such as when there is a significant volume of home market sales, do we consider using POR weighted-average home market prices as a means of simplifying the analysis. In those instances we apply a test to determine whether using a POR weighted-average price would be representative of the transactions under consideration. See Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review, 57 FR 4975, 4977 (February 11, 1992); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; Preliminary Results of Antidumping Duty Administrative Review, 58 FR 25606, 25608 (1993). In this instance, however, the volume of home market sales is not so large as to warrant using POR weighted-average home market prices. Therefore, we have continued to use monthly weighted-average prices for these final results.

Du Pont's argument that we should depart from the 20 percent rule is flawed in several respects. First, Du Pont calculated the ratio of the difmer adjustment to the total cost of production rather than to the total COM, thereby miscalculating the ratio. Second, we disagree with Du Pont's suggestion that we depart from our normal practice because the calculation is imprecise as a result of certain data allegedly missing from the U.S. sales listing. Ausimont provided the VCOM and COM of its wet raw polymer for the home market, and the market in which the product is sold does not change the VCOM or COM of the product. Therefore, although this information did not appear on Ausimont's U.S. sales listing, it was provided elsewhere in the questionnaire response.

Finally, when selecting similar merchandise sold in the home market we normally reject any comparisons in which the difference between the variable manufacturing costs of the U.S. and home market products exceeds 20 percent of the total manufacturing cost of the U.S. product. In such cases, as here, we normally use CV as the basis for FMV. We do not consider merchandise to be reasonably similar if the difmer adjustment is greater than 20 percent unless there is evidence indicating that it is appropriate to do so, and that there will not be unreasonable distortions if the comparisons are made. See Certain Stainless Steel Cooking Ware From the Republic of Korea; Final Results of the Antidumping Duty Administrative Review, 58 FR 9560, 9561 (February 22, 1993); Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Administrative Review, 58 FR 43327, 43328 (August 16, 1993); and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof From Japan; Final Results of Antidumping Duty Order Administrative Review, 55 FR 38720, 38725 (September 20, 1990). In this case, petitioner has not provided evidence that would lead us to conclude that there would not be unreasonable distortions if we used price-based FMVs with difmer adjustments exceeding 20 percent. Accordingly, we did not make price to price comparisons where the difmer exceeded 20 percent.

While we found price-based FMVs for all U.S. sales of non-further manufactured resins, we compared U.S. sales of further manufactured resins to CV when there were no contemporaneous home market sales of PTFE reactor bead, the imported product from which granular PTFE resin is processed in the United States.

Final Results of the Review

We determine the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Ausimont S.p.A.	08/01/92–07/31/93	2.26

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Ausimont will be 2.26 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 46.46 percent for the reasons explained in Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review, 59 FR 51166 (October 7, 1994).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 USC 1675(a)(1)) and 19 CFR 353.22.

Dated: September 29, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–25754 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–475–819]

Preliminary Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy

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

EFFECTIVE DATE: October 17, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske, Vincent Kane, Todd Hansen, or Cynthia Thirumalai, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0819, 482–2815, 482–1276, or 482–4087, respectively.

PRELIMINARY DETERMINATION: The Department preliminarily determines that countervailable subsidies are being provided to manufacturers, producers, or exporters of pasta in Italy. For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the Federal Register (60 FR 30280, June 8, 1995), the following events have occurred.

Because of the large number of pasta producers and exporters in Italy, we selected the five largest exporters to the United States as mandatory respondents. We identified those exporters using information provided to us by the Unione Industriali Pastai Italiani, an association of pasta producers in Italy, on June 9, 1995. One of the selected companies did not produce pasta but exported on behalf of several producers. We included those producers in the investigation and requested that they respond to our

questionnaire. The companies selected were Agritalia, S.r.l. (''Agritalia''), Arrighi S.p.A. Industrie Alimentari (''Arrighi''), Pastificio Campano, S.p.A. (''Campano''), F.lli De Cecco di Filippo Fara S. Martino S.p.A. (''De Cecco''), Delverde, S.r.l. (''Delverde''), De Matteis Agroalimentare S.p.A. (''De Matteis''), Italpast S.p.A. (''Italpast''), Labor S.r.l. (''Labor''), Pastificio Guido Ferrara (''Guido Ferrara''), and Pastificio Riscossa F.lli Mastromauro S.r.l. (''Riscossa''). Because of their association with two of the respondent companies, Delverde and De Matteis, we also asked Tamma Industrie Alementari (''TIA'') and Demaservice S.r.l. (''Demaservice''), respectively, to respond to the questionnaire.

On June 22, 1995, we issued countervailing duty questionnaires to the Government of Italy (''GOI''), the Commission of the European Union (''EU''), and the selected companies, concerning petitioners' allegations. We received responses to our questionnaire in July and August. Four additional companies also filed voluntary responses and we have included these companies in our analysis. The following companies are voluntary respondents in this investigation: Barilla G. e R. F.lli S.p.A. (''Barilla''), Industria Alimentare Colavita, S.p.A. (''Indalco''), Gruppo Agricoltura Sana S.r.L. (''Gruppo''), and Isola del Grano S.r.L. (''Isola''). We issued supplementary questionnaires to parties in August and September for which responses were received by early October.

On July 5, 1995, we postponed the preliminary determination in this investigation until October 10, 1995 (60 FR 35899).

Scope of Investigation

The product covered by this investigation is certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this investigation is typically sold in the retail market in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this investigation are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise under investigation is currently classifiable under subheading 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTS).* Although the *HTS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

On July 19, 1995, the Association of Food Industries (AFI) Pasta Group, a group of importers, requested that we expand the scope to cover all imports of non-egg dry pasta, irrespective of package size or channel of trade. On August 24, 1995, petitioners requested that we expand the scope to cover all imports of non-egg dry pasta for the retail and the food service markets. We have determined that the scope should not be expanded. According to the Department's past practice, products which were excluded at the petition stage are not generally added to the scope later in the investigatory process. In addition, expanding the scope would raise numerous issues such as industry support, and the lack of a preliminary injury determination by the U.S. International Trade Commission (''ITC'') concerning the expanded scope. For a discussion of this decision, *see* Memorandum to Susan G. Esserman, Assistant Secretary for Import Administration, dated September 10, 1995, on file in this case in the Central Records Unit.

On September 27, 1995, Spruce Foods, an importer of organic pasta from Italy, requested that organic pasta certified by the European Union under EEC Regulation 2092/91 be excluded from the scope of this investigation. Because this request was made so late, we are unable to consider it for purposes of this preliminary determination. However, we will address this issue in our final determination.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the ''Act''). References to *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (''Proposed Regulations''), which have been withdrawn, are provided solely for further explanation of the Department's countervailing duty practice.

Injury Test

Because Italy is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of pasta from Italy materially injure, or threaten material injury to, a U.S. industry. On July 10, 1995, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Italy of the subject merchandise (60 FR 35563).

Petitioners

The petition in this investigation was filed by Borden, Inc., Hershey Foods Corp., and Gooch Foods, Inc.

Period of Investigation

The period for which we are measuring subsidies (the ''POI'') is calendar year 1994.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: With the exception of Barilla, the companies under investigation did not take out any long-term, fixed-rate, lira-denominated loans or other debt obligations in any of the years in which grants were received or government loans under investigation were given. Therefore, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate (see *Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe (''Seamless Pipe'') From Italy* (60 FR 31992, 31994–95, June 19, 1995)). We lacked the specific information needed to calculate the mark-up for years prior to 1986, so we applied an average of the mark-up for the years 1986 through 1994 to those earlier years.

In the case of Barilla, the company reported that it had secured fixed-rate obligations during two years of the relevant period. Therefore, in accordance with section 355.49(b)(2) of the Proposed Regulations, we used this company-specific benchmark as the discount rate for Barilla in those years.

Allocation Period: Non-recurring benefits are being allocated over a 12-year period, the average useful life of physically renewable assets in the food processing industry (as reported in the Internal Revenue Service Asset Depreciation Range System).

Benefits to Mills: Where respondents received subsidies specifically tied to related milling operations, we have not included those subsidies in our calculations. Semolina, a primary input in the manufacture of pasta, is a definable good with an established

market, and is thus considered an input into the manufacturing process for pasta, not an intermediate step in the manufacturing process. Petitioners have not made an upstream subsidy allegation in accordance with section 771A, which would be necessary for us to investigate subsidies to the production of semolina from durum wheat. Additionally, we determine that semolina, a processed agricultural product, fails to qualify as a raw agricultural product under section 771B.

Changes in Ownership

Based on the information provided in the responses, we have learned that one of the companies under investigation, Delverde, purchased another company's pasta factory. The selling company received non-recurring countervailable subsidies prior to Delverde's purchase of the factory. Delverde has provided sufficient information to calculate the amount of those prior subsidies that passed through to Delverde with the acquisition of the factory pursuant to the methodology followed by the Department in the Restructuring section of the General Issues Appendix in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217, 37268–69, July 9, 1993) (''General Issues Appendix''). For purposes of the preliminary determination, we have followed the General Issues Appendix methodology. We note that aspects of the General Issues Appendix methodology are being reviewed by the Court of Appeals for the Federal Circuit (CAFC). We may re-examine whether the General Issues Appendix methodology is appropriate for Delverde's transaction in light of facts developed in the final investigation, ongoing litigation, and section 771(5)(F) of the Act.

We are also collecting further information on acquisitions by other responding companies and the subsidies received by the selling companies prior to the acquisitions.

Related Parties

In the present investigation, we have examined several affiliated companies (within the meaning of section 771(33) of the Act) whose relationship may be sufficient to warrant treatment as a single company with a combined rate. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently related where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also stated that companies may be considered sufficiently related where there are common directors or one company performs services for the other company. According to the questionnaire, such companies that produce the subject merchandise or that have engaged in certain financial transactions with the company under investigation are required to respond.

We have preliminarily determined that one respondent, Arrighi, is affiliated to another pasta producer on the basis of common third-party ownership. Because of the extent of common ownership, we find it appropriate to treat these two pasta producers as a single company. As a consequence, we would calculate a single countervailing duty rate for both companies by dividing their combined subsidy benefits by their combined sales. However, there has not been sufficient time to receive information regarding the subsidies received by the related company for use in the preliminary determination. Therefore, for purposes of the preliminary determination, we calculated a rate based on subsidies received by Arrighi only, and using only Arrighi's sales in the denominator.

Another respondent, De Matteis, has reported that it is related to another company, Demaservice, through common ownership. De Matteis states that Demaservice does not produce or sell the subject merchandise and that no financial transactions, as defined in the questionnaire, have occurred between these companies. Nevertheless, based on the information reported by De Matteis, Demaservice is deeply involved in the operations of De Matteis. Therefore, for purposes of the preliminary determination, we have determined that it is appropriate to treat these two companies as a single company. As a consequence, we would calculate a single countervailing duty rate for both companies by dividing their combined subsidy benefits by their combined sales. However, there has not been sufficient time to receive information regarding the subsidies received by the related company for use in the preliminary determination. Therefore, for purposes of the preliminary determination, we calculated a rate based on subsidies received by De Matteis only, and using only De Matteis' sales in the denominator.

Agritalia has also reported that it is related through common ownership to another company, Meridiana. Meridiana did not produce or sell the subject merchandise during the POI. Only limited transactions have occurred between Agritalia and Meridiana. Unlike Demaservice, which played an integral role in De Matteis' operation, Meridiana had only an ancillary role in Agritalia's operation. Therefore, we have preliminarily determined that these transactions are limited in extent and are not a likely vehicle for the transmittal of subsidies. Therefore, we have not treated these companies as a single company.

Finally, Delverde is part of a consolidated group, consisting of a parent company and two sister companies which produce pasta. Another company, TIA, holds less than a 20 percent ownership interest in the Delverde group, but shares a common director with Delverde and Delverde's parent. TIA's business is principally wheat milling but it also manufactures non-egg dry pasta. We have preliminarily determined that the relationship between Delverde and TIA warrants treating them as a single company. Although the evidence in the record does not show that their relationship provides a likely vehicle for the transmittal of subsidies, it does demonstrate the possibility that the two companies might shift exports between them in response to differing countervailing duty rates. Therefore, instead of giving these companies a combined rate as above, we have calculated a separate countervailing duty rate for each company and then weight-averaged these rates by each company's exports to the United States to calculate a single rate applicable to both companies.

Facts Available

Section 776(a)(2)(A) of the Act requires the Department to use the facts available if ''an interested party or any other person withholds information that has been requested by the administering authority or the Commission under this title.'' Two of the companies selected to provide responses in this investigation, Italpast and Labor, did not respond to our countervailing duty questionnaire. Section 776(b) of the Act provides that the administering authority may use an inference that is adverse to the interests of the non-responding party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed in the record. Because petitioners did not include subsidy rates in the petition, we were unable to use the petition as a source for

facts available. Therefore, we have used the sum of the highest rates calculated for each program for respondent companies as the facts available for Italpast and Labor.

Based upon our analysis of the petition and the responses to our questionnaire, we determine the following:

Claims for ''Green Light'' Subsidy Treatment

Section 771(5B) of the Act describes subsidies that are noncountervailable, the so-called ''green light'' subsidies. Among these are subsidies to disadvantaged regions, as defined in section 771(5B)(C). The GOI has requested that the Department find the following subsidies to disadvantaged regions to be noncountervailable under section 771(5B)(C):

- ILOR and IRPEG Tax Exemptions under Decree 218 of 1978
- Industrial Development Grants under Law 64 of 1986
- Industrial Development Loans under Law 64 of 1986
- VAT Reductions on Capital Goods under Law 675 of 1977. Analysis

After World War II, the GOI recognized that the South lagged behind the rest of the country economically and established a number of programs to encourage industrial development in the South. Law 646 created the Fund for Southern Italy. Grants, interest contributions, and tax and social security reduction were provided for in this law.

In 1986, Law 64 created the Agency for the Promotion of Growth in Southern Italy. A total of 120,000 billion lira was allocated over the next nine years for development in the South. In 1988, after an investigation of Law 64 by the European Community (EC), the GOI barred four regions from receiving Law 64 benefits. After certain modifications, Law 64 was found to be compatible with the Treaty of Rome.

In 1992, the EC again investigated Law 64. As a result, Law 488 of 1992 was enacted to replace Law 64. The new law established a regional development policy for the entire country. As of August 21, 1992, applications under Law 64 were no longer accepted.

The programs for which the GOI has requested green light treatment all fall, directly or indirectly, under Law 64. The Industrial Development Grants and Loans were granted under Law 64. The VAT reductions under Law 675 were limited in 1986, by Law 64, to companies located in the South. Finally, the ILOR and IRPEG tax exemptions granted pursuant to Law 218/78 were extended by Law 64 through December 31, 1993.

We have preliminarily determined that it is appropriate to focus our green light analysis on the law(s) and programs that were in place at the time the assistance in question was granted. None of the companies being investigated has received benefits under Law 488. Therefore, we have limited our analysis to the above-named programs under Law 64.

We have preliminarily concluded that the information submitted by the GOI does not support the claim that these programs qualify as noncountervailable subsidies. For example, section 771(5B)(C) (i) and (iii) requires that regional subsidy programs be part of ''a generally applicable regional development policy.'' Yet Law 64 provides benefits solely to the South of Italy and there is no information regarding other laws (or provisions within Law 64) that make regional development a generally applicable policy across Italy. Also, section 771(5B)(C)(i)(II) and (ii) requires that economically disadvantaged regions be designated on the basis of neutral and objective criteria, which are clearly stated in the relevant statute, regulation or other official document and include a measure of per capita income or unemployment. No information has been provided to indicate that Law 64 or its implementing regulations met this standard. Therefore, for purposes of this preliminary determination we have not treated these programs as green light subsidies.

I. Programs Preliminarily Determined To Be Countervailable

A. Local Income Tax (''ILOR'') and Corporate Income Tax (''IRPEG'') Exemptions

Companies located in the Mezzogiorno may receive a complete exemption for a period of 10 years from the ILOR and the IRPEG on profits deriving from new plant and equipment or from plant expansion and improvement under Presidential Decree 218 of March 6, 1978. Prior to March 29, 1986, the IRPEG exemption applied to only 50 percent of profits deriving from new or expanded plant and equipment. Effective March 29, 1986, Law 64/86 granted a total exemption for the IRPEG, as well. In addition, otherwise non-qualifying profits which are reinvested in plant or equipment may receive an exemption from the ILOR for the year of reinvestment. Reinvested profits do not receive any exemption from the IRPEG. The provision for ILOR and IRPEG exemptions expired on December 31, 1993, but companies which were approved for the exemptions prior to this date may continue to benefit from the exemption until the expiration of the 10-year benefit period approved for each company.

We have determined that these tax exemptions are countervailable subsidies. They constitute subsidies within the meaning of section 771(5) of the Act, as the tax exemptions represent revenue foregone by the GOI and confer tax savings on the companies. Also, they are regionally specific within the meaning of section 771(5A) because they are limited to companies located in the Mezzogiorno. (As discussed above, the GOI has not demonstrated that the ILOR and IRPEG exemptions are entitled to noncountervailable status under section 771(5B)(C).)

Barilla, De Cecco, and Delverde claimed ILOR tax exemptions on tax returns filed during the POI.

To calculate the countervailable subsidy for each company, we divided the tax savings during the POI by the company's sales during the POI. On this basis, we determine the countervailable subsidy from this program to be 0.20 percent *ad valorem* for Barilla, 0.94 percent *ad valorem* for De Cecco, and 0.15 percent *ad valorem* for Delverde.

B. Industrial Development Grants Under Law 64/86

Law 64/86 provided for extraordinary intervention in favor of the Mezzogiorno, with the purpose of promoting industrial development in the region. Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants, because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament decided to abrogate Law 64. This decision became effective in 1993. Projects approved prior to 1993, however, were authorized to receive grant amounts after 1993.

Barilla, De Cecco, La Molisana, Delverde, TIA, and Riscossa received industrial development grants.

We preliminarily determine that these grants provide a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the grant. Also, these grants are regionally specific, within the meaning of section 771(5A). (As discussed above, the GOI has not

demonstrated that these grants are entitled to noncountervailable status under section 771(5B)(C).)

We have treated these grants as ''non-recurring'' grants based on the analysis set forth in the Allocation section of the General Issues Appendix. In accordance with our past practice, we have allocated those grants which exceeded 0.5 percent of a company's sales in the year of receipt over time. For Barilla, no grants exceeded 0.5 percent of Barilla's sales in the year of receipt. Accordingly, all of Barilla's grants were expenses. Barilla did not receive any grants during the POI. Therefore, Barilla had no benefit during the POI.

To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefit attributable to the POI for each company by that company's sales in the POI. On this basis, we determine the countervailable subsidy for this program to be 0.00 percent *ad valorem* for Barilla, 0.26 percent *ad valorem* for De Cecco, 0.35 percent *ad valorem* for La Molisana, 2.83 percent *ad valorem* for Delverde, 2.90 percent *ad valorem* for TIA, and 1.01 percent *ad valorem* for Riscossa.

C. Industrial Development Loans Under Law 64/86

Law 64/86 also provided for interest contributions on industrial development loans to companies located in the Mezzogiorno for constructing new plants or expanding or modernizing existing plants. The interest rate on these loans was set at the reference rate, with the GOI's interest contributions serving to reduce this rate. For the reasons discussed above, pasta companies were eligible for interest contributions to expand existing plants but not to establish new plants.

Barilla, De Cecco, Delverde, TIA and La Molisana received interest contributions on industrial development loans.

We have preliminarily determined that these interest contributions are countervailable subsidies within the meaning of section 771(5). They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, they are regionally specific within the meaning of sections 771(5A). (As discussed above, the GOI has not demonstrated that industrial development loans are entitled to noncountervailable status under section 771(5B)(C).)

Because the recipients of the interest contributions knew, prior to taking out the loans, that they would receive the interest contributions, we have allocated the benefit over the life of the loan for which the contribution was received. We divided the benefit attributable to the POI for each company by that company's sales. On this basis, we determine the countervailable subsidy for this program to be 0.08 percent *ad valorem* for Barilla, 0.44 percent *ad valorem* for De Cecco, 2.35 percent *ad valorem* for Delverde, 0.86 percent *ad valorem* for TIA, and 0.17 percent *ad valorem* for La Molisana.

D. Export Marketing Grants Under Law 304/90

To increase market share in non-EU markets, Law 304/90 provides grants to encourage enterprises operating in the food and agricultural sectors to carry out pilot projects aimed at developing links between Italian producers and foreign distributors in non-EU markets and improving the quality of services in those markets. Emphasis is placed on assisting small- and medium-sized producers.

We have determined that the export marketing grants under Law 304 provide countervailable subsidies within the meaning of section 771(5) of the Act. The grants are a direct transfer of funds from the GOI providing a benefit in the amount of the grant. The grants are also specific because their receipt is contingent upon export performance.

Delverde received a grant under this program for a market development project in the United States.

We have determined that Law 304 grants are ''non-recurring,'' because they are exceptional events rather than an ongoing occurrence. Each project funded by the a grant requires a separate application and approval, and the projects represent one-time events in that they involve an effort to establish warehouses, sales offices, and a selling network in new overseas markets. Therefore, we have treated the grant received under this program as ''non recurring'' based on the analysis set forth in the Allocation section of the General Issues Appendix. Further, we have determined that the grant exceeded 0.5 percent of Delverde's exports to the United States in the year it was received. Therefore, in accordance our past practice, we allocated the benefits of this grant over time.

To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefits attributable to the POI by the total value of Delverde's exports to the United States. On this basis, we determine the countervailable subsidy to be 0.19 percent *ad valorem* for Delverde.

E. Social Security Reductions and Exemptions

Pursuant to Law 1089 of October 25, 1986, companies located in the Mezzogiorno were granted a 10 percent reduction in social security contributions for all employees on the payroll as of September 1, 1968, as well as those hired thereafter. Subsequent laws authorized companies located in the Mezzogiorno to take additional reductions in social security contributions for employees hired during later periods, provided that the new hires represented a net increase in the employment level of the company. The additional reductions ranged from 10 to 20 percentage points. Further, for employees hired during the period July 1, 1976 to November 30, 1991, companies located in the Mezzogiorno were granted a full exemption from social security contributions for a period of 10 years, provided that employment levels showed an increase over a base period.

We determine that the social security reductions and exemptions are countervailable subsidies within the meaning of section 771(5). They represent revenue foregone by the GOI and they confer a benefit in the amount of the savings received by the companies. Also, they are specific within the meaning of section 771(5A) because they are limited to companies located in the Mezzogiorno.

Barilla, De Cecco, Delverde, TIA, La Molisana, Guido Ferrara, Campano, De Matteis, Riscossa, and Indalco received social security reductions and exemptions during the POI.

To calculate the countervailable subsidy, we have divided the total savings in social security contributions realized by each company by that company's sales during the same period. On this basis, we calculated the countervailable subsidy from this program to be 0.69 percent *ad valorem* for Barilla, 0.70 percent *ad valorem* for De Cecco, 0.45 percent *ad valorem* for TIA, 2.60 percent *ad valorem* for Delverde, 2.58 percent *ad valorem* for La Molisana, 0.98 percent *ad valorem* for Guido Ferrara, 1.77 percent *ad valorem* for Campano, 1.51 percent *ad valorem* for De Matteis, 0.78 percent *ad valorem* for Riscossa, and 1.17 percent *ad valorem* for Indalco.

Several companies reported that in addition to the social security tax relief described above, they received Social Security tax holidays under another program, called ''Fiscalizzazione'' The GOI has provided no information with

regard to these benefits. According to respondent companies, Fiscalizzazione is available to companies in both Northern and Southern Italy. However, the percentage of the tax reduction that may be taken in Southern Italy is greater.

We preliminarily determine that the Fiscalizzazione reductions are countervailable subsidies within the meaning of section 771(5) for companies with operations in Southern Italy. They represent revenue foregone by the GOI and confer a benefit in the amount of the greater savings accruing to the companies in Southern Italy. In addition, they are regionally specific within the meaning of section 771(5A).

The available information suggests that all companies with operations in Southern Italy which received the social security tax relief described above also received these Fiscalizzazione benefits. These companies include Barilla, Campano, De Cecco, De Matteis, Delverde, Guido Ferrara, Indalco, La Molisana, Riscossa, and TIA.

To calculate the countervailable subsidy, we have divided the additional savings in social security contributions realized by each company by that company's sales during the same period. We note that we do not have the information necessary to calculate individual rates for some of these companies. Therefore, we have calculated individual rates for those companies for which we have the information. We have applied a weighted average of these rates to the companies for which we do not have the necessary information. On this basis, we calculated the countervailable subsidy from this program to be 0.46% *ad valorem* for Barilla, 0.46% *ad valorem* for Campano, 0.34% *ad valorem* for De Cecco, 0.46% *ad valorem* for De Matteis, 0.73% *ad valorem* for Delverde, 0.46% *ad valorem* for Guido Ferrara, 0.06% *ad valorem* for Indalco, 0.46% *ad valorem* for La Molisana, 0.46% *ad valorem* for Riscossa, and 0.29% *ad valorem* for TIA.

F. Regional Development Grant

One respondent, Arrighi, claims to have received a grant in 1994 under the European Regional Development Fund (''ERDF''). However, the EU has claimed that no Italian pasta producers or exporters received money under the ERDF and that Arrighi is located in a region that would not be eligible for ERDF assistance. Moreover, our review of the supporting documentation supplied by Arrighi provides no indication that the ERDF was the source of the funds.

For purposes of the preliminary determination, we are not treating this as an ERDF grant. Consequently, we have not analyzed the information provided by the EU in support of its claim that the ERDF is a noncountervailable subsidy under section 771(5B)(C) of the Act. However, we intend to clarify the origin of the assistance reported by Arrighi so that we can analyze it fully for our final determination.

We are treating the assistance reported by Arrighi as a countervailable subsidy within the meaning of section 771(5) of the Act. The grant is a direct transfer of funds providing a benefit in the amount of the grant. Also, the available information indicates that the grant is regionally specific within the meaning of section 771(5A) of the Act.

We view this as a ''non-recurring'' grant based on the analysis set forth in the Allocation section of the General Issues Appendix. According to the information received, there is no indication that the grants are available on an ongoing basis, and separate government approval is required for each grant. However, we have determined that the grant was less than 0.5 percent of Arrighi's total pasta sales in the POI (excluding sales of pasta produced by other producers) which was the year of receipt of the grant. Therefore, in accordance with our past practice, we are allocating the full amount of the grant to the POI.

To calculate the countervailable subsidy, we divided the full amount of the grant by Arrighi's total pasta sales, excluding its sales of pasta from other producers. On this basis, we calculated the countervailable subsidy from this program to be 0.34 percent *ad valorem* for Arrighi.

G. Export Restitution Payments

Since 1962, the EU has operated a subsidy program which provides restitution payments to EU pasta exporters based on the durum wheat content of their exported pasta products.

Generally, under this program, a restitution payment is available to any EU pasta producer exporting pasta products, regardless of whether the EU pasta producer has purchased the durum wheat used in its pasta exports from within the EU or has imported it. The amount of the restitution payment is calculated by multiplying the prevailing restitution payment rate per 100 kilograms of durum wheat by the weight of the wheat, in kilograms, used to produce the exported pasta. The restitution payment rate itself is based on a levy that the EU imposes on imported durum wheat in order to bring the price of imported durum wheat up to the (typically higher) price level within the EU. Consequently, the amount of the restitution payment, in theory, should equal the difference between the EU's internal price for durum wheat and the world market price for durum wheat, as determined by the EU, exclusive of the levy. The restitution payment rate, like the levy on which it is based, is adjusted by the EU monthly.

The EU uses the restitution payment rate prevailing on the date of exportation of the pasta products to calculate the amount of the restitution payment.

Additionally, under this program, the EU permits a pasta exporter to purchase a certificate that locks in a restitution payment rate if the pasta exporter promises to export a certain amount of pasta by a certain date. The promised export date can be as much as 6 months later. Moreover, the pasta exporter is free to sell this certificate to another pasta exporter. The selling price is determined through negotiations between the seller and the purchaser and typically will be dependent on such factors as the amount of time left until the certificate expires, the purchaser's projected volume of exports, the restitution payment rate under the certificate, and the current and expected future restitution payment rates set by the EU. A pasta exporter that fails to use a certificate by the date set forth in the certificate must pay a penalty.

In 1987, the nature of this program changed with regard to exports to the United States as a result of a settlement reached by the United States and the EC. This settlement arose out of a GATT panel proceeding, brought by the United States, in which the panel ruled (in 1983) that the program violated the EC's GATT obligations and did not fall within the exception under Item (d) of the Illustrative List of Export Subsidies.

Under the settlement, the EC agreed to allow the importation of durum wheat from any non-EC country free of any levy under a system described in the settlement as ''Inward Processing Relief,'' or ''IPR.'' Under this system, the EC pasta producer would not receive a restitution payment when exporting to the United States pasta products containing durum wheat imported with IPR. Essentially, a restitution payment no longer was necessary because no levy had been paid upon importation in the first place.

As to pasta products containing EC durum wheat or durum wheat that had been imported without IPR, a restitution payment remained available for exports to the United States, except that the

restitution rate was reduced, originally by 27.5 percent and later by approximately 35 percent, from the normal level available for exports to all other countries.

As a further condition of the settlement, the EC agreed to attempt to balance its exports to the United States equally between pasta products containing durum wheat imported with IPR, on the one hand, and pasta products containing EC durum wheat or durum wheat imported without IPR, on the other hand. The goal was for 50 percent of the EC's pasta exports to the United States to contain durum wheat imported with IPR (for which the exporter had paid world market price, free of any levy, and had received no restitution payments), while the remaining 50 percent of the EC's pasta exports to the United States would contain EC durum wheat or durum wheat imported without IPR (for which the exporter could receive reduced restitution payments).

In all other respects, the program remained unchanged.

For purposes of this preliminary determination, we have concluded that the restitution payments made are countervailable subsidies within the meaning of section 771(5) of the Act. Each payment represents a direct transfer of funds from the EU providing a benefit in the amount of the payment. The restitution payments are specific because their receipt is contingent upon export performance.

Respondent firms in this investigation have argued that this program escapes countervailability because it falls within the exception under Item (d) of the Illustrative List of Export Subsidies, although the EU itself has not made this claim. Item (d) explains that one type of export subsidy is

> The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for the use in the production of exported goods, on terms or conditions more favorable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, *if* (*in case of products*) *such terms or conditions are more favorable than those commercially available on world markets to their exporters.*

Subsidies Agreement, Annex 1 (footnote omitted) (emphasis added). In a footnote, Item (d) defines the term ''commercially available'' as meaning ''the choice between domestic and imported products is unrestricted and depends only on commercial considerations.'' *Id.*, n.57.

We do not find that this program fits within the Item (d) exception because two features of the program render any comparison to the terms and conditions commercially available on world markets to EU exporters inapposite. The first feature is the ability to buy and sell certificates representing the right to a locked-in restitution payment rate. Here, it is possible for an EU exporter to realize a windfall by selling the certificate to another exporter rather than using it to export.

The other differentiating feature of the program that makes Item (d) inapplicable is that the actual restitution payment is based on the prevailing rate at the time of exportation rather than at the time of the purchase of the input, durum wheat, which was used to produce the exported pasta. It is possible that months or even a year or more may transpire between the time of the purchase of the input and the time when the restitution payment is set. As a result, with any fluctuation in the world market price commercially available to the EU exporter over this time period, the restitution payment will not equal (even in theory) the difference between the EU price for the input and the world market price commercially available to the EU exporter. In any given instance, therefore, depending on the direction of the price fluctuation, the restitution payment will either undercompensate or, more significantly, overcompensate the EU exporter within the meaning of Item (d).

We also note that, in any event, we could not find that this program fits within the Item (d) exception because neither the EU nor the respondent firms have produced the pricing and related information necessary for the Department to determine whether the program satisfies this exception.

As the United States Court of Appeals for the Federal Circuit explained in *Creswell Trading Co.* v. *United States,* 15 F.3d 1054, 1060 (Fed. Cir. 1994):

> [I]n the context of an Item (d) investigation, Commerce necessarily requires information that is within the knowledge and control of the government of the exporting country, its exporters, or both, which information Commerce cannot obtain independently * * *. Thus, it is only logical that some burden be placed on the government or exporter to come forward with such information * * *.
>
> To this end, we hold that the existence of a program wherein a government, or an agency thereof, delivers to an exporter products or services for use in the production of exported goods on terms and conditions more favorable than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption is, standing alone, presumptive evidence that the program also provides the products or services under investigation to that exporter on terms or conditions more favorable than the terms and conditions available on world markets. Commerce's initial burden of production is thus satisfied by way of this presumption. The burden of production accordingly shifts to the exporter to come forward with evidence that the services or products were not provided on terms or conditions more favorable than available on world markets.
>
> We do not hold that the ultimate burden of proof is shifted by this presumption. Rather, we merely hold that this presumption creates a prima facie case that shifts the burden of production to the exporter to come forward with sufficient evidence to rebut this presumption * * *. [If the exporter is able to rebut this presumption,] [t]he totality of evidence must then be weighed to determine whether a countervailable subsidy exists.

In this investigation, the Department has carried its initial burden of production because it can point to record evidence demonstrating the existence of the EU's export restitution program, which provides terms more favorable than those for domestic goods. This evidence, therefore, gives rise to a rebuttable presumption that the program is countervailable and places on the EU and the respondent firms the burden of producing sufficient evidence to rebut this presumption, which must be accomplished through the submission of the pricing and related information necessary for the Department to determine whether the program satisfies the exception under Item (d). Because neither the EU nor the respondent firms have produced this information, they have not rebutted the presumption that the EU's program is countervailable.

Arrighi, Delverde, TIA, La Molisana, Riscossa and Indalco realized benefits from this program during the POI.

Since pasta exporters are able to calculate the precise benefit from the restitution payments at the time of exportation, we have calculated the countervailable subsidy on an earned, rather than received, basis. (See *Final Affirmative Countervailing Duty Determination: Certain Steel Wire Nails from New Zealand,* 52 FR 37196, 37197, October 5, 1987). Hence, the export restitution payments earned during the POI are allocated solely to the POI.

To calculate the countervailable subsidy, we divided the export restitution payments earned during the POI on shipments to the United States by the company's total export sales to the United States during the POI. On this basis, we calculated a countervailable subsidy under this program of 0.62 percent *ad valorem* for Arrighi, 0.62 percent *ad valorem* for Del Verde, 0.05 percent *ad valorem* for TIA, 0.08 percent *ad valorem* for La

Molisana, 0.25 percent *ad valorem* for Riscossa and 0.21 percent *ad valorem* for Indalco.

II. Program Found To Be Not Countervailable Lump-Sum Interest Payment Under Law 1329/65 for Companies in Northern Italy

Law 1329 (the Sabatini Law) was enacted in 1965 to encourage the sale of machine tools and production machinery. It provides for a deferral of up to five years of payments due on installment contracts for the purchase of such equipment and for a one-time, lump-sum interest contribution from Mediocredito Centrale (''MCC'') toward the interest owed on these contracts. The amount of the interest contribution is equal to the present value of the difference between the payment stream over the life of the contract based on the reference rate and the payment stream over the life of the contract based on a concessionary rate. The concessionary rate for companies located in the Mezzogiorno is the reference rate less eight percentage points. The concessionary rate for companies located outside the Mezzogiorno is the reference rate less five percentage points.

No companies located in the Mezzogiorno had Law 1329 loans outstanding during the POI, which related to the subject merchandise.

Arrighi, which is located outside the Mezzogiorno, had Law 1329 loans outstanding during the POI. Isola, also a company in the north, had Law 1329 loans outstanding but we are awaiting more information on these loans.

For Arrighi's loans, we have analyzed whether the program is specific ''in law or in fact,'' within the meaning of section 771(5A)(D) (i) and (iii). Section 771(5A)(D)(iii) of the Act provides the following four factor to be examined with respect to *de facto* specificity: (1) The number of enterprises, industries or groups thereof which usually use a subsidy; (2) predominant use of a subsidy by an enterprise, industry, or group; (3) the receipt of disproportionately large amounts of a subsidy by an enterprise, industry, or group; and (4) the manner in which the authority providing a subsidy has exercised discretion in its decision to grant the subsidy.

Law 1329, which created the program, contains no limitations on the types of industries that can apply for assistance. Further, during the POI, assistance under the program was distributed over 19 sectors, representing a wide cross-section of the economy. On this basis, we concluded that the subsidy recipients were not limited to a specific industry or group of industries. We also examined evidence regarding the usage of this program and found no predominant use by the pasta industry. We next examined whether a disproportionately large share of benefits was granted to the pasta industry. We found that during the POI, benefits to the food processing industry, which includes the pasta industry, amounted to 7.1 percent of all benefits granted in that period. The shares of the 19 reported sectors ranged from 0.5 percent for sundry manufacturing to 18.2 percent for metal products, machines, and mechanical products. Considering the number and variety of sectors receiving benefits and the range of benefits over the various sectors, we do not consider the benefits received by the food processing sector to constitute a disproportionate share of the benefits distributed under this program. Given our findings that the number of users is large and that there is no dominant or disproportionate use of the program by the pasta producers, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Thus, for companies located outside the Mezzogiorno, we preliminarily determine that interest contributions under the Sabatini Law are not specific.

We note, however, that our practice in determining specificity is to examine the distribution of benefits in the year they were approved for the company under investigation and in each of the three previous years. Because this information was not available for the preliminary determination, we based our *de facto* analysis on information relating to the POI. For the final determination, we intend to gather information for the period 1988 through 1991.

III. Program for Which More Information Is Needed

A. Export Credit Insurance Under Law 227/77

The GOI reported that one company, La Molisana, obtained export credit insurance from a private insurer for a shipment to the United States and that the private insurer had, in turn, reinsured the export transaction with the GOI's Export Insurance Agency. The GOI further reported that its Export Insurance Agency had suffered substantial losses over the past five years.

For purposes of the final determination, we will be seeking more information and giving further consideration to whether a subsidy is being provided to La Molisana through its purchase of export insurance.

IV. Programs Preliminarily Determined To Be Not Used

The responses indicated that certain companies received assistance under the European Social Fund (''ESF'') and Italian Law 675/77. Specifically, worker training grants were reported under the ESF and VAT reductions under Law 675/77. We have determined that any payments received under these programs are ''recurring,'' as they are among the types of benefits the Department has identified as normally being expensed in the year of receipt. (See Allocation section of the General Issues Appendix.) Since no payments were received by any investigated companies under these programs during the POI, we are treating the programs as ''not used'' and, consequently, have not analyzed whether they confer countervailable subsidies.

Similarly, as discussed above, no companies located in the Mezzogiorno had loans under law 1329/65 outstanding during the POI. Therefore, we have not analyzed whether lump-sum interest payments on such loans confer countervailable subsidies on companies located in the Mezzogiorno.

Other programs that were not used were:

A. *Export Credits under Law 227/77*
B. *Capital Grants under Law 675/77*
C. *Retraining Grants under Law 675/77*
D. *Interest Contributions on Bank Loans under Law 675/77*
E. *Interest Grants Financed by IRI Bonds*
F. *Preferential Financing for Export Promotion under Law 394/81*

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual subsidy rate for each company investigated. For companies not investigated, we have determined an ''all others'' rate by weighting individual company subsidy rates by each company's exports of the subject merchandise to the United States, if available, or pasta exports to the United States. The all others rate does not include zero and *de minimis* rates or any rates based solely on the facts available.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of pasta from Italy which

are entered or withdrawn from warehouse, for consumption, on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

Company	Ad valorem rate
Arrighi	0.96 (*de minimis*)
Agritalia	2.41
Barilla	1.43
Campano	2.23
De Cecco	2.68
De Matteis	1.97
Demaservice*	1.97
Delverde*	9.20
Gruppo	0.00
Guido Ferrara	1.44
Indalco	1.44
Isola del Grano	0.00
Italpast	10.67
Labor	10.67
La Molisana	3.64
Riscossa	2.50
TIA*	9.20
All Others	4.08

* See *Related Parties* section for explanation of why the rates for Delverde and TIA and the rates for De Matteis and Demaservice are the same.

Since the estimated preliminary net countervailable subsidy rate for Arrighi, Gruppo, and Isola del Grano is either zero or *de minimis*, these companies will be excluded from the suspension of liquidation.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will be held on December 8, 1995, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 10 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, 10 copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than December 1, 1995. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than December 6, 1995. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 355.38 and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act.

Dated: October 10, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–25752 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–489–806]

Preliminary Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Turkey

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

EFFECTIVE DATE: October 17, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Kristin Mowry, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4105 and 482–3798, respectively.

PRELIMINARY DETERMINATION: The Department preliminarily determines that countervailable subsidies are being provided to manufacturers, producers, or exporters of pasta in Turkey. For information on the countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the Federal Register (60 FR 30280, June 8, 1995), the following events have occurred.

Based on volume and value information provided by the GOT on June 14, 1995, we selected as respondents in this investigation the four largest exporters to the United States. These companies are: Aytac Dis Ticaret (Aytac), Filiz Gida Sanayii ve Ticaret A.S. (Filiz), Makarnacilik ve Ticaret T.A.S. (Maktas), and Oba Makarnacilik Sanayi ve Ticaret (Oba). On June 22, 1995, we issued countervailing duty questionnaires to the Government of Turkey (''GOT'') and the above-named companies, concerning programs included in the initiation of this investigation. On August 21, 1995, Aytac, Filiz, and Maktas filed responses. Oba failed to respond to our questionnaire.

In its response, Aytac explained that it is in the meat packing business and is not a producer/exporter of pasta. During 1994, Maktas agreed to let Aytac act as the exporter of record for certain of Maktas' sales of pasta to the United States. However, Aytac transferred its rights to benefits with respect to those exports to Maktas. Based on this information, we have not calculated an individual countervailing duty rate for Aytac. If this company exports to the United States, it will be subject to the all others rate.

On August 28, 1995, the GOT responded to our questionnaire. We issued supplementary questionnaires to the respondent companies and the GOT in August and September. We received responses to the company and GOT supplementary questionnaires in September and October.

On July 5, 1995, we postponed the preliminary determination in this investigation until October 10, 1995 (60 FR 35899, July 12, 1995).

Scope of Investigation

The product covered by this investigation is certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by

this investigation is typically sold in the retail market in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this investigation are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise under investigation is currently classifiable under subheading 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTS*). Although the *HTS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

On August 24, 1995, petitioners requested that we expand the scope to cover all imports of non-egg dry pasta for the retail and the food service markets. We have determined that the scope should not be expanded. According to the Department's past practice, products which were excluded at the petition stage are not generally added to the scope later in the investigatory process. In addition, expanding the scope would raise numerous issues such as industry support, and the lack of a preliminary ITC determination concerning the expanded scope. For a discussion of this decision, *see* Memorandum to Susan G. Esserman, Assistant Secretary for Import Administration dated October 10, 1995, on file in this case in the Central Records Unit.

On September 27, 1995, Spruce Foods, an importer of organic pasta from Italy, requested that organic pasta certified by the European Union under EEC Regulation 2092/91 be excluded from the scope of this investigation. Because this request was made so late, we are unable to consider it for purposes of this preliminary determination. However, we will address this issue in our final determination.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). References to the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), which have been withdrawn, are provided solely for further explanation of the Department's CVD practice.

Injury Test

Because Turkey is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (''ITC'') is required to determine whether imports of pasta from Turkey materially injure, or threaten material injury to, a U.S. industry. On July 10, 1995, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Turkey of the subject merchandise (60 FR 35563).

Petitioners

The petition in this investigation was filed by Borden, Inc., Hershey Foods Corp., and Gooch Foods, Inc.

Subsidies Valuation Information

Period of Investigation: The period for which we are measuring subsidies (''the POI'') is calendar year 1994. Short-term loan benchmark: The GOT stated that there is no predominant source of short-term financing in Turkey and that it does not maintain statistics concerning short-term interest rates. Based on our review of the *Annual Report of the Central Bank of Turkey*, we could not identify any short-term commercial interest rates. Therefore, we used as the short-term benchmark, the weighted-average short-term interest-rate paid by Maktas on its commercial loans. We have preliminarily determined that these rates provide the best measure of what Maktas would pay on comparable commercial loans obtained on the market. (The other companies being investigated did not use the short-term loan program.)

Due to an average inflation rate in Turkey of 91 percent during the POI, interest rates have fluctuated significantly. Hence, we have calculated monthly benchmarks. (*See* 355.44(b)(3)/(iii) of the *Proposed Regulations*.)

Facts Available

Section 776(a)(2)(A) of the Act requires the Department to use the facts available ''if an interested party or any other person withholds information that has been requested by the administering authority or the Commission under this title.'' One of the companies included in this investigation, Oba, did not respond to our questionnaire. Section 776(b) of the Act provides that the administering authority may use an inference that is adverse to the interests of such a party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record. Because petitioners did not provide subsidy rates in the petition, we were unable to use the petition as a source for facts available. Therefore, we have used as the facts available for Oba the sum of the highest rate calculated for each program used by Filiz or Maktas.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Pre-Shipment Export Loans

The Export Credit Bank of Turkey (Turk Eximbank) provides short-term pre-shipment export loans to exporters through intermediary commercial banks. The program was commenced in March 1989 in order to meet the financing needs of exporters and overseas contractors. Loans are made available to certified exporters who commit to a certain value of exports within a specified time period. Generally, loans are extended for a period of three to nine months, covering between 10 and 100 percent of the FOB value of the committed export value. During the POI, the food sector (including pasta) was eligible for pre-shipment export loans amounting to 70 percent of the committed FOB value of exports, for a maximum of 180 days. These loans were denominated in Turkish lira (TL).

We have determined that these loans provide a countervailable subsidy within the meaning of section 771(5) of the Act. The loans are a direct transfer of funds from the GOT. They provide a benefit because the interest rate paid on these loans is less than the amount the recipient would pay on a comparable commercial loan. Finally, the loans are specific because their receipt is contingent upon export performance.

Of the exporters investigated, only Maktas received pre-shipment export loans during the POI. We calculated the countervailable subsidy as the difference between actual interest paid on loans for shipments to the United States during the POI and the interest that would have been paid using the benchmark interest rate. This difference was divided by Maktas' total exports to the United States during the POI. On this basis, we preliminarily determine the countervailable subsidy from this

program to be 5.97 percent *ad valorem* for Maktas.

B. Tax Exemption Based on Export Earnings

Corporate Tax Law 3946, dated December 25, 1993, provided that companies exporting industrial products in excess of U.S.$250,000 or the equivalent were entitled to deduct five percent of total export revenues from taxable profit.

We have determined that this tax exemption is a countervailable subsidy within the meaning of section 771(5) of the Act. The exemption represents revenue forgone by the GOT and provides a benefit in the amount of the tax saving to the company. Also, the subsidy is specific because its receipt is contingent upon export performance. Of the exporters investigated, only Maktas claimed this tax exemption on the tax return it filed in 1994.

To calculate the countervailable subsidy, we divided the tax savings realized during the POI by the company's export sales during the POI. On this basis, we determine the countervailable subsidy from this program to be 0.56 percent *ad valorem* for Maktas.

The GOT has stated that the program was terminated as of January 1, 1994. However, it has not provided the decree terminating this program. Although our normal practice is to adjust the countervailing duty deposit rate to reflect program-wide changes that occur prior to our preliminary determination (*see,* section 355.50 of the *Proposed Regulations*), we have not done so in this instance because we have no evidence of the termination. We will attempt to verify both the program's termination and whether companies are able to receive residual benefits.

C. Pasta Export Grants

During 1994, the Central Bank of Turkey provided cash grants and government promissory notes or bonds to exporters of pasta. According to the GOT, the purpose of the program was to develop Turkey's export potential. In order to receive the grants, exporters were required to submit applications (including proof of exportation and payment from the customer) to the local office of the Central Bank. The exporter received a specified percentage of the FOB U.S. dollar price, subject to a cap.

We have determined that these export grants are countervailable subsidies within the meaning of section 771(5) of the Act. The grants are a direct transfer of funds from the GOT providing a benefit in the amount of the grant. Also, the grants are specific because their receipt is contingent upon export performance.

Since pasta exporters are able to calculate the precise U.S. dollar benefit for each export at the moment the transaction is made, respondents have argued that the benefit from the grants should be calculated on the basis of when they are earned rather than when they are received. (*See e.g., Final Affirmative Countervailing Duty Determination: Certain Steel Wire Nails from New Zealand,* 52 FR 37196, 37197, October 5, 1987.) We have adopted this approach for the preliminary determination. However, although the U.S. dollar amount is known at the time of export, the amount the exporter will actually receive in TL is not certain until the time of receipt because it is subject to fluctuations in the exchange rate. This suggests that it may be more appropriate to calculate the benefits as they are received, rather than earned. We will consider this issue further for the final determination. We will also consider whether the delay in the actual receipt of the export grants should lead us to reduce their value.

To calculate the countervailable subsidy based on the data available for this preliminary determination, we divided the total amount of grants earned on exports to the United States (denominated in U.S. dollars) by the total exports to the United States denominated in U.S. dollars. On this basis, we determine the countervailable subsidy from this program to be 14.72 percent *ad valorem* for Filiz and 13.27 percent *ad valorem* for Maktas.

While the GOT has stated that this program was terminated for pasta exports made on or after January 1, 1995, a notice in the Turkish Official Gazette dated September 29, 1995, indicates that this program may have been reinstated. Therefore, although our normal practice is to adjust the countervailing duty deposit rate to reflect program-wide changes that occur prior to our preliminary determination (*see,* section 355.50 of the *Proposed Regulations*), we have not done so in this instance. We will examine the possible reinstatement of this program at verification.

D. Incentive Premium on Domestically Obtained Goods

Companies holding investment incentive certificates under the General Incentives Program (see below) are eligible for a cash grant equal to the amount of VAT paid on locally-sourced machinery and equipment. Imported machinery and equipment is subject to the VAT and is not eligible for the cash grant.

We have determined that these incentive premiums are countervailable subsidies within the meaning of section 771(5) of the Act. The grants are a direct transfer of funds from the GOT, providing a benefit in the amount of the grant. Also, they are specific because their receipt is contingent upon the use of domestic goods over imported goods. Filiz received incentive premiums during the POI.

To calculate the countervailable subsidy, we divided the grants received by Filiz during the POI by the total value of the company's sales during the POI. On this basis, we determine the countervailable subsidy to be 0.00 percent *ad valorem* for Filiz.

II. Program for Which We Need More Information

The September 29, 1995 edition of the Turkish Official Gazette states that the GOT will provide a transportation subsidy of 35 dollars per metric ton for pasta shipped to North America, whether or not the pasta is transported on Turkish ships. We intend to collect information on this program prior to verification so that it can be addressed in our final determination.

III. Program Preliminarily Determined To Be Not Countervailable

General Incentives Program (GIP) for Companies Meeting the Higher Investment Threshold

The GIP is designed to promote investments consistent with the development objectives of the GOT. The goals of the GIP are to eliminate the unbalanced development of different regions and to support investments in the sectors where the country is lacking such investment. The sectors and regions targeted by the GIP are generally selected by the Undersecretariat of the Treasury (UT). The UT is also responsible for issuing investment incentive certificates under the GIP.

Investment incentive certificates are issued when a proposed investment project meets the criteria and financial thresholds set by the Council of Ministers. These criteria include: (1) The project provides international competitiveness; (2) the project incorporates appropriate advanced technology; and (3) the project satisfies at least a minimum of economic capacity or scale determined on a sectoral basis. Each application for an investment incentive certificate must be accompanied by a feasibility study and detailed financial projection. The GOT stated that approximately 99 percent of applications for investment incentive certificates are approved. Those

applications which are rejected are generally revised, resubmitted, and eventually obtain approval.

For purposes of the GIP, Turkey is divided into four types of regions: (1) Developed; (2) normal; (3) priority regions of the second degree; and (4) priority regions of the first degree. The level of investment needed to obtain an investment incentive certificate for the priority regions is lower than the level needed for normal and developed regions (*i.e.*, the minimum investment requirement during 1994 in priority regions was 1 billion TL and the minimum investment in normal and developed regions was 5 billion TL). Beyond that, however, the GOT has stated that all certificate holders are eligible for the same benefits, regardless of their region or sector. The GOT also stated that the GIP is generally available to all sectors of the Turkish economy and all geographic areas of Turkey, and that certificates are not granted based on governmental discretion.

Filiz, located in a normal region, used the following benefits under the GIP: Customs Duty Exemptions, Resource Utilization Support Fund Grants, VAT Deferrals, Investment Allowances, and Incentive Premiums on Domestically-Obtained Goods. Maktas, located in a developed region, used only the Incentive Premiums on Domestically-Obtained Goods benefits.

As Filiz and Maktas are located in regions which do not benefit from the reduced investment requirement, we determine that the assistance they have received is not specific to a region. (*See* section 771(5A)(D)(iv) of the Act.) Instead, we have examined whether assistance under the GIP is specific ''as a matter of fact,'' as described in section 771(5A)(D)(iii) of the Act.

Section 771(5A)(D)(iii) of the Act provides the following four factors to be examined with respect to *de facto* specificity: (1) The number of enterprises, industries or groups thereof which actually use a subsidy; (2) predominant use of a subsidy by an enterprise, industry, or group; (3) the receipt of disproportionately large amounts of a subsidy by an enterprise, industry, or group; and (4) the manner in which the authority providing a subsidy has exercised discretion in its decision to grant the subsidy. The GOT has provided statistics for the period 1991–1994 concerning the awarding of investment incentive certificates to the various sectors of the economy. These statistics indicate that during the POI, thirty-three industries, within the agriculture, mining, manufacturing, energy, and services sectors, received investment incentive certificates. We consider this distribution of industries sufficiently broad. During the POI, the food and beverages industry received 7.5 percent of the investment incentive certificates issued. During the same period, the textiles and clothing industry received 24.6 percent and the transportation industry received 14.8 percent of the investment incentive certificates issued. Each of the thirty-three other industries each accounted for 4.8 percent or less of the total investment incentive certificates issued. The statistics for the period 1991–1993 indicate a similar distribution of investment incentive certificates.

Based on this distribution of certificates (including the fact that pasta accounts for a fraction of the certificates issued to the food and beverage industry), we determine that the pasta industry was neither a dominant user of the program nor did it receive a disproportionate amount of the investment incentive certificates. Absent a finding of dominant or disproportionate use, the fact that a foreign authority administering a subsidy program may have exercised discretion in selecting the recipients of the subsidy is insufficient for a finding of *de facto* specificity. Furthermore, the GOT has stated that the certificates are not granted based on governmental discretion. We have no evidence to the contrary. Therefore, we preliminarily determine that the GIP (with the exception of the Incentive Premium on Domestically Obtained Goods, discussed above) does not confer countervailable subsidies to producers in Turkey who meet the higher investment threshold.

IV. Programs Preliminarily Determined To Be Not Used

As discussed above, none of the producers under investigation was located in a region subject to lower investment thresholds under the GIP. Therefore, we are treating the GIP as it applies to companies meeting the lower investment threshold versus ''not used.''

Other programs that were not used were:

1. *Support and Price Stabilization Fund*
2. *Payments for Exports on Turkish Ships*
3. *Advance Refunds of Tax Savings*
4. *Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility*
5. *Normal Foreign Currency Export Loans*
6. *Performance Foreign Currency Export Loans*
7. *Export Credit Insurance*
8. *Regional Subsidies*
   a. *Investment Allowances*
   b. *Mass Housing Fund Levy Exemptions*
   c. *Customs Duty Exemptions*
   d. *Rebate of VAT on Domestically-Sourced Machinery and Equipment*
   e. *Additional Refunds of VAT*
   f. *Postponement of VAT on Imported Goods*
   g. *Other Tax Exemptions*
   h. *Payment of Certain Obligations of Firms Undertaking Large Investments*
   i. *Corporate Tax Deferral*
   j. *Subsidized Turkish Lira Credit Facilities*
   k. *Subsidized Credit for Proportion of Fixed Expenditures*
   l. *Subsidized Credit in Foreign Currency*
   m. *Land Allocation*
9. *Exemption from Mass Housing Fund Levy (Duty Exemptions)*

V. Programs Preliminarily Determined To Not Exist

Based on the information provided in the responses, we preliminarily determine that the following programs do not exist.

1. *Export Promotion Program*
2. *Export Credit Program*
3. *Interest Rebates on Export Financing (GIP)*
4. *Direct Payments to Exporters of Wheat Products to Compensate for High Domestic Input Prices*

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual subsidy rate for each company investigated. For companies not investigated, we have determined an all others rate by weighting individual company subsidy rates by each company's exports of the subject merchandise to the United States, if available, or pasta exports to the United States. The all others rate does not include zero and *de minimis* rates or any rates based solely on the facts available.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of pasta from Turkey which are entered or withdrawn from warehouse, for consumption, on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

Company	Ad valorem rate
Filiz	14.72
Maktas	19.80
Oba	21.25
All Others	17.92

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with section 355.38 of the Commerce Department regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will be held on December 4, 1995, at 1 p.m. at the U.S. Department of Commerce, Room 1617M4, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within ten days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than November 24, 1995. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than November 30, 1995. Briefs should include a summary of the issues of no more than five pages. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with section 355.38 of the Commerce Department regulations and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: October 10, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–25751 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Business Development Center Applications: Jackson, Mississippi

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Jackson Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Jackson, Mississippi Metropolitan Area. The award number of the MBDC will be 04–10–96002–01.

DATES: The closing date for applications is November 27, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before November 27, 1995. A pre-application conference will be held on November 1, 1995, at 9:00 a.m., at the Atlanta Regional Office, 401 W. Peachtree Street, N.W., Suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.

Proper identification is required for entrance into any Federal building.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Robert Henderson at (404) 730–3300.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from February 1, 1996 to February 28, 1997, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the

Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, § 26.105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR Part 26, § 26.605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR Part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: October 11, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–25468 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[I.D. 053095D]

Small Takes of Marine Mammals Incidental to Specified Activities; Offshore Seismic Activities in Southern California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization to take small numbers of cetaceans by harassment incidental to conducting a three-dimensional (3–D) seismic survey in the Santa Ynez Unit (SYU), located in the western portion of the Santa Barbara Channel, offshore California, in Federal waters has been issued to the Exxon Company, U.S.A., Thousand Oaks, CA, for a period of approximately 2 months.

EFFECTIVE DATE: This authorization is effective from October 11, 1995 through December 31, 1995.

ADDRESSES: The application, authorization, programmatic environmental assessment (EA), and reference lists are available from the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southwest Region, NMFS, 501 West Ocean Blvd. Long Beach, CA 90802.

A copy of the EA for the 3–D seismic survey in the SYU is available from the Minerals Management Service (MMS), Pacific Region, 770 Paseo Camarillo, Camarillo, CA 93010.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 310–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 30, 1994, the President signed Public Law 103–238, The MMPA Amendments of 1994. One part of this law added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to 1 year. The MMPA defines ''harassment'' as:

> * * * any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

On May 11, 1995, NMFS received an application from Exxon requesting an authorization for the harassment of small numbers of certain species of cetaceans incidental to conducting a 3–D seismic survey within the SYU, located in the western portion of the Santa Barbara Channel, off Southern California, in U.S. waters. The species requested are as follows: Blue whale (*Balaenoptera musculus*), fin whale (*Balaenoptera physalus*), sei whale (*Balaenoptera borealis*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), gray whale (*Eschrichtius robustus*), sperm whale (*Physeter macrocephalus*) and pygmy sperm whale (*Kogia breviceps*).

Exxon's survey will cover an area of approximately 117 mi^2 (303 km^2) of the outer continental shelf and will require approximately 45–60 days, commencing in late October 1995, to complete. The survey will provide subsurface data that will enable Exxon to more accurately assess the oil and gas reservoirs in order to optimally locate future development wells from existing platforms.

In addition to a press release, notices were published in newspapers of general circulation in Santa Barbara and Ventura Counties, the areas adjacent to the SYU survey area. Also a notice of receipt of Exxon's application and the proposed authorization were published in the Federal Register (June 7, 1995, 60 FR 30066) and a 30-day public comment period was provided on the application and proposed authorization. The comment period closed on July 7, 1995. During the comment period, 9 letters were received. Beginning September 13, 1995, more than 2 months after the comment period closed, NMFS received several additional comments. NMFS is under no obligation to accept comments received after close of the comment period. Nevertheless, NMFS considered the concerns raised by the late comments, and because NMFS believed that valid points had been made, took them into consideration in finalizing the incidental harassment authorization. Comments relative to Exxon's incidental harassment authorization request are discussed below. Other than information necessary to respond to the comments, additional background information on the activity and request can be found in the above-mentioned documents and does not need to be repeated here.

Comments and Responses

Activity Concerns

Comment 1. One commenter had concerns that neither the application nor the proposed authorization addressed the operation of the 3–D seismic array in sufficient detail, thereby preventing a detailed analysis of the impacts. This same commenter questioned the duty cycle and that signals with quick rise and fall times do not allow the animal time to auditorially accommodate the noise.

Response. The commenter is correct that there was absent from the discussion any mention of the peak source level for the seismic array. However, like the commenter, NMFS used data provided in Richardson et al. (1991) [1] and Malme et al. (1984). These references indicate that a seismic array would have a sound pressure level (SPL) of between 226 dB and 239 dB (re 1 μPa) at 1 meter (m) from the source. Information not available at the time of receipt of the application indicates that air gun arrays may produce broadband peak source levels as high as 240–250 dB (re 1 μPa), but that much of this total output is directed downward; horizontal

[1] A list of references used in this document can be obtained by writing to the address provided above (see **ADDRESSES**).

propagation is 230–235 dB (MMS, 1995). Air gun pulse components are strongest around 50–100 Hz, although there is considerable energy in the 20–250 Hz range (Richardson and Malme, 1993 as cited in MMS, 1995). Exxon's contractor for the surveys, who had not been selected at the time of the proposed authorization's publication, has indicated that his seismic arrays will have a maximum output of 215 dB at a distance of 8 m and will result in fewer west-east transects (55 v 64) than estimated in the application and proposed authorization. This array will therefore result in lower sound pressure levels at a given distance from the source than was predicted in the proposal.

While the proposed authorization noted that the 195 dB isopleth would be located approximately 300 ft (91.5 m) from the source, recalculations (based upon the 20LogR transmission loss model), indicate that 195 dB will occur at 246 ft (75 m) from the source. This is the area within which NMFS was originally concerned that temporary or permanent threshold-shift (TTS/PTS) injury potentially could take place (if the animal remained in this relatively small area for any length of time and had the ability to hear in the frequencies of the source) and therefore, in order to protect all species of marine mammals from potential auditory injury, the seismic array must be turned off whenever any marine mammals are sighted within the area and/or must not be powered up whenever marine mammals are within the area. NMFS recognizes that some marine mammals are deep divers and may not be visible on the surface, and that night-time operations will limit observations outside the safety zone. NMFS is confident however, that no marine mammals will remain within this area because (1) The vessel is underway at a speed of approximately 5 knots (9.26 km/hr), less than the normal swimming speed of marine mammals, allowing them sufficient advance notice of the seismic array (if they hear the noise) and, if it disturbs them, to move away from the source; (2) it is presumed that water turbulence from the vessel, the paravanes and streamer array will tend to deter marine mammals from approaching the source even if they do not hear the source; and (3) the requirement to ramp-up whenever the source is turned on.

The seismic source will consist of dual air gun arrays deployed approximately 120 ft (37.5 m) apart and fired alternately to acquire separate records. Each array will consist of 18 guns of different strengths. Each array will transmit every 8 to 9 seconds (depending upon vessel speed), while the vessel is on a trackline, creating a regular series of strong noise impulses, with short pulses separated by silent periods lasting 5–15 seconds, depending on survey type and depth of target strata. While the science is unclear on the relationship between the duty cycle of a seismic source and the potential for auditory damage to a marine mammal, because of the slow vessel speed, and the requirements to both terminate the source whenever marine mammals are within the safety zone and to employ ramp-up, NMFS believes that the likelihood that a marine mammal would voluntarily remain in close proximity to the source in the presence of pain or annoyance, and thereby be seriously injured by the towed acoustic array, is remote.

Marine Mammal Species Impacts

Comment 2. Three commenters were concerned that seismic surveys disturbed other marine mammal species in addition to the large whales, especially the harbor seal and the California sea lion. Also, comments were received after the close of the comment period that (1) Seismic arrays produced seismic noise in frequencies up to 1 kHz at levels sufficient to harass odontocetes and pinnipeds and (2) that the correct transmission loss model for the seismic area was not 20LogR but more likely 15 or 17LogR which would affect both designated safety zones and the number of marine mammals affected. Based upon measurements made in the Beaufort Sea in 1993, one commenter believed that a 160 dB isopleth should extend 27.4 km, not 5.2 km as proposed.

Response. NMFS would like to clarify for reviewers that being able to hear certain sounds (noise) does not necessarily mean that a marine mammal is being physiologically stressed (harassed) by that sound. In addition, when noise is frequent, marine mammals may habituate to it once the determination is made that injury or harm does not result.

In order to be detectable by a marine mammal, noise needs to be greater than ambient within the same frequency band as the animal's hearing range. The further outside the species' principal (best) hearing range the noise occurs, the greater (louder) sounds need to be in order to be detectable, bothersome, or injurious.

Seismic airgun arrays emit pulsed energy at frequencies in the 20 to 250 Hz range, with a peak SPL usually between 226 dB and 239 dB (re 1 μPa) at 1 m. Exxon calculated (and the manufacturer has confirmed) that its seismic array would have an SPL of 215 dB at a distance of 8 m from the geometric center of the source (or approximately 1 m from the outside of the array) and based its transmission loss calculations using the 20LogR model, even though Malme et al. (1986) indicated that for offshore California seismic work, a less conservative, 25LogR model was appropriate. The 8 m/20LogR model indicated SPLs would attenuate to approximately 195 dB at 246 ft (75 m), 190 dB at 451 ft (137.5 m), 180 db at 1,476 ft (450 m) and 160 dB at 2.84 nautical miles (nm) (5.2 km). Based upon comments that the 20LogR transmission loss model was not appropriate for coastal California waters, Exxon has again recalculated transmission loss estimates based upon an industry standard of 1 m from geometric center of the source. This model indicates that SPLs would attenuate approximately as follows:

DISTANCE FROM SOURCE (ft/m)

Sound level	20LogR	17LogR	15LogR
195 dB	32.9/10	49.2/15	72.1/22
190 dB	58.4/17.8	96.8/29.5	152.4/46.5
180 db	187.0/57	377.3/115	705.4/215
170 dB	587.3/179	1492.8/455	3280.8/1000
160 dB	1837.2/560	5643.0/1,720	15419.8/4700

As these distances are significantly less than the distances proposed earlier for 8m/20LogR, NMFS has determined that the more cautious approach, using 8 m/20LogR model, should be used for this authorization. The commenter who

suggested that 1993 Beaufort Sea survey data should be used acknowledged that his model may not be ''completely accurate for the Santa Barbara Channel,'' but believed it was appropriate for planning purposes. NMFS is unaware of the parameters involved with the Beaufort Sea measurements (e.g., water temperature, depth, bottom topography, ice cover), but in general those characteristics are quite different from those off Southern California.

In the proposed authorization, NMFS stated that dolphin, porpoise, seal, and sea lion hearing is believed to be poor at frequencies less than 1,000 Hz, and thus it is unlikely that the airgun noise would significantly affect them. One commenter correctly pointed out that ''significantly affect a marine mammal'' is not the appropriate criterion, and that the appropriate criterion is that the activity have a negligible impact. This commenter recommended NMFS provide a more thorough rationale for the determination that species other than large whales will not be taken by harassment incidental to the seismic surveys and that the takings of large whales will be limited to harassment.

Within the pinniped suborder, Schusterman et al. (1967) have determined that none of the species tested to date have exhibited good hearing capabilities at low frequencies, although the northern elephant seal, California sea lion, and harbor seal appear to have some communication ability within the upper low-frequency band (100–1,000 Hz). Underwater audiograms indicate that pinnipeds and odontocetes are particularly sensitive to sound with frequencies in the 2–12 kHz range (Richardson et al., 1991). Seals and sea lions have thresholds of roughly 60 to 80 dB (re 1 μPa) in the range of best hearing. Phocid seals have lower thresholds and a wider frequency range of hearing than otariid seals. Pinniped hearing in sub-1 kHz range varies from 85 dB at 1 kHz to 114 dB at 250 Hz for the California sea lion, 70–85 dB at 1 kHz for the harbor seal, and 95 dB at 1 kHz for the northern fur seal (Richardson et al., 1991). No information has been reported concerning the in-water hearing of northern elephant seals (Richardson et al., 1991), although Schusterman (as cited in Advanced Research Projects Office, 1995) believes they may have mid- to low-frequency hearing ability.

No studies have focused on pinniped reaction to underwater noise from pulsed, seismic arrays in open water (Richardson et al., 1991), as opposed to in-air exposure to continuous noise. However, assuming an SPL needed to be 80–100 dB over its threshold in order to cause annoyance and 130 dB for injury (pain), as is the current thought based upon human studies (ARPA, 1995), it appears unlikely that pinnipeds would be harassed or injured by low frequency sounds from a seismic source unless they were within close proximity of the array (114 dB[2] + 80 dB = 190 dB (harassment); 114 dB[2] + 130 dB = 244 dB (injury)). At the upper end of the seismic array's frequency (1 kHz), sufficient energy to cause harassment would occur at a distance of only 1–3 m from the source while TTS injury takes would not occur (70 dB (harbor seal) − 85 dB (California sea lion) + 80 dB = 150–165 dB (harassment); 70 dB (harbor seal) − 85 dB (California sea lion) + 130 dB = 200–215 dB (injury)).

For permanent injury, marine mammals would need to remain in the high noise field for extended periods of time. Existing evidence also suggests that, while they may be capable of hearing sounds from seismic arrays, seals and sea lions appear to tolerate intense pulsatile sounds, without known effect, once they learn that there is no danger associated with the noise (see for example, NMFS/WDFW, 1995). In addition, they will apparently not abandon feeding or breeding areas due to exposure to these noise sources (Richardson et al., 1991) and may habituate to certain noises over time. Since seismic work is common in southern California waters, pinnipeds have previously been exposed to seismic noise, and may not react to it. However, because the evidence indicates that pinnipeds could be incidentally harassed at an SPL of 190 dB or greater, and because Exxon has not requested an incidental harassment authorization for pinnipeds, NMFS will require, as part of the authorization, that a safety zone around the source be established at the 190 dB isopleth or 451 ft (137.5 m) from the source. For added protection, this zone will include the entire area from the stern of the vessel out to the paravanes or approximately 500 ft (152.4 m) from the source.

For odontocetes, based upon the best scientific evidence available, NMFS concludes that the hearing of dolphins, porpoises and other small whales that inhabit the Channel Islands area is poor at frequencies less than 1,000 Hz, and thus it is unlikely that the airgun noise would affect them. While odontocetes can hear sounds over a very wide range of frequencies, from as low as 75–125 Hz in bottlenose dolphins and belugas (Johnson, 1967; Awbrey et al., 1988) to 105–150 kHz in several other species (Richardson et al., 1991), underwater audiograms indicate that odontocetes hear best at frequencies above 10 kHz. However, none of the seismic source frequencies will be within the dominant frequencies used by odontocetes for vocalization (Richardson et al., 1991).

In the range of best hearing (10 kHz–90 kHz), odontocetes have thresholds in the range of 40 to 60 dB re 1 μPa. In the absence of noise, bottlenose dolphins can detect a signal of about 41–42 dB at various frequencies between 10 kHz and 100 kHz (Johnson, 1967, 1968). For frequencies from 100 Hz to roughly 1000 Hz however, hearing thresholds range from 130 dB to 90 dB re 1 μPa, suggesting the potential for an increased tolerance for low frequency sound. Other odontocete species appear to have similar threshold frequencies (see Richardson et al., 1991). If one accepts one commenter's premise and Richardson et al.'s (1991) conclusion, that, based upon studies on humans, SPLs of 80–100 dB over threshold are necessary in order to cause annoyance and 130 dB for injury (pain) in odontocetes, most odontocetes would probably need to be almost adjacent to the seismic source, and intentionally remain there, in order to be affected by the seismic array (110 dB[3] + 80 dB (harassment) = 190 dB; 110 dB + 130 dB (injury) = 240 dB). At the upper end of the seismic array's frequency (1 kHz), sufficient energy would not occur that would cause either harassment or TTS injury takes to occur (90 dB + 80 dB = 170 dB (harassment); 90 dB + 130 dB = 220 dB (injury)).

However, NMFS cautions that testing on the similarity between hearing capabilities between humans and marine mammals still needs to be conducted before more than hypothetical conclusions can be drawn. Similar to pinnipeds, because the evidence indicates that odontocetes (other than the sperm whale) could be incidentally harassed at an SPL of 190 dB or greater, and because Exxon has not requested an incidental harassment authorization for odontocetes (other than the sperm whale), NMFS will require, as part of the authorization, that a safety zone around the source be established at the 190 dB isopleth or 451 ft (137.5 m) from the source. For added protection, this zone will include the entire area from the stern of the vessel out to the paravanes, or approximately 500 ft (152.4 m) from the source.

Therefore, whether or not the above mentioned marine mammal species can hear seismic array sounds, their

[2] Extrapolated from Figure 7.2 in Richardson et al. (1991).

[3] Extrapolated from Figure 7.1 in Richardson et al. (1991).

estimated area of potential harassment and/or auditory damage remains entirely within the area bounded by the vessel, the paravanes and the streamer cables. As Exxon will be required to turn off the array if any species of marine mammal is sighted within this new 500-ft (152.4 m) safety zone, to ramp-up the array slowly (see below), and, if any marine mammals are observed within the 500-ft (152.4-m) safety zone, delay operations until all marine mammals are outside the zone, it is unlikely that pinnipeds or odontocete cetaceans (except sperm whales) will be incidentally harassed by the seismic array and therefore, an authorization is not needed for these species. It can also be presumed that any marine mammals that consistently remain in the vicinity of, or swim along with, the vessel or its equipment, are not being harassed by the vessel or the array.

For mysticete and sperm whales, NMFS has reviewed the evidence and has determined that, because an authorization for serious injury has not been requested for these species, a no-injury safety zone should be established that, based upon the best evidence, would preclude injury. NMFS has determined that injury may occur at a level of 180 dB or greater and has therefore established, through the authorization, a safety zone for these species at a distance of 1,476 ft (450 m) from the source. While there are indications, based upon the Heard Island assessment, that injury may occur at the 160 dB SPL, because the 160 dB SPL is where Malme et al. (1984) noted 10 percent avoidance behavior for gray whales, and injury appears to be about 30 dB higher than the onset of harassment, 160 dB may be an overly conservative level for injury takes. However, because mysticete sensitivity is likely greater than that of odontocetes, 190 dB appears too high for these species. Therefore, a safety zone established at the 180 dB level appears warranted.

Comment 3. Several commenters noted that Exxon's survey period was for 60 days but that NMFS' proposed authorization was for a period of 1 year. These commenters recommended either that the period of time not extend past the period when the gray whale migration begins, because the analyses have not been conducted to assess the risk of adversely affecting this migration or that the authorization period end at the same time (December 31st) that the California Air Pollution Control District's (APCD) permit for the survey. One of these commenters also questioned the calculated level of take of gray whales (and other species), noting that, for gray whales, the level depended upon the timing of the survey and, therefore, might be greater than proposed. For other species, the commenter was concerned that the proposed authorization used average densities along the coast of California and may seriously over- or under-estimate abundance.

Response. While one commenter is correct that NMFS originally proposed to issue a 1-year authorization, NMFS has accepted the other commenter's suggestion and will limit the authorization to a period of validity of the APCD permit (December 31, 1995).

In its proposed authorization, NMFS assumed that gray whales could be incidentally harassed if the survey extended into the gray whale migratory period (southbound—mid-December through early February; northbound—mid-February through May) and therefore, included that species under the proposed incidental harassment authorization. Because Barlow (1995) did not observe any gray whales during his summer/fall ship surveys, incidental harassment levels were based upon fall/winter gray whale density calculations found in Forney et al. (1995).

It should be noted that for incidental harassment takings, NMFS does not consider its calculations to be quotas, but only a guide for making the MMPA negligible impact determinations. The two tables in the proposed authorization indicate that, based upon density calculations in Forney et al. (1995), NMFS estimated that, if the survey extended into the latter part of December, on average, 11 gray whales could be within the area at any one time. Because of the method of operation of the seismic array (as explained in the proposed authorization), NMFS has calculated that there could be 341 incidental harassment takings of gray whales, but that this level could increase or decrease somewhat depending upon the time of the year, pod size, and the actual location of the seismic vessel (onshore/offshore). This number may vary also due to the time of the survey in relation to gray whale migration, if the survey ends early, the number of harassments would be lower than it the survey continued into the peak migration period in late January. However, whether the estimate is an under- or over-estimate, with a migration rate of approximately 3–4 mi/hr (5.5–7.7 km/hr), an individual gray whale would be expected to be harassed only during a single-line transect by the vessel and the length of time the animal is exposed to the noise would depend upon its direction and distance in relation to the seismic vessel's direction and speed and any action the animal might take to avoid the noise. Therefore, although the potential exists that the seismic array noise could result in gray whale harassments, and although Exxon will make every effort to complete the survey prior to the start of the gray whale period, an authorization remains necessary for this species because of the possibility of survey delays.

During their southbound migration, gray whales migrate near shore along the coast of North America from Alaska to central California. In 1993 and 1994, 95.6 percent and 98.7 percent of the southbound gray whales passed within 3 nm (5.6 km) of the Granite Canyon area of central CA (Withrow et al., 1995). After passing Point Conception, California, Rice et al. (1984) believed the majority of the animals took a more direct offshore route across the southern California Bight to northern Baja California. This route passes Santa Rosa and San Nicolas islands, the Tanner and Cortes banks and into Mexican waters (MMS, 1992), well away from Exxon's seismic survey area. Other routes include the nearshore route which follows the mainland coast of California, and the inshore route which passes through the northern Channel Island chain to Santa Catalina or San Clemente Island and on into Mexico. Although seismic array noise may be detectable to those gray whales using the offshore and inshore routes, the noise levels at those distances are not expected to result in any behavioral modification or require animals to deviate from their planned migratory path. Therefore, it is anticipated that only those gray whales on the nearshore route would come into the vicinity of the seismic array and potentially be disturbed by it.

Assuming that nearshore migratory animals would be within 3 nm (5.6 km) (Withrow et al., 1995) of the coastline as in central California, this portion of the population could potentially be subject to disturbance by seismic noise if the survey continued into the migratory period. However, even though NMFS believes that few gray whales will be migrating through the area prior to the time the authorization expires on December 31, 1995, and therefore any harassment takings that do occur would have only a negligible impact on the eastern Pacific stock, in order to ensure that those early migratory gray whales have an unimpeded migratory corridor, NMFS will require, as part of the authorization, that an NMFS biologist be on board the seismic and/or another auxiliary support vessel to monitor gray whale behavior. This individual would

have authority, under the authorization, and with the concurrence of the Regional Director, to modify or terminate the authorization if this individual determines that gray whales are not able to migrate through the SYU area.

Comment 4. One commenter was concerned about other potential causes of incidental harassment or other forms of taking by, for example, entanglement in streamer cables, vessel noise, or support vessels and aircraft. Another commenter believed that disturbance by whale watch vessels circling the animals was more likely than disturbance by a seismic array.

Response. All vessels create underwater noise that is potentially detectable by marine mammals and, based upon distance between the mammal and the source, may have the potential to cause disturbance to the animal. If owners or operators of these vessels (other than commercial fishing vessels) believe that their vessels may be harassing marine mammals, they should apply for incidental harassment authorizations. However, the operation of one or two seismic and support vessels or aircraft for a 45- to 60-day period is expected to have a negligible impact on marine mammals. Vessel noise is likely to be indistinguishable from the noise caused by the approximately 19,800 round trips annually by vessels, other than commercial-fishing boats, into Los Angeles/Long Beach (LA/LB) harbor. It should be noted that the southwestern portion of the survey area is adjacent to the LA/LB shipping lanes and, therefore, is already subject to anthropogenic noise. To avoid additional harassment authorizations, except in emergency situations, aircraft supplying the seismic vessels are requested to maintain an altitude of 1,000 ft (305 m) until within 3,038 ft (.5 nm; 926 m) of the seismic vessel, unless conducting surveys for marine mammals.

The streamer array, along which the passive hydrophones are located, will consist of 6 cables in parallel. The individual cables will be 9,840 ft (3,000 m) long and spaced 246 ft (75 m) apart, typically towed at a depth of 16.4 to 32.8 ft (5 to 10 m) below the water surface. Hydrophones are attached along the cable and paravanes will be deployed to separate the streamer arrays. The cables have a diameter of 3.5–4 inches (8.9 to 10.2 cm); therefore, it is very unlikely that a marine mammal would become entangled in one. More likely, the presence of the vessel and the water turbulence from the paravane and streamer cables will provide a zone around the source that marine mammals will not enter. In addition, because of the slow ship speed and resultant water turbulence and noise, it is extremely unlikely that any marine mammals would be struck and thereby injured or killed by the seismic vessel.

Mitigation and Monitoring Concerns

Comment 5. Two commenters were concerned that the criterion for the Acoustic Thermography of Ocean Climate (ATOC) project having a potential to cause harassment has been established at 120 dB, while the 3–D seismic survey's zone of influence (ZOI) was proposed for 160 dB. Another commenter questioned whether some marine mammals would hear the seismic pulse outside the 160 dB isopleth since Tyack (1988) indicated that 10 percent of the gray whales showed behavioral changes at that range.

Response. It is presumed that certain species of marine mammals outside the 160 dB isopleth will hear the seismic array. For California waters, Richardson et al. (1991) estimated that airgun sound pulses would remain above typical ambient noise levels (approximately 75–90 dB) at distances greater than 60 mi (100 km) from the source. However, as stated previously, being able to hear certain frequency sounds does not necessarily mean that the marine mammal is being physiologically stressed by that sound.

Based upon Tyack (1988), who indicates that avoidance behavior occurs only at relatively close ranges at decibels greater than 120 dB for continuous noise and 160–170 dB for pulsed sounds such as from airguns, the marine mammal ZOI for seismic work is considered to be the 160 dB isopleth because seismic arrays are pulsed noise generators whereas activities such as ATOC result in continuous sound and therefore has a ZOI set at the 120 dB isopleth. For pulsed sounds such as airgun arrays, Tyack found that fewer than 10 percent of the animals located beyond the 160 dB range would show avoidance behavior to the noise. However, because noise level measurements are logarithmic, extending the potential ZOI to the 150 dB isopleth, as one commenter suggests, may unnecessarily impose a larger ZOI. For reference purposes, it should be noted that ZOI and the terms ''zone of potential disturbance'' and ''zone of potential harassment'' used in the proposed authorization, are all considered synonymous.

Comment 6. Two commenters expressed opposing concerns regarding NMFS' proposed mitigation measure that would require Exxon to leave the array on if restarting the array would occur during nighttime hours. A third commenter noted that NMFS' proposed authorization and the Exxon application differed in that the applicant appeared to envision monitoring occurring day and night while NMFS envisioned it to occur only during the day.

Response. One of the mitigation measures proposed by NMFS was for the airgun arrays to be shut down during turning and maneuvering, and then be powered up slowly over a 5-minute period. NMFS also proposed that whenever the array was turned off during nighttime that the array not be repowered until daylight. As a result of comments, difficulties with this proposed mitigation measure were identified. If the survey vessel is not authorized to power up the array during nighttime, the duration of the survey could be doubled, resulting in increased total air emissions, fishing preclusion time in the survey area, and costs to the applicant, although the number of marine mammal incidental harassments would probably not increase or decrease substantially. In addition, NMFS has been informed that crew safety concerns will prevent leaving an array powered up whenever work is needed on the rear deck. Unfortunately, while leaving at least partial power to one of the arrays at times when repairs are underway should alert marine mammals to the presence of the array and prevent potential auditory damage, this could also result in additional harassments. It is NMFS' view that ramping up the acoustic array and use of lights to illuminate most of the 500 ft (152.4 m) safety zone, no serious injury of a marine mammal should result during nighttime operations. Therefore, NMFS will not require a mitigation requirement prohibiting turning on an array in darkness but will modify ramp-up to require the array be linearly increased by no more than 6 dB/min above 160 dB. This will increase the ramp-up period from 5 minutes to approximately 15 minutes and will further ensure that marine mammals can vacate the immediate survey area if they so choose, prior to potential onset of a temporary threshold shift injury or less serious harassment.

Comment 7. Two commenters recommended a greater distance between the vessel and cetaceans prior to turning on and ramping up of the seismic array. One commenter recommended that the seismic array not be turned on if marine mammals were within the 160 dB isopleth while the other commenter noted that within state

waters mitigation measures prohibit the array from being powered up whenever cetaceans are within 1.2 nm (2 km) of the survey boat.

Response. While NMFS has established a safety zone for pinnipeds and odontocetes at 500 ft (152.4 m) and increased the safety zone for mysticetes to 1,476 ft (450 m), there are several difficulties with requiring that the seismic device not be turned on if marine mammals are visible within the 160 dB isopleth. The 160 dB isopleth occurs at a radius of approximately 2.84 nm (5.2 km) from the seismic source and, based upon estimates made by NMFS in the proposed authorization, mysticete/sperm whale harassment incidents are predicted to occur within this zone. Because harassment takings of mysticetes are authorized, and harassment takings of odontocetes and pinnipeds are not expected to occur unless the animals were within the 190 dB isopleth, termination of the seismic source, if marine mammals are seen within the 160 dB isopleth, is not warranted. In addition, if Exxon were required to cease operations each time one of these animals was sighted, or whenever a pinniped and odontocete was sighted (which evidence indicates will not be disturbed by seismic array noise in this area), the survey would result in many data gaps. Depending upon the frequency of shutting off the array and powering it back up, track lines could have serious data gaps requiring all or portions of the track-line to be resurveyed. This would result in increased survey time.

Because harassment takings only are being authorized by this action, and because implementing this recommendation is not likely to result in a lesser impact on marine mammals in the long-term, NMFS does not believe that it is necessary to require this mitigation measure.

A distance of 1.2 nm (2 km) from the survey vessel, while less conservative than a 2.84 nm (5.2 km) safety zone, may be unwarranted and impractical for the same reasons.

In addition, some cetaceans have been reported approaching seismic survey vessels. If true, this would be evidence that certain species of marine mammals either do not hear the array or the noise is not disturbing the animal. NMFS believes that to require this mitigation measure would impose an unnecessary burden on Exxon, since it would be required to wait until all marine mammals voluntarily move away from the area before resuming the survey. Observers however, will be required to record all marine mammal behavior patterns within the 2.84 nm (5.2 km) ZOI. One purpose of these observations will be to determine whether pinnipeds and odontocetes react to seismic noise. This information will then be available for consideration in future seismic applications.

Comment 8. One commenter recommended that NMFS require Exxon to implement monitoring methods similar to that used by seismic and oil development activities in the Beaufort Sea, including an extensive aerial monitoring program.

Response. While a monitoring protocol based upon monitoring guidelines recommended for use in the Beaufort Sea will be provided to Exxon, aerial monitoring is an expensive undertaking whose benefit for marine mammals must be weighed against the cost of undertaking the program. In the Beaufort Sea, an extensive monitoring program has been implemented by MMS since 1979 and MMS and NMFS since 1986, particularly since 1991, to determine among other things, whether oil and gas exploration and development activities were having a more than negligible impact on the availability of bowhead whales for subsistence purposes during the fall migration of bowheads. More extensive monitoring requirements were recommended because extensive activities were conducted (i.e., seismic work, actual drilling, icebreaking operations and supply ship and aircraft activities) and there were concerns that such activities might drive bowheads so far offshore that they would become unavailable for subsistence purposes. Secondary use of the monitoring program was to determine the level of harassment takings to bowheads and several other marine mammal species. Aerial monitoring was augmented by vessel observations, but other mitigation, such as ramp up and termination of the source whenever a marine mammal entered a pre-set ZOI was not required as part of the Letter of Authorization. Because (1) the SYU 160 dB ZOI can be adequately monitored visually from the bridge of the survey vessel, (2) aerial marine mammal surveys may result in additional incidental harassment of marine mammals, (3) mitigation measures imposed will ensure no harassment takings of pinnipeds and odontocetes nor any TTS injury to mysticetes will occur, and (4) the relative low abundance of marine mammals in the Southern California Bight (SCB) during this time of year, NMFS does not believe that aerial monitoring of the SYU survey area is warranted solely for monitoring purposes. However, because aerial surveys can provide valuable information on whale behavior and can provide a platform for better statistical analyses of behavioral modification, NMFS recommends that Exxon incorporate an aerial survey for marine mammals that provides statistically valid results.

Comment 9. Two commenters recommended that the observers on board the Exxon vessel either be NMFS employees or be an independent third party contracted by NMFS.

Response. Although NMFS will require Exxon to have an NMFS employee on board the vessel after December 15th to observe gray whale behavior, NMFS has neither the staff nor funding to provide observers under small take authorizations. For this authorization, Exxon has contracted an independent firm in southern California to provide NMFS-approved observers. These observers are trained and instructed to record all observations made on marine mammals (and other sea life), including times when marine mammals may enter a designated safety zone. NMFS will require observers to report daily on harassment takes and logbooks be submitted as part of the reporting requirement. These logbooks will be reviewed by NMFS and if violations to either the incidental harassment authorization or the MMPA are found, appropriate action can be taken under existing procedures.

Comment 10. Several commenters recommended that (a) because sperm whales and some other species have long dive periods, monitoring commence sooner than 30 minutes prior to turning on the array, (b) that monitoring continue 24 hours daily and (c) NMFS and Exxon supplement the proposed monitoring program with acoustic monitoring capable of detecting submerged sperm whales and other cetacean species.

Response. NMFS has modified the monitoring program requirements to make clear that monitoring will be continuous during daylight hours to (a) ensure that no marine mammals enter the safety zones while the array is at or above 160 dB, and (b) commence monitoring 30 minutes prior to the estimated time that the array will reach the 160 dB SPL. As the ramp-up period has been increased to approximately 15 minutes, this will mean a minimum monitoring period of 45 minutes. To ensure adequate monitoring of the safety zone, Exxon will be required, as part of the authorization, to provide Big Eye binoculars for use by the observers.

During nighttime hours, monitoring by the observer needs to be conducted only whenever the array is being powered up. To facilitate observations

within the expanded safety zones, Exxon will provide observers with night-vision binoculars. The 500-ft (91.5 m) safety zone around the array will be required to be visually monitored by the biological observer for a minimum of 30 minutes prior to reaching the 160 dB SPL during ramp up to ensure that no marine mammals are within the zone. After careful consideration, additional visual monitoring by the observer during nighttime is viewed as being neither necessary nor practical, since, as mentioned previously, it is very unlikely that a marine mammal will enter the safety zone(s) and ramping up will allow affected marine mammals adequate time to leave the area. Use of statistical analyses will allow for an estimate of those mysticetes that may enter the 160-dB ZOI during nighttime. However, a crew member will be assigned to monitor the area with instructions to alert the watch stander to the presence of marine mammals and, if necessary, power-down the source to below 160 dB. The biological observer on call for such an event will then be promptly notified.

Because the seismic array is broadband in the same frequencies utilized by the mysticete cetacean species, it is difficult to make continuous acoustic recordings of mysticete vocalizations and to distinguish marine mammal vocalizations from other noises. However, although recordings can be made independent of the survey vessel's hydrophone array during periods between transmission cycles or while turning or maneuvering, because (1) there is an authorization to incidentally harass mysticete whales; (2) the 160 dB ZOI and the 180 and 190 dB safety zones can be adequately monitored visually from the bridge of the survey vessel because of the small areas involved; (3) mitigation measures (including ramp up and termination of the source whenever marine mammals are sighted within their safety zones) imposed will virtually eliminate any harassment takings of pinnipeds and odontocetes and any TTS injury to mysticetes, and (4) the relative low abundance of marine mammals in the SCB during this time of year especially deep diving sperm whales, NMFS does not believe that a sophisticated acoustic monitoring of the SYU survey area is warranted solely for monitoring purposes. However, because acoustic monitoring can provide valuable information on whale behavior (at least acoustic) and an indication of behavioral modification with and without seismic noise, NMFS recommends that Exxon incorporate an acoustical measurement program for marine mammals.

National Environmental Policy Act Concerns

Comment 11. Two commenters were concerned that there did not appear to be a recognition of National Environmental Policy Act (NEPA) responsibilities since it was not mentioned in the proposed authorization.

Response. The responsibility for reviewing an activity under NEPA belongs primarily to the responsible Federal agency, if that activity is Federal, federally-funded, or federally-permitted. The MMS of the U.S. Department of the Interior has published several documents under NEPA regarding offshore oil and gas leasing and development in the SYU. A list of MMS' NEPA references is available upon request (see **ADDRESSES**). In addition, an EA on conducting the 3–D seismic survey in the SYU has recently been released by, and is available from, MMS (see **ADDRESSES**). That document, which has been reviewed and adopted in part (marine mammals) by NMFS, supports NMFS' conclusion that this activity will have a negligible impact on marine mammal stocks and their habitat. An analysis of concerns regarding oil spills and other environmental issues can be found in those documents.

In addition, it should be noted that while each proposed incidental harassment authorization is reviewed independently by NMFS to determine its impact on the human environment, NMFS believes that, because the finding required for incidental harassment authorizations is that the taking (limited to harassment) have only a negligible impact on marine mammals and their habitat, the majority of the authorizations should be categorically excluded (as defined in 40 CFR 1508.4) from the preparation of either an environmental impact statement or an EA under NEPA and section 6.02.c.3(i) of NOAA Administrative Order 216–6 for Environmental Review Procedures (published August 6, 1991). For Exxon's application, NMFS conducted a review of the impacts expected from the issuance of an incidental harassment authorization. NMFS has determined that there will be no more than a negligible impact on marine mammals from the issuance of the harassment authorization provided the mitigation measures required under that authorization are implemented and, based upon this determination and the portions of the MMS EA adopted by NMFS, has made a finding of no significant impact.

A programmatic EA on issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA is available for public review and comment until October 16, 1995 (see **ADDRESSES**).

Other Concerns

Comment 12. Several commenters recommended NMFS require the immediate suspension of operations if taking by means other than harassment occurs as a condition of the authorization.

Response. NMFS concurs with this recommendation and has made the harassment, injury or death of a marine mammal that is not authorized, or the serious injury or death of a species for which an authorization has been issued, to be a violation of the authorization and making the Incidental Harassment Authorization subject to suspension.

Comment 13. One commenter requested NMFS deny the incidental harassment authorization because the commenter is opposed to more oil wells and platforms going into operation, and because the risk of oil spills is significant.

Response. NMFS would like to clarify that it does not authorize the activity (i.e., conducting the seismic survey); such authorization is provided by the MMS and is not within the jurisdiction of the Secretary of Commerce. Rather, NMFS authorizes the unintentional incidental harassment of marine mammals in connection with such activities and prescribes methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat.

Furthermore, the 3–D seismic survey does not involve any oil drilling or production activities. The survey merely would provide additional subsurface data that would enable Exxon to more accurately assess the oil-bearing strata to more efficiently develop the field while minimizing the number of wells needed to do so. Geological and geophysical work to gather seismic data is authorized by Exxon's lease. The Exxon SYU project underwent considerable environmental analysis during the implementation of the NEPA process and that analysis identified mitigation measures that would reduce the risk of oil spills to the extent feasible. These mitigation measures have been implemented. Additionally, in complying with recent state and Federal legislation, Exxon has implemented extensive oil spill contingency planning requirements that further reduce the risk of oil spills.

Summary of Mitigation Measures

To minimize potential serious injury to marine mammals and to limit incidental harassment to the lowest practical level, NMFS will require Exxon to: (1) Ramp up airguns to operating levels at a rate not to exceed 6 dB/min. from 160 dB to operating level at the start of operations or testing, when beginning a new trackline, or any time after the array is powered down below 160 dB; (2) immediately power down the array to a level below 160 dB whenever a marine mammal is observed entering either the 500-ft (152.4 m) safety zone for pinnipeds and odontocetes or the 1,476 ft (450 m) safety zone for mysticetes; (3) if marine mammals are observed within these safety zones, powering up the array above 160 dB must be delayed until all marine mammals are given the opportunity to leave the safety zone; and (4) ensure that the seismic survey's acoustical sounds do not impede the southbound migration of the gray whale. To accomplish this latter mitigation measure, Exxon will be required to notify NMFS if the survey continues after December 15, 1995, in order for an NMFS biologist to board an Exxon vessel to observe gray whale behavior, and to determine if a more than negligible impact on gray whale migration is occurring. At any time the NMFS biologist can no longer make a negligible impact determination for gray whales, Exxon will be required to either terminate the survey or move to an area of the SYU where a negligible impact determination can again be made. In addition, no incidental harassment takings will be authorized after December 31, 1995.

Monitoring

NMFS will require that the holder of the Incidental Harassment Authorization monitor the impact of seismic activities on the marine mammal populations within the SYU. Monitoring will be conducted by one or more NMFS-approved observers during all daylight hours using Big Eye binoculars and whenever the array is being powered up. At all times, but specifically during routine nighttime surveys when an observer need only be on standby, the crew is to be instructed to keep watch for marine mammals. If any are sighted, the watch-stander is to immediately notify the NMFS-approved observer. If the marine mammal is within the safety zone, the acoustic source must be immediately powered down. To facilitate nighttime sightings within the safety zones, high intensity lighting will be installed and used to light up these zones.

Visual monitoring will commence a minimum of 30 minutes prior to the estimated time that the array will reach the 160 dB SPL after being turned on and/or powered up. Monitoring will consist of noting the numbers and species of all marine mammals seen within the 2.84 nm (5.2 km) ZOI, their behavior whenever the seismic source is off (speed, direction, submergence time, respiration etc) and any behavioral responses or modifications of these indicators due either to the seismic array or vessel. A report on this monitoring program will be required to be submitted daily by radio, cellular telephone, or fax to NMFS and within 90 days of completion of the survey. In addition, NMFS will require Exxon, as part of the authorization, to undertake additional observations or measurements, or both, necessary to determine the acoustic properties of the seismic source and the impacts of seismic activities on marine mammals. These may include aerial observations and acoustic recordings of marine mammal vocalizations and are subject to the approval of NMFS prior to initiating the survey.

Consultation

Under section 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.), NMFS has completed consultation on the issuance of this authorization. Based on the best available information, NMFS concludes that the authorization to harass small numbers of cetaceans from conducting a 3–D seismic survey in the SYU under section 101(a)(5)(D) of the MMPA is not likely to jeopardize the continued existence of any listed species. The short-term impact from conducting these surveys may result in a temporary modification in behavior of certain listed and non-listed whale species. While temporary behavioral modifications may be made by these species of cetaceans to avoid seismic noise, this behavioral change is expected to have only a negligible impact on the animals.

Conclusions

Since NMFS is assured that the taking will not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of mysticete cetaceans, sperm whales, and possibly pygmy sperm whales; would have only a negligible impact on these cetacean stocks; will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses; and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued.

For the above reasons, NMFS has issued an incidental harassment authorization for the period ending December 31, 1995, for a 3–D seismic survey within the SYU provided the above mentioned monitoring and reporting requirements are incorporated.

Dated: October 11, 1995.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–25722 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–22–P

Monterey Bay National Marine Sanctuary Advisory Council; Meetings

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Monterey Bay National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: The Advisory Council was established in December 1993 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Monterey Bay National Marine Sanctuary. The Advisory Council was convened under the National Marine Sanctuaries Act.

TIME AND PLACE: Friday, October 27, 1995, from 8:30 until 4:30. The meeting will be held at the Moss Landing Chamber of Commerce, 8045 Moss Landing Road, Moss Landing, California.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including an update from the Sanctuary Manager, reports from the working groups, an update on the Sanctuary license plate marketing program, and discussions about enforcement of Sanctuary regulations and strategic planning for the Advisory Council.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Jane Delay at (408) 647–4246 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: October 11, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–25667 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 091595A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a change to a public meeting.

SUMMARY: The data and location for the October 18, 1995 meeting of the Gulf of Mexico Fishery Management Council's (Council) Law Enforcement Advisory Panel has changed.

DATES: The meeting will be held on October 25, 1995.

ADDRESSES: The meeting will be held at the Mobile Convention and Civic Center, 64 Water Street, Mobile, AL; telephone: (334) 438–4000.

FOR FURTHER INFORMATION CONTACT: Terrance Leary, telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Council's Law Enforcement Advisory Panel meeting, originally scheduled for October 18, as published on September 28, 1995 (60 FR 50185), has been changed to October 25, 1995. The time of the meeting remains the same.

All other information as printed in the previous publication remains unchanged.

Dated: October 13, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–25864 Filed 10–13–95; 3:38 pm]

BILLING CODE 3510–22–M

[I.D. 100595A]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of a Scientific Research Permit (P557E).

SUMMARY: Notice is hereby given that the Scripps Institution of Oceanography, Institute for Geophysics and Planetary Physics (Dr. Christopher W. Clark, Principal Investigator), 9500 Gilman Drive, La Jolla, California 92093–0225, has been issued a permit to take (harass) several species of marine mammals and sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/955–8831).

SUPPLEMENTARY INFORMATION: On May 31, 1995, notice was published in the Federal Register (60 FR 23890) that the above-named applicant had submitted a request for a scientific research permit to take (harass) several species of marine mammals and sea turtles over a 2-year period, during sound transmission studies in the waters offshore Kauai, Hawaii. The requested permit has been issued, under the authority of the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing endangered species permits (50 CFR parts 217–227).

Issuance of this Permit as required by the ESA of 1973 was based on a 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 this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: October 6, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–25642 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 5371, published on January 27, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive

issued to you on January 24, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on October 11, 1995, you are directed to amend further the January 24, 1995 directive to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334	125,161 dozen.
335	140,434 dozen.
352/652	8,579,272 dozen.
369–S [2]	1,169,294 kilograms.
634	372,157 dozen.
641	592,787 dozen.
647/648	1,140,786 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–25749 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcing the Signing of Form ITA–370P and Correction of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

October 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs announcing the signing of Form ITA–370P and correcting an import limit.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Notices published in the Federal Register on August 30, 1995 announce the establishment of a Special Access Textile Program for eligible Andean Trade Preference Act Countries (60 FR 45144) and the establishment of Special Access limits for Colombia for Categories 352/652 and 444 (60 FR 45145). Beginning on October 18, 1995, the U.S. Customs Service will start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 352/652 and 444 that are destined for Colombia and subject to the Special Access Textile Program for the periods beginning April 1, 1995 and extending through December 31, 1995 for Categories 352/652; and January 1, 1995 through December 31, 1995 for Category 444. These products are governed by Harmonized Tariff item number 9802.00.8015 and chapter 61 Statistical Note 5 and chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule. Interested parties should be aware that shipments of cut parts in Categories 352/652 and 444 must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Colombia in order to qualify for entry under the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to start signing the first section of the form ITA–370P and to correct the current level for Categories 352/652 from 2,250,000 dozen to 22,500,000 dozen.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994).

Requirements for participation in the Special Access Program are provided in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; 58 FR 41245, published on August 3, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and Memoranda of Understanding dated June 27, 1995 and August 9, 1995 between the Governments of the United States and Colombia, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Memoranda of Understanding dated June 27, 1995 and August 9, 1995 between the Governments of the United States and Colombia, beginning on October 18, 1995, the U.S. Customs Service is directed to start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 352/652 and 444 that are destined for Colombia and re-export to the United States under the Special Access Textile Program.

To facilitate implementation of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, I request that, effective on October 18, 1995, you correct the directive dated August 24, 1995 to change the level for Categories 352/652 to 22,500,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–25743 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Arab Republic of Egypt

October 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 17, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or

call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 36785, published on July 18, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1995, as amended on July 12, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on October 17, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Fabric Group 218–220, 224–227, 313–317 and 326, as a group.	80,092,298 square meters.
227	16,487,475 square meters.
314	18,923,266 square meters.
Levels not in a Group	
300/301	7,796,723 kilograms of which not more than 2,738,767 kilograms shall be in Category 301.
338/339	2,079,641 dozen.
340/640	1,144,921 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–25744 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

October 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17325, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 13, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on October 18, 1995, you are directed to amend the directive dated February 13, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338	5,224,078 dozen.
340/640	559,515 dozen of which not more than 185,680 shall be in category 340–D/640–D [2]
638/639	123,986 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 340–D:only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025, and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030, and 6205.90.4030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–25747 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

October 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17334, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on October 18, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Levels in Group I	
347/348	1,887,971 dozen.
359–C/659–C [2]	802,714 kilograms.
433	3,463 dozen.
447	8,396 dozen.
634	430,822 dozen.
635	345,349 dozen.
647/648	1,053,916 dozen.
650	97,879 dozen.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O [3], 360, 362, 363, 369–O [4], 400–414, 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [5], 665, 666, 669–O [6], 670–O [7], 831–846 and 850–859, as a group.	112,471,517 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C).

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[5] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H).

[6] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[7] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–25745 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6716. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/339 is being increased for swing and carryforward. The limit for Categories 639 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17335, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round

Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on October 18, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	1,219,983 dozen of which not more than 722,081 dozen shall be in Category 338 and not more than 802,864 dozen shall be in Category 339.
639	3,260,459 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–25746 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced of Manufactured in Thailand

October 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 200 is being increased by application of swing and carryforward. The limit for Category 218 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17337, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on October 11, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	1,026,043 kilograms.
218	15,428,592 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–25748 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 11, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 645/646 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 5371, published on January 27, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round

Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on October 11, 1995, you are directed to amend further the January 24, 1995 directive to increase the limit for Categories 645/646 to 239,418 dozen [1], as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–25750 Filed 10–16–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Change in date of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board scheduled for October 25–26, 1995, as published in the Federal Register (Vol. 60, No. 13, Page 4150, Friday, January 20, 1995, FR Doc. 95–1365) will be held on October 31 and November 1, 1995. In all other respects the original notice remains unchanged.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

Dated: October 11, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–25616 Filed 10–16–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army, Corps of Engineers

Coastal Engineering Research Board (CERB)

AGENCY: Corps of Engineers.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: October 25, 1995.

Place: Fort Lauderdale Airport Hilton, Fort Lauderdale, Florida.

Time: 8:00 a.m. to 5:45 p.m.

Proposed Agenda: The morning session will consist of presentations on the following topics: New policies; Coast of Florida Study, GIS; Dredging Research Program and technology transfer activities; aragonite studies; turtle deflector, Coastal Inlet Research Program; and dredged material disposal (Miami). The afternoon session is devoted to old CERB business; benefits of the Coastal Engineering Education Program, and presentations dealing with various Division and District activities. These include: a South Atlantic Division overview, risk based analysis of coastal projects; Folly Beach, Tybee Island, economics of beach-fill projects, and POD/Caribbean Island partnering.

This meeting is open to the public; participation by the public is scheduled for 11:55 a.m. on October 25.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Bruce K. Howard, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experimentation Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

Bruce K. Howard,

Corps of Engineers Executive Secretary.

[FR Doc. 95–25666 Filed 10–16–95; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs: 84.129T Distance Learning Through Telecommunications; 84.129U–l Parent Information and Training Programs; 84.129U–3 Parent Information and Training Programs—Technical Assistance

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1996; correction.

SUMMARY: This notice provides material inadvertently omitted from the combined application notice (CAN) inviting new awards for fiscal year (FY) 1996 under many of the Department's programs and competitions, as published in the issue of Thursday, August 10, 1995 (60 FR 40956). The Secretary publishes this material under the Education Department General Administrative Regulations (EDGAR). The material is useful to potential applicants in applying for awards under the affected programs and competitions.

SUPPLEMENTARY INFORMATION: A number of the discretionary grant programs and competitions included in the CAN for FY 1966—especially those for which the Department has not issued program-specific regulations—use the selection criteria in EDGAR (specifically 34 CFR 75.210) for their selection criteria. Paragraph (c) of § 75.210 provides that the Secretary distributes an additional 15 points among the criteria listed in paragraph (b) of that section and that the Secretary indicates in the application notice for the program how the 15 points are distributed.

Among the programs or competitions included in the CAN that use EDGAR for their selection criteria are three from which the reference to the EDGAR selection criteria and the distribution of the additional 15 points were inadvertently omitted. All three of these programs or competitions are under the Rehabilitation Services Administration of the Office of Special Education and Rehabilitative Services. They are: CFDA No.84.129T, Distance Learning through Telecommunications; CFDA No. 84.129U–l, Parent Information and Training Programs; and CFDA No. 84.129U–3, Parent Information and Training Programs—Technical Assistance.

The correct references to the EDGAR selection criteria and the distribution of the additional points are as follows:

Corrections

84.129T Distance Learning Through Telecommunications

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

84.129U–l Parent Information and Training Programs

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

84.129U–3 Parent Information and Training Programs—Technical Assistance

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

Dated: October 12, 1995.

Judith A. Winston,

General Counsel.

[FR Doc. 95–25720 Filed 10–16–95; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on August 6, 1994, an arbitration panel rendered a decision in the matter of *Lue Atha Dixie* v. *Tennessee Department of Human Services (Docket No. R–S/92–10).* This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d–2 upon receipt of a complaint by petitioner Lue Atha Dixie.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal and other property.

Background

Ms. Lue Atha Dixie began her career as a vending facility manager in the Tennessee Business Enterprise Program in 1980. The program is operated by the Tennessee Department of Human Services (TDHS), the State licensing agency (SLA), in conformance with the requirements of the Randolph-Sheppard Act (the Act), 20 U.S.C 107 *et seq.*, and implementing regulations in 34 CFR Part 395.

Ms. Dixie was removed from the Business Enterprise Program on October 31, 1990, when her license as a facility manager was revoked on the grounds that her visual acuity exceeded the standard established by the Act. However, pending the outcome of the Federal arbitration hearing, Ms. Dixie continued to manage the facility pursuant to an arrangement with the SLA.

The question of visual acuity was raised when she underwent a periodic eye examination that was required of all managers in the TDHS program following a 1989 amendment to the Tennessee State Rules, 1240–6–2.03. Prior to this amendment, there had been no requirement of periodic examinations of vending facility managers. In the course of the eye examination conducted after the passage of the new rule, Ms. Dixie's level of visual acuity disqualified her from the program based on the visual acuity standard found in the regulations in 34 CFR 395.1(c).

Consequently, in compliance with revised State Rule 1240–6–2.03, which provided for the revocation of the license of any manager whose vision did not qualify him or her under the regulations in 34 CFR 395.1(c), Ms. Dixie's license was terminated. The ophthalmologist who conducted the initial examination of Ms. Dixie's eyes concluded that her vision did not fall within the eligibility guidelines. Subsequently, at Ms. Dixie's request, she was examined by another ophthalmologist, whose examination largely confirmed the previous doctor's assessment.

In March 1991, after her license was terminated, Ms. Dixie was examined by a third ophthalmologist. Using specialized contrast sensitivity acuity testing procedures, which measure acuity over a broader range of light and color than traditional methods, the doctor's report was favorable to Ms. Dixie.

However, during the time the foregoing examinations were taking place, the SLA discovered in its records two eye examinations of Ms. Dixie in 1978 and 1980 indicating that her visual acuity did not meet the eligibility requirements of the Randolph-Sheppard program.

Following her October 1990 license termination, Ms. Dixie requested and received a State fair hearing, which was conducted on March 15, 1991. On July 2, 1991 a hearing officer upheld the SLA's decision terminating Ms. Dixie's license, and on July 15, 1991 the SLA adopted the hearing officer's decision as final agency action.

Subsequently, Ms. Dixie filed a request with the Secretary of the U.S. Department of Education to convene an arbitration panel to hear this dispute. A panel was convened, and this complaint was heard on February 21, 1994.

Arbitration Panel Decision

The arbitration panel concluded that Ms. Dixie's functional visual acuity satisfied the applicable regulations in 34 CFR 395.1(c) and that she was improperly removed from the Tennessee Business Enterprise Program. The panel reasoned that, if the report of the contrast acuity examination had been available to the SLA prior to Ms. Dixie's removal from the vending facility program, her removal might well have been avoided.

The panel concluded that the contrast sensitivity testing for visual acuity is probably the most comprehensive way to measure functional vision. The panel further stated that while the definition of blindness contained in 34 CFR 395.1(c) uses the Snelling Acuity Chart

for its basis, the panel did not consider that this precluded use of the newer method of contrast sensitivity testing to measure visual acuity.

Consequently, the panel directed that Ms. Dixie be restored to her prior position with appropriate credit given to her retirement plan. The panel also concluded that no additional remedy was required, since Ms. Dixie, in agreement with the SLA, had continued to operate her facility pending the outcome of the arbitration proceedings.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the United States Department of Education.

Dated: October 11, 1995.

Howard Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–25617 Filed 10–16–95; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on December 20, 1993, an arbitration panel rendered a decision in the matter of *C. Gene King* v. *Indiana Department of Human Services, Office of Services for the Blind and Visually Impaired (Case No. R–S/91–11).* This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d–2, upon receipt of a complaint filed by petitioner C. Gene King.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C.107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal and other property.

Background

The Indiana Department of Human Services, through its Office of Services for the Blind and Visually Impaired (OSBVI), is the State licensing agency under the Randolph-Sheppard Act. In 1985, on an experimental basis, OSBVI offered vending locations that included both sides of the interstate highway system. Only one vendor, Mrs. Tetzlaff, who was a member of the State Committee of Blind Vendors, took a two-sided location. The other locations later were bid to commercial vendors. After studying the revenue from the highway locations, OSBVI decided that one-sided highway locations provided adequate income to a vendor, thus giving more blind vendors an opportunity to participate in the Randolph-Sheppard program. In May 1990, after consultation with the State Committee of Blind Vendors, OSBVI changed its policy and announced that highway locations would be opened and placed for bid as Randolph-Sheppard facilities, awarding only one location per vendor, with the understanding that one location meant on one side of the highway only.

Mr. C. Gene King, complainant, is a blind vendor licensed by the Indiana Department of Human Services. Mr. King has participated in the program since 1980, successfully managing a facility in Indianapolis. Mr. King contends that OSBVI discriminated against the blind in the awarding of vending facilities located along the interstate highway system by allowing Mrs. Tetzlaff to retain her vending facility located on both sides of the highway awarded to her in 1985. Mr. King believed the decision to change policy was biased since Mrs. Tetzlaff was on the State Committee of Blind Vendors. Mr. King also contended that OSBVI restricted upward mobility opportunities for blind vendors in May of 1990 when it made additional highway locations available.

Arbitration Panel Decision

On the issue of whether the decision by OSBVI to change the policy of awarding Randolph-Sheppard facilities was improperly influenced by Mrs. Tetzlaff, the panel found in favor of the State agency. The panel found that, even though Mrs. Tetzlaff was a member of the State Committee of Blind Vendors, she did not vote in any of the meetings pertaining to the policy change regarding the facilities located on the interstate highway system. The panel found that the State agency had the authority to establish new Randolph-Sheppard locations without participation of the State Committee of Blind Vendors.

The panel also found that OSBVI did not restrict the upward mobility and income of vendors in the State of Indiana. The OSBVI was within the scope of the enabling legislation by providing additional locations in May 1990, thus creating more opportunities for additional blind vendors to earn a fair income. The panel decided that no further action was required because Mr. King could not support his contentions.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: October 11, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–25718 Filed 10–16–95; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on December 27, 1994, an arbitration panel rendered a decision in the matter of *Jeana Martin* v. *California State Department of Rehabilitation (Docket No. R–S/92–13).* This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d–2, upon receipt of a complaint filed by Jeana Martin.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal and other property.

Background

The complainant, Jeana Martin, a licensed blind vendor, was assigned to operate the facility at the United States Post Office General Mail Facility (GMF) in Santa Ana, California, in 1985 by the California Department of Rehabilitation, the State licensing agency (SLA) responsible for the Randolph-Sheppard Vending Facility Program in California.

The facility consists of a snack bar/lunchroom and vending machines

located in the breakroom areas throughout GMF. At the time the complainant began operating the GMF facility, there were 40 vending machines, 11 of them under the management of Ms. Martin. Complainant received monies from the remaining vending machines in accordance with the income-sharing provisions of the Randolph-Sheppard Act (the Act) and implementing regulations and the California Code of Regulations.

Following her placement at the GMF facility, Ms. Martin submitted a request to the SLA for remodeling and expansion of the facility as the result of requests from patrons and the Federal property managing officials to increase her service level. In August 1989, the SLA began working with complainant, the Postal Service, and an architect to develop plans for the remodeling of the GMF vending facility.

Subsequently, in September 1989, a dispute arose between the SLA and the Postal Service regarding the 29 vending machines at GMF not under Ms. Martin's management. Prior to this time, the SLA had informed postal officials at the GMF Facility of its desire to participate in the bidding process when the contract for these vending machines would be opened for bid. However, without formal notification to the SLA, the Postal Service began negotiations with a private vending company regarding the renewal of the contract. The negotiations culminated in a renewed contract between the Postal Service and the private vending company, which implemented a ''break-even'' vending machine arrangement with the Postal Service. That arrangement affected the complainant's income by eliminating the income-sharing of profits from the sales of the vending machines under the previous contract arrangement.

Shortly after the ''break-even'' pricing of the contract with the private vending company was instituted, complainant requested assistance from the SLA to stop what she termed unfair competitive pricing practices by the private vending company.

In October 1989, staff of the SLA's Business Enterprise Program informed the facility manager at GMF that the Postal Service was in violation of the Act and implementing regulations and that the ''break-even'' policy was adversely affecting the income of the complainant.

In April 1990, Ms. Martin filed a complaint with the SLA requesting a fair hearing on the matter. This request was heard by the SLA in May 1990. The SLA agreed with the portion of her complaint that dealt with the ''break-even'' policy of the private vending company. However, the SLA found no basis for granting an administrative remedy.

Subsequently, in March 1991, Ms. Martin filed an appeal of this decision. The Appeals Board found that the complainant had suffered as the result of the ''break-even'' pricing. The Appeals Board ruled, however, that the SLA had taken steps to correct the problem, although those efforts were unsuccessful.

In October 1990, the SLA filed a request for arbitration with the U.S. Department of Education against the United States Postal Service, seeking cancellation of the ''break-even'' policy at GMF. This dispute was resolved in a negotiated settlement between the parties.

After the settlement between the SLA and the Postal Service, complainant alleged that she continued to operate the GMF facility with the same level of expenses and a decreasing level of income.

By August 1991, complainant made a decision to leave the GMF facility as its manager and to relocate with the assistance of the SLA to other vending locations in Southern California. However, complainant's relocation efforts did not produce sufficient income to enable complainant to pay the sales tax and business suppliers she owed while managing the GMF facility.

By letter dated June 25, 1992, the SLA notified the complainant that her license would be terminated for non-payment of the sales tax and other financial obligations pursuant to State rules and regulations. Subsequently, complainant's license was revoked and on June 29, 1992, complainant filed with the Secretary of the U.S. Department of Education a request to convene a Federal arbitration panel. A hearing was held on April 14 and 15, 1994.

Arbitration Panel Decision

The issue before the arbitration panel was whether the California Business Enterprise Program failed to fulfill its obligations to complainant in its capacity as the State licensing agency charged with the operation and administration of the Randolph-Sheppard vending program in California.

In a majority opinion, the panel ruled that the SLA violated the Act in its relationship with complainant by failing to protect the priority accorded to the complainant as a licensed blind vendor under the Act; by failing to insist upon remittance to the SLA's vending program all vending machine income to which the SLA and complainant were entitled; by failing to stand firm against the promulgation and continuance of a ''break-even'' contract; by the lack of completed renovation of the GMF facility; and by the termination of complainant's license without sufficient foundation.

In a separate opinion on remedy, the panel awarded monetary compensation, including damages, restitution, and fees and expenses in the amount of $449,923.70. The panel ordered the respondent to pay this amount, with interest to be determined in accordance with California law, to complainant within 30 days following the date of the award.

The arbitration panel further directed the respondent to reinstate complainant's license to operate a vending facility and to place her in a vending facility comparable to the GMF facility. In the event no comparable facility was immediately available, respondent was directed to pay compensation to complainant each month, beginning January 1995, in an amount equal to the net income complainant would have received had she been placed in such a facility. The panel fixed this amount as $5,731.94 per month based upon the records submitted in the arbitration hearing.

The panel retained jurisdiction of the case for 90 days following the date of the award. One panel member concurred with the award in its entirety and one panel member dissented from the award of monetary compensation for damages.

The decision of the arbitration panel has been appealed to the United States District Court for the Central District of California, *Brenda Premo, Director of the Department of Rehabilitation, State of California* v. *Jeana Martin, United States Department of Education, Richard Riley, Secretary of Department of Education and DOES I-XX, Case No. 95–0546 JGD (CTx).*

The views and opinions expressed by the arbitration panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: October 11, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–25719 Filed 10–16–95; 8:45 am]

BILLING CODE 4000–01–P

Office of Postsecondary Education

[CFDA Nos.: 84.120A and 84.120B; and CFDA No. 84.262]

Notice of Technical Assistance Workshop

Summary: The U.S. Department of Education will sponsor a one-day technical assistance workshop for colleges and universities interested in applying for grants for the Minority Science Improvement Program and Programs to Encourage Minority Students to Become Teachers. This workshop will be conducted by staff of the Division of Higher Education Incentive Programs, Office of Postsecondary Education, U.S. Department of Education. The workshop will cover program regulations and guidelines governing applications, allowable costs and activities, as well as information on project accountability. The workshop will also offer suggestions for preparing highly successful applications. The session will be especially helpful for first-time applicants and previous applicants who were unsuccessful.

Dates: November 1, 1995.

Time: 9:00 a.m.—5:00 p.m.

Place: The Grand Hotel, 2350 M Street, N.W., Washington, D.C., Telephone: (202) 429–0100.

Application Deadlines: The application deadline for the Minority Science Improvement Program is December 8, 1995. The application deadline for the Programs to Encourage Minority Students to Become Teachers is November 17, 1995. Application forms and guidelines have been available since October 2, 1995.

Note: There will be no registration fees. Workshop space is limited. Participants should notify Ms. Janice H. Wilcox, by fax at (202) 260–7615 of their intentions to attend no later than October 20, 1995.

For Further Information Contact: Dr. Argelia Velez-Rodriguez at (202) 260–3261 for the Minority Science Improvement Program contact; Ms. Vicki Payne at (202) 260–3291 for Programs to Encourage Minority Students to Become Teachers. 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.

Dated: October 11, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–25654 Filed 10–16–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/NO(SW)–23, for the transfer of 10 grams of plutonium from Sweden to Norway for tests at the OECD Halden Reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–25690 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Korea concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/KO(EU)–5, for the transfer of 10.25 kilograms of uranium containing 2.045 kilograms of the isotope uranium-235 (19.95 percent enrichment) from EURATOM to Korea for fuel element production.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–25691 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/IE(EU)–10, for the transfer of 23.84 kilograms of uranium containing 4.788 kilograms of the isotope uranium–235 (19.95 percent enrichment) from EURATOM to Indonesia for fuel element production for the MPR–30 Research Reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–25692 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement''

under the Additional Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Korea concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/CA(KO)–4, for the transfer of 420.4 grams of uranium containing 82.9 grams of the isotope uranium–235 (19.75 percent enrichment) from the Republic of Korea to Canada for repair work.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–25693 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–64–NG]

Altresco Pittsfield, L.P.; Order Granting Long-Term Authorization To Import Natural Gas From 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 Altresco Pittsfield, L.P. authorization to import up to 22,420 Mcf of natural gas per day from Canada beginning November 1, 1995, and extending for fourteen years and 10 months.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 28, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–25695 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–65–NG]

Altresco Pittsfield, L.P.; Order Granting Long-Term Authorization To Import Natural Gas From 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 Altresco Pittsfield, L.P. authorization to import up to 11,757 Mcf of natural gas per day from Canada beginning November 1, 1995, through October 31, 2011, under terms and conditions of the gas sales agreement with Home Oil Company Limited.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 28, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–25696 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–73–NG]

Bay State Gas Company; Order Granting Blanket Authorization To Import Natural Gas From 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 Bay State Gas Company authorization to import up to 40 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after October 31, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 26, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–25698 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–74–NG]

Northern Utilities, Inc.; Order Granting Blanket Authorization To Import Natural Gas From 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 Northern Utilities, Inc. authorization to import up to 15 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after October 31, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 26, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–25699 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–68–NG]

Paramount Resources U.S. Inc.; Order Granting Blanket Authorization To Import Natural Gas From 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 Paramount Resources U.S. Inc. authorization to import up to 300 Bcf of natural gas from Canada. The import authorization is for a period of two years beginning on the date of the initial delivery after October 31, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is

open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 18, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–35697 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–62–NG]

Texaco Natural Gas Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

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 Texaco Natural Gas Inc. blanket authorization to export up to a total of 120 Bcf of natural gas to Mexico over a period of two years beginning on the date of first delivery after September 30, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 28, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–25694 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted energy information collections to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995.

DATES: Comments must be filed by no later than November 16, 1995. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information or copies of the forms and instructions should be directed to Norma White, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585–0670. Ms. White may be telephoned at (202) 254–5327.

SUPPLEMENTARY INFORMATION: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed below to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor; i.e., the DOE component), current OMB document number (if applicable), response obligation (mandatory, voluntary, or required to obtain or retain benefits), and type of request (new, revision, extension, or reinstatement); (3) a description of the need and proposed uses of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting and recordkeeping burden (number of respondents per year times the average number of responses per respondent annually times the average burden per response).

The energy information collections submitted to OMB for review were:

1. Forms EIA–412, EIA–759, EIA–826, EIA–860, EIA–861, EIA–867, and EIA–900, Electric Power Surveys.

2. Sponsor—Energy Information Administration; Docket Number—1905–0129; Response Obligation—Mandatory; and Revision—Significant changes in the Electric Power Surveys since the EIA requested comments earlier this year are:

a. The filing date for the Forms EIA–412, EIA–861, and the EIA–867 will be April 30 of each year following the data reporting calendar year.

b. Monthly reporting on the Form EIA–759, ''Monthly Power Plant Report,'' will be required for those operating utilities having at least one plant with a nameplate capacity of 25 megawatts or more. All other operating utilities will file yearly data on the Form EIA–759 at the end of each calendar year.

c. The Form EIA–861, ''Annual Electric Utility Report,'' and the Form EIA–867, ''Annual Nonutility Power Producer Report,'' will continue as separate surveys and will not be merged into the originally proposed Form EIA–899.

d. Form EIA–867, ''Annual Nonutility Power Producer Report,'' data on Schedules: I, Identification and Certification; II, Facility Information; and III, Standard Industrial Classification Code Designation; and VII, Notes, relating exclusively to these three schedules, will not be considered confidential by the EIA. Data reported on Schedules: IV.A, Facility Fuel Information; IV.B, Facility Generation Information; V, Facility Environmental Information; VI, Electric Generator Information; and VII, Notes, relating exclusively to these three schedules will continue to be held as confidential by the EIA.

e. New Form EIA–900, ''Monthly Nonutility Sales for Resale Report,'' will be required only from facilities with a nameplate capacity of 50 megawatts or more. The survey will collect one item on sales of electricity for resale and all data collected will be considered confidential by the EIA.

3. The Electric Power Surveys will collect information on capacity, generation, fuel receipts, consumption, fuel stocks, fuel prices, electric rates, construction costs, operating income, and revenues of electricity companies. Respondents include both electric utilities and nonutility electric power producers. Data are used for publication and analysis in both the public and private sectors.

4. State or local governments; businesses or others for profit; and Federal agencies or employees.

5. 66,512 total annual burden hours (7,944 respondents × 2.24 responses per respondent per year × 3.739 hours per response).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, October 11, 1995.

John Gross,

Acting Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–25684 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM96–1–20–001]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 11, 1995.

Take notice that on October 4, 1995, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following revised tariff sheet, with the proposed effective date of October 1, 1995:

Sixth Revised Sheet No. 343

Algonquin states that the purpose of this filing is to comply with the Letter Order issued in this docket on September 29, 1995.

Algonquin states that copies of this tariff filing were mailed to all firm customers of Algonquin and interested state commissions.

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 § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 18, 1995. Protest 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25629 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–8–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 11, 1995.

Take notice that on October 4, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP96–8–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon the Potomac Manor Point of Delivery in Mineral County, West Virginia and an associated lateral line located in Mineral County, West Virginia and Garrett County, Maryland under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to abandon the Potomac Manor Point of Delivery in Mineral County, West Virginia and an associated Lateral Line located in Mineral County, West Virginia and Garrett County, Maryland. The request has been requested by Mountaineer Gas Company and the West Virginia Department of Transportation, Division of Highways. The proposed abandonment will not result in any abandonment of service since the residents of the community of Potomac Manor have all moved.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25638 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–88–004]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

October 11, 1995.

Take notice that on October 4, 1995, Tennessee Gas Pipeline Company (Tennessee), filed the following revised tariff sheets in compliance with the Commission's September 19, 1995 order in the captioned proceeding:

—Third Sub. 2nd Revised Sheet No. 100
—Second Sub. Original Sheet No. 100A
—Third Sub. 1st Revised Sheet No. 110
—Original Sheet No. 110A
—Second Revised Sheet No. 205A
—Second Revised Sheet No. 209
—Second Sub. Original Sheet No. 209A
—Second Revised Sheet No. 216
—Second Sub. Original Sheet No. 313A
—Second Sub. First Revised Sheet No. 316
—Second Sub. Third Revised Sheet No. 318
—Second Revised Sheet No. 319A
—Fourth Revised Sheet No. 319B
—Third Revised Sheet No. 319C
—Substitute lst Revised Sheet No. 339A

Tennessee states that the revised tariff sheets: (1) Correct minor pagination, miscellaneous compliance, and electronic filing errors; (2) replace language in Section 11.11(m) of Article III of its General Terms and Conditions; and (3) add new language into its Rate Schedule FS and IS services to allow in-place transfers of gas in storage among different pipeline storage company contracts that cover the same storage field.

Tennessee also explains why it assesses injection and fuel charges when a customer transfers storage gas in place to Tennessee from another third party storage provider in a jointly-owned storage field. Tennessee states that additional tariff language addressing this issue is not necessary.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before October 18, 1995. 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. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25632 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–778–000]

Columbia Gas Transmission Corporation and Southern Natural Gas Company; Notice of Application

October 11, 1995.

Take notice that on September 25, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston,

West Virginia 25314, Columbia Gulf Transmission (Columbia Gulf) 1700 MacCorkle Avenue, S.E. Charleston, West Virginia 25314, and Southern Natural Gas Company (Southern), 1900 Fifth Avenue North, Birmingham, Alabama 35203, (collectively referred to as Companies) filed in Docket No. CP95–778–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a certain transportation and exchange service which was once required for exchange of gas among the Companies, all as more fully set forth in the application on file with the Commission and open to public inspection.

The Companies seek to abandon Rate Schedules X–92, X–71, and X–73, respectively, which provided for the transportation and exchange of up to 25,000 Mcf/d of gas among the Companies. It is stated that, currently, there are no imbalances and Columbia Gulf is providing Southern Part 284 interruptible service.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 1, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Companies to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25640 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–5–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 11, 1995.

Take notice that on October 5, 1995, Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets included in Appendix A to the filing. Such revised tariff sheets bear proposed effective dates as indicated therein.

ESNG states that the revised tariff sheets are being filed pursuant to § 154.308 of the Commission's Regulations, and Sections 23 and 24 of the General Terms and Conditions of ESNG's Gas Tariff, to reflect changes in ESNG's jurisdictional demand sales rates and storage rates. The instant filing is being made to ''track'' changes in Transcontinental Gas Pipe Line Corporation's (Transco) firm transportation demand and storage rates.

As background to the instant filing, on March 1, 1995, Transco filed a Section 4 general rate case in Docket No. RP95–197–000, *et al.* Transco filed to have rates effective April 1, 1995, but the Commission suspended the rates for five months, making the effective date September 1, 1995. On August 31, 1995, Transco subsequently made a Motion Filing to revise to the March 1, 1995 rates to eliminate costs associated with facilities not in service as of August 31, 1995.

ESNG is further ''tracking'' Transco's Transportation By Others (TBO) Cost Adjustment Filing made September 22, 1995, to be effective November 1, 1995. Transco's TBO filing affects ESNG's firm transportation sales rates and the PS–1 demand charge.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested States Commissions.

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 Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests shall be filed on or before October 18, 1995. 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. 95–25628 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR96–1–000]

Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, Unocal Pipeline Company; Petition for Declaratory Order

October 11, 1995.

Take notice that on October 2, 1995, Exxon Pipeline Company (EPC), Mobil Alaska Pipeline Company (Mobil), Phillips Alaska Pipeline Corporation (Phillips) and Unocal Pipeline Company (Unocal), four of the seven owners of the Trans Alaska Pipeline system (TAPS) (TAPS Carriers) filed a request for the Commission to issue a Declaratory Order pursuant to Section 207(a)(2), of the Commission's Rules and Regulations, 18 CFR 385.207(a)(2), to resolve a controversy between Petitioners and the three remaining TAPS Carriers, ARCO Transportation Alaska, Inc. (ARCO), Amerada Hess Pipeline Corporation (Amerada Hess) and BP Pipelines (Alaska), Inc. (BP).

EPC, Mobil, Phillips and Unocal request that the Commission issue an order declaring that the ramp-down capacity allocation scheme which ARCO, Amerada Hess and BP purport to have imposed upon the other TAPS Carriers without their assent is an illegal anticompetitive pooling arrangement prohibited by Section 5(1) of the Interstate Commerce Act.

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 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 November 1, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25635 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER95–1842–000 and ER92–764–004]

New England Power Company; Notice of Filing

October 11, 1995.

Take notice that on September 1, 1995, New England Power Company (NEP) tendered for filing a Notice of Cancellation for Transmission Tariff No. 7. NEP also included in its filing a request for waiver of the compliance filing in Docket No. ER92–764–004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 395.211 and 19 CFR 385.214). All such motions or protests should be filed on or before October 20, 1995. 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. 95–25636 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–7–000]

Northwest Pipeline Corporation; Notice of Petition for Grant of Limited Waiver of Tariff

October 11, 1995.

Take notice that on October 4, 1995, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Grant of Limited Waiver of Tariff.

Northwest seeks a waiver of the Commission's first-come, first-served policy as reflected in Section 1 of Northwest's Rate Schedule TI–1 and in the Priority Date provisions in Section 12.3 of the General Terms and Conditions of Northwest's FERC Gas Tariff, Third Revised Volume No. 1, in order to allow the receipt point priority dates held by BRING Gas Services Corp. (BRING) under an interruptible transportation agreement dated February 22, 1993, as amended, to be retained by BRING's assignee and affiliate, PennUnion Energy Services, L.L.C.

Northwest states that a copy of this filing has been served upon Northwest's jurisdiction customers and upon affected state regulatory commissions.

Any person desiring to be heard or protests 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 §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 18, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25631 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–8–000]

Northwest Pipeline Corporation; Notice of Petition for Grant of Limited Waiver of Tariff

October 11, 1995.

Take notice that on October 4, 1995, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Grant of Limited Waiver of Tariff.

Northwest seeks a waiver of the Commission's first-come, first-served policy as reflected in Section 1 of Northwest's Rate Schedule TI–1 and in the Priority Date provisions in Section 12.3 of the General Terms and Conditions of Northwest's FERC Gas Tariff, Third Revised Volume No. 1, in order to allow the receipt point priority dates held by Amoco Production Company (APC) under an interruptible transportation agreement dated June 10, 1988, as amended, to be retained by APC's assignee and wholly-owned subsidiary, Amoco Energy Trading Corporation.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 18, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25630 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–7–000]

Mississippi River Transmission Corporation; Notice of Request Under Blanket Authorization

October 11, 1995.

Take notice that on October 4, 1995, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri, 63124, filed in Docket No. CP96–7–000 a request pursuant to §§ 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.211) for approval to add a new delivery point to serve Trigen-St. Louis Energy Corporation (Trigen), a new transportation customer, under its blanket certificate authority issued in Docket No. CP82–489–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT proposes to install a ten-inch tap and appurtenant facility on its Line A–122 in Township 46 North, Range 7 East, St. Louis City, Missouri. MRT states the facilities will be located on right-of-way already owned by MRT and will be interconnected with a service line to be constructed, owned, and

operated by Trigen. MRT indicates that the proposed new delivery point will have the capacity to deliver up to 24,000 MMBtu of natural gas on a peak day, but MRT estimates that only 3,500,000 MMBtu of natural gas will be delivered on an annual basis at the proposed point. MRT further indicates that it is authorized to transport gas for Trigen pursuant to its Part 284 open access blanket certificate issued in Docket No. CP89–1121–000 and that Trigen will initially take service under MRT's Rate Schedule ITS. It is also indicated that Trigen will reimburse MRT for the actual cost of the MRT facilities, which MRT estimates to be $291,036,000.

MRT states that the volumes which will be delivered at the new delivery point will be within Trigen's certificated entitlement and that the addition of the Trigen delivery point is not prohibited by its tariff. It is indicated that MRT has sufficient capacity to accomplish the deliveries proposed herein without detriment to its other customers. MRT further states that the interruptible service provided to Trigen will have no impact on MRT's peak day deliveries, and MRT estimates that it will increase annual deliveries by approximately 3,500,000 MMBtu.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25639 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11496–000; Project No. 2523–007]

City of Oconto Falls Oconto Falls Hydroelectric Project N.E.W. Hydro, Inc. Oconto Falls Hydroelectric Project; Amended of Notice of Site Visit

October 11, 1995.

The Federal Energy Regulatory Commission (FERC) has received an application for new minor license of the Oconto Falls Hydroelectric Project, FERC No. P11496–000 and P–2523–007. The project is located on the Oconto River in southcentral Oconto County, Wisconsin.

The FERC staff intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act.

As part of the EA preparation process for Oconto Falls, the Commission issued on October 5, 1995, a Notice of site visit. The staff was informed that there was an error in the time the site visit was to be held.

Due to the above error, the project site visit will be held at *10:00 a.m.*

If you would like to attend the site visit, we will meet at 10:00 a.m. on October 25, 1995. The Oconto Falls Hydro Project directions to the meeting location are as follows:

The dam is located on Maple Street in the City of Oconto Falls. From Green Bay, WI, take highway 141 north to highway 22. Follow highway 22 west into the City of Oconto Falls. Turn left on county trunk CC (Maple Street). The dam will be on the right.

We will conclude the site visit at the Hydroelectric Project location. Please be aware that you will be responsible for your own lodging, transportation, and meals.

Please notify Mr. Charles Alsberg, North American Hydro, Inc. at (414) 293–4628, if you plan to attend the site visit. All those attending the site visit are urged to refrain from any communication concerning the merits of the license application to any member of the Commission staff or Commission's Contractor, CH2M HILL, outside of the established process for developing the licensing record.

For further information, please contact Ms. Angela Oliver at (202) 219–2998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25661 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1468–000; Docket No. ER95–976–000; Docket No.TX95–5–000]

Southern Company Services, Inc.; Southern Energy Marketing, Inc.; Southeastern Power Administration; Notice of Issuance of Order

October 10, 1995.

On April 28, 1995, Southern Energy Marketing, Inc. (Southern Energy),[1] filed an application in Docket No. ER95–976–000 to sell power at market-based rates. Southern Energy also requested waiver of the Commission's regulations and blanket authorizations that have been granted to other power marketers.

In particular, Southern Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Southern Energy. On September 29, 1995, the Commission issued an Order Accepting for Filing, Suspending and setting for Hearing Proposed Transmission Tariffs, Accepting Market-Based Rates (as modified) for Filing and Granting Waivers and Authorizations (Order), in the above-docketed proceedings.

The Commission's September 29, 1995 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (I), (J), and (L):

(I) Within 30 days after the date of issuance this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Southern Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(J) Absent a request to be heard within the period set forth in Ordering Paragraph (I) above, Southern Energy is hereby authorized, pursuant to section 204 of the Federal Power Act, to issue securities and assume obligations and liabilities as guarantor, executor, security, or otherwise in respect to any security of another persons; provided that such issue or assumption is for some lawful object within the corporate purposes of Southern Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(L) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by

[1] Southern Energy Marketing, Inc. is a Southern Company power marketer affiliate.

continued Commission approval of Southern Energy's issuances of securities or assumptions of liabilities.
* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 30, 1995.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25662 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–10–000]

Transwestern Pipeline Company; Notice of Application

October 11, 1995.

Take notice that on October 4, 1995, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP96–10–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, installation and operation of certain compression and related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Transwestern seeks authorization to (1) Construct and operate a compressor station near Bisti, New Mexico (Bisti Compressor Station), consisting of a 10,000 horsepower (hp) electric motor driven compressor and related facilities, located near Mile Post 36 on Transwestern's San Juan Lateral in San Juan County, New Mexico; (2) construct and operate a 7,000 hp electric motor driven compressor, and related facilities at Transwestern's existing Bloomfield Compressor Station located on Transwestern's San Juan Lateral in San Juan County, New Mexico; (3) operate, as discussed in the application, an existing 4,132 hp gas compressor at Transwestern's Bloomfield Compressor Station originally certificated as a back-up compressor; (4) adjust its capacity on its mainline and San Juan Lateral facilities on a flexible basis in response to market demands for San Juan gas by changing the pressure in its mainline facilities from the current level of 950 psig to as low as 800 psig, to the extent required to meet reduced market demand for firm transportation capacity to California, but high demand for San Juan gas in Arizona, California and Transwestern's eastern markets; and (5) purchase from Northwest Pipeline Corporation (Northwest) a 77.7 percent ownership interest in Northwest's south end mainline extension facilities extending from the Ignacio Compressor Station near Ignacio, Colorado to the Blanco Hub near Bloomfield, New Mexico (the La Plata Facilities), acquire capacity in such facilities, as provided in the Northwest-Transwestern Letter of Intent (Agreement), and operate such jointly-owned La Plata facilities. Transwestern states that the agreement between Transwestern and Northwest provides that the exact levels of the ownership interest and capacity to be acquired by Transwestern are subject to change based on the amount of capacity retained by Northwest in order to serve changes in receipt and delivery points made by Northwest's customers as of October 20, 1995. Transwestern further states that Northwest will use reasonable efforts to file its abandonment application no later than November 3, 1995 reflecting customer's elections and Transwestern will supplement its application, if necessary, on or about November 3, 1995, to also reflect such elections.

Transwestern states that the cost of compressors and related facilities proposed to be constructed is $14.6 million, and such additional compression facilities will allow Transwestern to add 170,000 Dth/day of capacity to the San Juan Lateral. It is stated that such 170,000 Dth/day is the amount of additional firm capacity on the San Juan Lateral requested by shippers under newly executed long-term, firm transportation agreements. According to Transwestern, granting it the flexibility to adjust the pressure, and thereby the capacity, on its mainline at Thoreau, to the extent necessary to meet reduced market demand for firm mainline capacity to California, and high market demand for San Juan gas in California and Transwestern's eastern markets, would allow Transwestern to add up to an additional 85,000 Dth/day of capacity on the San Juan Lateral from the compression facilities proposed herein. While capacity on the San Juan Lateral would be increased by up to 85,000 Dth/day as a result of reducing mainline capacity on a firm basis. However, Transwestern states that it would maintain its ability to fully serve all of its firm customers.

Transwestern states that with the flexibility to adjust the pressure, and thereby the capacity, on the mainline to respond to market demand, the additional compression facilities proposed herein would result in a total capacity increase of 255,000 Dth/day on the San Juan Lateral. It is stated that with such additional capacity, the capacity of the San Juan Lateral would total up to 775,000 Dth/day on an annual basis, as compared to the current design capacity of 520,000 Mcf/day. On a peak day, Transwestern contends that the increased capacity on the San Juan Lateral could reach up to 275,000 Dth/day, for a total peak day capacity of up to 795,000 Dth/day.

Based on existing receipt and delivery points (which are subject to change as provided in the Agreement), Transwestern states that it will acquire a 77.7 percent ownership interest in the La Plata Facilities, and, in addition to other capacity defined in the Agreement, 276,000 Dth/day of north to south capacity through the La Plata A compressor station. It is stated that Northwest will retain an ownership interest of 22.3 percent, and with respect to the north to south capacity, 24,000 Dth/day of capacity, and sufficient south to north capacity to meet its customers' needs. Transwestern states that the cost of its 77.7 percent ownership interest is $21.0 million, based on the estimated book value at the projected closing date. According to Transwestern, the 276,000 Dth/day of north to south capacity through the La Plata A compressor station includes contracts for 201,000 Dth/day capacity previously subscribed by Northwest which are intended to be assigned to Transwestern. Transwestern states that the Agreement provides that Transwestern will attempt to negotiate such assigned contracts, but that if such contracts cannot be renegotiated and/or assigned, Northwest will retain such contracts, and the capacity and ownership percentage retained by Northwest will be adjusted to the extent that Northwest will retain north to south capacity. In addition, Transwestern contends that such 276,000 Dth/day includes 75,000 Dth/day of capacity newly subscribed by Transwestern under long-term firm transportation agreements.

Transwestern respectfully requests expedited action by the Commission in light of the following circumstances: (1) The need to meet the market demand evidenced by the executed firm transportation agreements submitted with the application; (2) the need to provide San Juan producers with the means to transport their gas to market and avoid the shut-in of gas; (3) submission with the application of a complete environmental report; (4) the limited construction window of July 1 through mid-February due to the environmental factors discussed in such report; and (5) the fact that no

determination of rolled-in versus incremental rate treatment is required in light of Transwestern's use of its existing Part 284 rates. Accordingly, Transwestern respectfully requests that the Commission provide for a shorter notice period for the filing of protests or motions to intervene so that the Commission could issue a preliminary determination by January 19, 1996, and a final certificate by March 31, 1996.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25637 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 459–051 & –060 Missouri]

Union Electric Company; Notice of Availability of Environmental Assessment

October 11, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed two applications for dredging two sites on the Lake of the Ozarks at the Osage Project. The applicants propose to excavate:

459–051: approximately 1,700 cubic yards (cy) of material from two areas, for the purpose of providing boat access to an existing boat dock and proposed boat ramp.

459–060: approximately 1,284 cy of material for three existing single family boat docks, one existing multi-family boat dock, and boat access lanes for each dock.

The proposed excavations will occur on project lands on the Lake of the Ozarks, in Camden and Morgan Counties, Missouri. The primary purpose of the excavation activities is to provide boat access to project waters for private recreational use. The staff prepared an Environmental Assessment (EA) for the actions. In the EA, staff concludes that approval of the non-project use of project lands would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25634 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11442–001 Washington]

Weeden's Hydro; Notice of Surrender of Preliminary Permit

October 11, 1995.

Take notice that Weeden's Hydro, Permittee for the West Cady Creek Project No. 11442, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11442 was issued February 3, 1994, and would have expired January 31, 1997. The project would have been located in the Snoqualmie—Mt. Baker National Forest, on West Cady Creek, in Snohomish County, Washington.

The Permittee filed the request on September 18, 1995, and the preliminary permit for Project No. 11442 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25633 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Parker-Davis Project—Notice of Rate Order No. WAPA–68

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order—Parker-Davis Project Firm Electric Service Rate and Firm and Non-Firm Transmission Rate Adjustments.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–68 and Rate Schedules PD–F5, PD–FT5, PD–NFT5, and PD–FCT5 placing decreased firm power rates for capacity and energy and decreased firm and non-firm transmission rates from the Parker-Davis Project (P–DP) of the Western Area Power Administration (Western) into effect on an interim basis. The interim rates, called the provisional rates, will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis, or until they are replaced by other rates.

Western is requesting approval to place into effect a rate decrease in the firm power rates for capacity and energy and a rate decrease for firm and nonfirm transmission service from the P–DP. Four major changes are affecting the rates for the P–DP system

The first change is in the costs apportionment study. This change was suggested by the P–DP customers and was a collaborative effort between all of Western's P–DP customers, Western and the Bureau of Reclamation (Reclamation). The new costs apportionment study more accurately allocates the P–DP's total power related costs and revenue between generation and transmission. In the previous

ratesetting study for Step Two rates, the apportionment percentages between generation and transmission were approximately 26 percent and 74 percent, respectively. Based upon a reallocation of these costs, the appointment percentages between generation and transmission are approximately 16 percent and 84 percent, respectively.

The second change concerns the ratesetting methodology. This change has also been made in response to questions and concerns voiced by Western's P–DP customers. Previously, rates were set using the traditional pinch-point methodology, where 50 years of data was analyzed and rates were based on the year in which the revenue requirement was the highest. Under the proposed methodology, revenue requirements are determined for the next five years. In addition, a compound interest amortization schedule is prepared for all investments, including replacements, thus ensuring project repayment. By October 1 of each year, new rates for the following five year period will be determined and implemented.

The third change concerns the determination of interest offsets. An interest offset is a credit that is made toward interest expense. Western has decided to handle interest offsets consistently with the other Federal power marketing administrations. The main difference between the new method and the old method is that the old method calculated interest offsets on only the principal that was repaid in the current year. The new method calculates interest offsets on both principal and interest for the current year.

The final change is in the area of cost containment. Western and its customers have participated in many collaborative, or partnership, efforts since the last P–DP rate process. Western has significantly increased its customer's input into its engineering and future construction program, its maintenance activities, and in its financial planning and budget planning activities. This collaborative effort has resulted in a significant decrease in both future operation and maintenance expenses and capital expenses.

A comparison of existing and provisional rates follows:

COMPARISON OF EXISTING AND PROVISIONAL POWER AND TRANSMISSION RATES

	Step 2 of the existing rates October 1, 1995, through January 31, 1999	Proposed rates October 1, 1995 [1]	Percent change
Composite Rate [2] (mills/kWh)	12.01	6.33	−47.29
Firm Capacity Charge ($/kW/month) PD–F5	$2.63	$1.92	−27.00
Firm Energy Charge (mills/kWh) PD–F5	6.01	1.95	−67.55
Firm Transmission Service ($/kW/year) PD–FT5	$12.55	$11.51	−8.29
Nonfirm Transmission Service (mills/kWh) PD–NFT5	2.39	2.19	−8.37
Transmission Service for SLCA/IP PD–FCT5	$6.27 per kW-Season	$5.76 per kW-Season	−8.13

[1] A new rate will be determined each year on September 1, based upon the proposed new ratesetting methodology. These rates represent FY 1996 only.

[2] The Composite Rate is the total of the Firm Capacity Charge, the Firm Energy Charge and the Firm Transmission Service, all expressed on a mills/kWh basis.

DATES: Rate Schedules PD–F5, PD–FT5, PD–FCT5, and PD–NFT5 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after October 1, 1995, and will be in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis for a five year period, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Tyler Carlson, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453

Ms. Deborah M. Linke, Acting Director, Division of Power Marketing, Western Area Power Administration, P.O Box 3402, Golden CO 80401–0098, (303) 275–1610

Mr. Joel K. Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–027, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0001, (202) 586–5581

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy (Secretary) delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18,1985 (50 FR 37835).

These power rates are established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and Reclamation under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary.

Most of the comments received at the public meetings and in correspondence dealt with purchase power costs, comparability issues with the recently announced FERC notice of proposed rulemaking concerning open access non-discriminatory transmission service, the new rate methodology and Reclamation's working capital improvement process.

Rate Order No. WAPA–68, confirming, approving, and placing the proposed P–DP rate adjustments into effect on an interim basis, is issued, and the new Rate Schedules PD–F5, PD–FT5, PD–FCT5, and PD–NFT5 will be submitted promptly to FERC for confirmation and approval on a final basis.

Issued in Washington, DC, September 29, 1995.

Charles B. Curtis,

Deputy Secretary.

Department of Energy—Deputy Secretary

In the matter of: Western Area Power Administration, Rate Adjustment for Parker-Davis Project. Rate Order No. WAPA–68.

Order Confirming, Approving, and Placing the Parker-Davis Project Firm Power Service Rate, Firm Transmission Service Rate, Nonfirm Transmission Service Rate and Transmission Service for the Salt Lake City Area/Integrated Projects Into Effect on an Interim Basis

October 1, 1995.

These power rates are established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project system involved were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

$/kW/month: Monthly charge for capacity (usage—$ per kilowatt per month).

Costs Apportionment Study: A study which allocates P–DP's total costs and other revenue between generation and transmission.

CROD: Contract rate of delivery.

Customer Brochure: A document prepared for public distribution explaining the background of the rate proposal contained in this rate order.

DOE: Department of Energy.

DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting.

EA: Environmental assessment.

EIS: Environmental impact statement.

FERC: Federal Energy Regulatory Commission.

FY: Fiscal year.

Interior: U.S. Department of the Interior.

kW: Kilowatt.

KW/month: The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation, or (2) the contract rate of delivery.

kWh: Kilowatthour.

mills/kWh: Mills per kilowatthour.

MW: Megawatt.

NEPA: National Environmental Policy Act of 1969.

NOPR: Notice of Proposed Rulemaking.

O&M: Operation and maintenance.

P–DP: Parker-Davis Project.

pinch-point The FY in which the level of the rate is set as dictated by a revenue requirement in some future year to meet relatively large annual costs or to repay investments which come due.

PAO: Western's Phoenix Area Office.

PMA: Power marketing administration.

Proposed Rate: A rate revision that the Administrator of Western recommends to the Deputy Secretary.

Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.

PRS: Power repayment study.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

Replacements: A unit of property constructed or acquired as a substitute for an existing unit of property for the purpose of maintaining the power features of a project or the joint features properly allocated to power.

SLCA/IP: Salt Lake City Area/Integrated Projects.

Western: Western Area Power Administration, U.S. Department of Energy.

Effective Date

The new rates and rate methodology will become effective on an interim basis on the first day of the first full billing period beginning on or after October 1, 1995, and will be in effect pending FERC's approval of them or substitute rates on a final basis for a five year period, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of the firm power rate, firm transmission rate, and nonfirm transmission rate. The provisional firm power rate, firm transmission rate, and nonfirm transmission rate will cause more than a 1 percent change in total P–DP power revenues; therefore, it is a major rate adjustment as defined at 10 CFR §§ 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. Discussion of the proposed rate adjustment was initiated on February 16, 1995, when a letter announcing an informal customer meeting was mailed to all firm power customers, firm and nonfirm transmission customers, and other interested parties. The informal customer meeting was held on February 22, 1995, in Phoenix, Arizona. At this informal meeting, Western and Reclamation Representatives explained the need for the rate adjustments and answered questions for those attending.

2. A Federal Register notice was published on March 21, 1995 (60 FR 14935), officially announcing the proposed firm power rate, firm transmission rate, and nonfirm transmission rate adjustment; initiating the public consultation and comment period; announcing the public information and public comment forums, and presenting procedures for public participation.

3. On March 29, 1995, letters were mailed from PAO to all P–DP firm power, firm transmission, and nonfirm transmission customers and other interested parties, providing a copy of the P–DP Rate Brochure dated March 1995. The Rate Brochure also included a copy of the Federal Register notice of March 21, 1995.

4. At the public information forum on April 5, 1995, Western and Reclamation representatives explained the need for the rate adjustments in greater detail and answered additional questions.

5. The public comment forum was held on May 15, 1995, to give the customers and interested parties an opportunity to comment for the record. Five persons, representing customers and customer groups, made oral comments.

6. On June 22, 1995, a letter was mailed to all P–DP customers and interested parties with copies of an updated PRS and rate design spreadsheets.

7. A Federal Register notice was published on July 6, 1995 (60 FR 35199), extending the consultation and comment period until July 12, 1995.

8. Eight comment letters were received during the 114-day consultation and comment period which ended July 12, 1995. All formally submitted comments have been considered in the preparation of this rate order.

Project History

The Parker Dam Power Project was authorized by section 2 of the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1039). The Davis Dam Project was authorized April 26, 1941, by the Acting Secretary of the Interior under provisions of the Reclamation Project Act of 1939 (43 U.S.C. 485, *et seq.*). The P–DP was formed by the consolidation of the two projects under the terms of the Act of May 28, 1954 (68 Stat. 143).

Construction of Parker Dam was authorized for the purposes of controlling floods, improving river navigation, regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof, for the reclamation of public lands and Indian reservations, for other beneficial uses, and for the generation of electric energy as a means of making the P–DP a self-supporting and financially solvent undertaking.

Parker Dam was constructed by Reclamation with funds advanced by the Metropolitan Water District of Southern California (MWD). Lake Havasu, the reservoir created behind Parker Dam, serves as the forebay from which water is diverted into the MWD aqueduct. The aqueduct delivers a major portion of California's entitlement of Colorado River water to southern California and is the diversion point for delivering Central Arizona Project water to the state of Arizona. Reservoir operation is limited to minor storage fluctuations. The dam provides a head of approximately 75 feet for Parker Powerplant. Reclamation began operation of Parker Powerplant in December 1942. Although the total generator nameplate capacity is 120,000 kW, the powerplant capacity is essentially limited to 104,000 kW because of operating constraints of downstream physical structures, primarily Headgate Rock Dam. MWD is entitled, under current contract, to one-half of the net energy generated by Parker Powerplant at any given time.

Davis Dam, which created Lake Mohave, provides regulation, both hourly and seasonally, of water releases from lake Mead (through Hoover Dam and Powerplant) to facilitate water delivery for downstream irrigation requirements and for water delivery beyond the boundary of the United States as required by the Mexican Water Treaty. Operation of the powerplant began in January 1951 with a generating capacity of 225,000 kW. During the period 1974–1978, the generator nameplate capacity was increased to 240,000 kW by rewinding the generator stators.

All facilities of the P–DP were operated and maintained by Reclamation until the formation of the DOE pursuant to the DOE Organization Act (DOE Act), 42 U.S.C. Sections 7101 *et seq.*, enacted by Congress on August 4, 1977. Pursuant to section 302 of the DOE Act (42 U.S.C. 7152), responsibility for the power marketing functions of Reclamation, including the construction, operation, and maintenance of substations, transmission lines and attendant facilities was transferred to the DOE. The responsibility for operation and maintenance of the dams and powerplants remains with Reclamation.

Power Repayment Studies

PRS's are prepared each fiscal year to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA 6120.2, section 12b, requires that:

In addition to the recovery of the above costs (operation and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus, (5) other costs such as payments to basin funds, participating projects, or States.

Existing and Provisional Rates

A comparison of existing and provisional rates follows:

COMPARISON OF EXISTING AND PROVISIONAL POWER AND TRANSMISSION RATES

	Step 2 of the existing rates October 1, 1995, through January 31, 1999	Proposed rates October 1, 1995 [1]	Percent change
Composite Rate [2] (mills/kWh)	12.01	6.33	−47.29
Firm Capacity Charge ($/kW/month) PD–F5	$2.63	$1.92	−27.00
Firm Energy Charge (mills/kWh) PD–F5	6.01	1.95	−67.55
Firm Transmission Service ($/kW/year) PD–FT5	$12.55	$11.51	−8.29
Nonfirm Transmission Service (mills/kWh) PD–NFT5	2.39	2.19	−8.37
Transmission Service for SLCA/IP PD–FCT5	$6.27 per kW/season	$5.76 per kW/season	−8.13

[1] A new rate will be determined each year on September 1, based upon the proposed new ratesetting methodology. These rates represent FY 1996 only.

[2] The Composite Rate is the total of the Firm Capacity Charge, the Firm Energy Charge and the Firm Transmission Service, all expressed on a mills/kWh basis.

Certification of Rate

Western's Administrator has certified that the P–DP firm power rate, firm transmission rate, nonfirm transmission rate, and the transmission service for SLCA/IP rate, placed into effect on an interim basis herein are the lowest possible consistent with sound business principles. The rates have been developed in accordance with administrative policies and applicable laws.

Discussion

Western is requesting approval to place into effect a rate decrease in the

firm power rates for capacity and energy and a rate decrease for firm and nonfirm transmission service from the P–DP of the Western Area Power Administration on an interim basis. Four major changes are affecting the rates for the Parker-Davis system.

The first change is in the costs apportionment study. This change was suggested by the P–DP customers and was a collaborative effort between all of Western's P–DP customers, Western and Reclamation. Since the last rate adjustment process, Western has worked with the customers to develop a revised costs apportionment study which can be described in four steps.

1. All costs, including Western's O&M expenses, Reclamation expenses, purchase power costs, multi-project costs associated with Mead Service Center, interest expenses, and principal payments were allocated to either generation or transmission. Each component was allocated based on whether it was directly related to generation or transmission. If a component was related to both, a customer allocation factor based on the number of customers was used to separate costs between generation and transmission.

2. All revenues, including nonfirm transmission, nonfirm energy, fuel replacement, spinning reserves, facility use charges, and multi-project revenues associated with SCADA and the Phoenix Service Center were allocated to either generation or transmission. Each component was allocated based on whether it was directly related to generation or transmission. If a component was related to both, a customer allocation factor was used to separate other sources of revenues between generation and transmission.

3. Project use costs for both generation and transmission were compared to the anticipated revenue of $1.2 million. The difference between the project use costs and the anticipated revenues was allocated to the generation and transmission customers. This allocation was based on the ratio of project use generation costs to project use transmission costs.

4. Final percentages of costs associated with generation and costs associated with transmission were derived.

The new costs apportionment study more accurately allocates the P–DP's total power related costs and revenue between generation and transmission. In the previous ratesetting study for Step Two rates, the apportionment percentages between generation and transmission were approximately 26 percent and 74 percent, respectively. Based upon a reallocation of these costs, the new apportionment percentages between generation and transmission are approximately 16 percent and 84 percent, respectively.

The second change concerns the ratesetting methodology. This change has also been made in response to questions and concerns voiced by Western's P–DP customers. Previously, rates were set using the traditional pinch-point methodology, where 50 years of data was analyzed and rates were based on the year in which the revenue requirement was the highest. Under the proposed methodology, revenue requirements are determined for the next five years. In addition, a compound interest amortization schedule is prepared for all investments, including replacements, thus ensuring project repayment. By October 1 of each year, new rates for the following five year period will be determined and implemented.

Under the previous pinch-point methodology, 50 years of data were analyzed and the rate was based on the year in which the highest revenue requirement was encountered. This methodology used a priority of repayment which first applied annual revenues to operation and maintenance expenses, purchased power expenses, interest, and then to required annual principal payments. Any excess annual revenue was then applied toward principal owed to the Federal Treasury. Under the new repayment methodology, Western first determines an amortization schedule of all existing and future investments. This includes both a principal component and an interest component. Western then adds this annual amortization amount to operation and maintenance expenses, purchase power expenses, and other annual expenses to determine the total annual revenue requirements over the next five years. An average revenue requirement and an average rate are than calculated for the five year period. Revenues collected that are in excess of the annual revenue requirement are carried forward to the next year and are utilized to cover revenue shortfalls in future years. This new methodology, while relying on a five year rate setting period instead of 50 years, provides for guaranteed payment of all costs within the five year rate setting window and establishes a guaranteed methodology concerning repayment of principal, thus ensuring total repayment of the project within its prescribed time period.

RA 6120.2 states that revenues remaining after paying for annual expenses shall be used to repay the Federal investment. Under the new ratesetting methodology, repayment of the Federal investment will become a component of the total annual expenses and will be made on an annual basis through a compound interest amortization payment. Any excess revenues remaining after the payment of total annual expenses will be carried forward to the following operating year to be applied toward annual expenses.

The third change concerns the determination of interest offsets. An interest offset is a credit that is made toward interest expense. Western has decided to handle interest offsets consistent with the other Federal power marketing agencies. The main difference between the new method and the old method is that the old method calculated interest offsets on only the principal that was repaid in the current year. The new method calculates interest offsets on both principal and interest for the current year.

The final change is in the area of cost containment. Western and its customers have participated in many collaborative, or partnership, efforts since the last P–DP rate process. Western has significantly increased its customer's input into its engineering and future construction program, its maintenance activities, and in its financial planning and budget planning activities. This collaborative effort has resulted in a significant decrease in both future operation and maintenance expenses and capital expenses.

Since the last P–DP rate process was concluded, Western and the customers have worked quite closely in a partnership process to implement a coordinated 10-year engineering and construction plan process. This process annually generates a 10-Year Engineering and Construction plan, which is issued in October of each year. This process is also integrated with Western's rates and budgeting processes to (1) provide certainty to the customers that all of Western's processes are operating from the same financial base and (2) provide the customers with the maximum input possible into the financial decisions that are reflected in the rates paid by the customers. This process has resulted in considerable changes both in the way Western does business and in the amount of future expenditures Western will be committing on behalf of its customers.

Power Sales Revenue Requirements

A comparison of the power sales revenue requirements estimated for 1996 and the existing 1996 power sales revenue requirements are noted in the table below.

	Estimated 1996 revenue	
	Existing	Proposed
Power Sales Revenue Requirements	[1] $42,011,732	[2] $28,521,763

[1] From the Parker-Davis Project Rate Design Worksheet for WAPA–55, Step 2.
[2] From the Parker-Davis Project Rate Design Worksheet for WAPA–68.

The rate decrease satisfies the cost-recovery criteria set forth in DOE Order RA 6120.2.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the 5-year Provisional Rates approval period.

PARKER-DAVIS PROJECT COMPARISON OF 5-YEAR RATE PERIOD REVENUES AND EXPENSES

[In thousands of dollars]

	Provisional ratesetting (FY 1996) PRS 1996–2000	Current step 2 proposed rate (FY 1995) PRS 1996–2000	Difference
Total Revenues [1]	180,212	210,401	30,189
Revenue Distribution:			
O&M	114,874	123,095	8,221
Purchased Power	4,500	1,400	−3,100
Other	1,017	2,891	1,874
Interest	56,452	66,130	9,678
Investment Repayment	3,014	13,113	10,099
Capitalized Expenses	355	3,772	3,417
Total	180,212	210,401	30,189

[1] Total Revenues includes revenues from all sources. Total Revenues for the Provisional ratesetting PRS also includes excess revenues from the previous year.

Basis for Rate Development

The rates were designed using a cost apportionment study. The study was based upon the separation of costs between generation and transmission. As a result of the study, 84 percent of the P–DP costs are to be recovered from the firm transmission customers, while the remaining 16 percent of the costs are to be recovered from firm power customers. The rate design consists of five steps.

1. Required revenue is derived in the proposed PRS for the period 1996 through 2000.

2. The percentages from the Costs Apportionment Study for generation and transmission are applied to the total revenue requirements in step one above. This determines the required revenue for generation and the required revenue for the transmission system.

3. The firm transmission rate is developed by dividing the required revenue for transmission by the total transmission sales. Total transmission sales includes firm transmission service and firm electric service.

4. The transmission rate is applied to the sales for firm transmission service to determine transmission revenues.

5. The demand and energy components of the power rate are then calculated. The demand component is calculated by (i) first multiplying the firm transmission rate by the maximum firm electric service kW sales, (ii) adding 50 percent of the required revenue for generation and then (iii) dividing this total revenue requirement by the average firm electric service kW sales.

The energy component is determined by dividing 50 percent of the generation revenue requirements by the total firm electric service kWh sales.

The composite rate is determined by adding the revenue requirements associated with demand and the revenue requirements associated with energy and dividing by the total firm electric kWh sales.

The SLCA/IP rate is determined by dividing the firm transmission service rate in half, to determine the seasonal rate.

Comments

During the 114-day comment period. Western received eight written comments either requesting additional information or commenting on the rate adjustment. In addition, five persons provided oral comments during the May 15, 1995, public comment forum. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Arizona Public Service Company (Arizona)
Salt River Project (Arizona)
Maricopa Water District (Arizona)
Ak-Chin Indian Community (Arizona)
Irrigation & Electrical Districts Association of Arizona (Arizona)
Tonopah Irrigation District (Arizona)
Overton Power District No. 5, Valley Electric Association, Inc. (Nevada)
Arizona Power Authority—R.W. Beck (Arizona)

Representatives of the following organizations made oral comments:

Overton Power District No. 5, Valley Electric Association, Inc. (Nevada)
Arizona Power Authority (Arizona) (two commenters)
Salt River Project (Arizona)
Irrigation & Electric District Association of Arizona (Arizona)

Most of the comments received at the public meetings and in correspondence dealt with purchase power costs, comparability issues with the recently announced FERC notice of proposed rulemaking concerning open access non-discriminatory transmission service, new rate methodology, and Reclamation's working capital improvement process.

Issue: Some customers expressed concern about purchase power costs that have been incurred in the past, especially in unusual flood years, such as occurred in 1993. Western was forced into a position of buying power to replace lost generation when the customers did not need replacement power. How do we handle this hydrologic condition so it doesn't happen again?

Response: Western shares the customers' concern that this hydrologic condition could occur again. In the near future, Western will set up a working group to examine how to keep purchase powers costs from occurring under these particular conditions. Western looks forward to working with its customers on this issue.

Issue: Customers would like Western to determine what would be required of Western should FERC finalize its notice of proposed rulemaking (NOPR) on the comparability issue.

Response: Presently, Western has several working groups set up to determine what would be required of Western should the FERC NOPR become final. This is a Western-wide issue. Once the requirements on comparability are determined and Western determines how it will voluntarily adhere to such requirements, such information will be made available to all customers and interested parties.

Issue: Customers would like Reclamation to continue to commit to enter into a 10-year planning process related to costs and expenditures of the Parker-Davis Project.

Response: Reclamation has verbally committed to continue to work with the customers on a 10-year planning process related to its operations and maintenance expenses.

Issue: The customers support the compound interest amortization process and commend Western for implementation of this item in the PRS.

Response: Western acknowledges the customer's support and looks forward to working with customers on other process improvement issues.

Issue: One transmission customer requested that the 11.5 percent increase for the firm transmission rate be phased in using a two-step process.

Response: Western received only one comment pertaining to phasing in the firm transmission rate. While the provisional firm transmission rate of $11.51/kW-yr is 10.67 percent higher than the existing Step 1 rate of $10.40/kW-yr, it is 8.29 percent lower than the existing Step 2 rate previously proposed to go into effect October 1, 1995. Western believes that a phase in of the rate will not be necessary.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

Availability of Information

Information regarding this rate adjustment, including PRSs, comments, letters, memorandums, and other supporting material made by or kept by Western for the purpose of developing the power rates, is available for public review in the Phoenix Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 615 South 43rd Avenue, Phoenix, Arizona 85009; Western Area Power Administration, Division of Power Marketing, 1627 Cole Boulevard, Golden, Colorado 80401; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission

The rate herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective October 1, 1995, Rate Schedules PD–F4, PD–FT4, PD–FCT5, and PD–NFT5 for the P–DP. The rate schedule shall remain in effect on an interim basis, pending the Federal Energy Regulatory Commission confirmation and approval of it or a substitute rate on a final basis, through September 30, 2000.

Issued in Washington, DC, September 29, 1995.

Charles B. Curtis,

Deputy Secretary.

Department of Energy—Western Area Power Administration; Parker-Davis Project

Schedule of Rates for Wholesale Firm Power Service

[Rate Schedule PD–F5 Supersedes Schedule PD–F4]

Effective: The first day of the first full billing period beginning on or after October 1, 1995, and remaining in effect through September 30, 2000, or until superseded, whichever occurs first.

Available: In the marketing area serviced by the Parker-Davis Project (P–DP).

Applicable: To the wholesale power customers for firm power service supplied through one meter at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate: October 1, 1995:

Demand Charge: $1.92 per kilowatt of billing demand.

Energy Charge: 1.95 mills per kilowatthour of use.

Billing Demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

October 1, 1996, through September 20, 2000:

By October 1 of each year, a new rate for the following 5-year period will be determined and implemented as described in the rate design section of the rate order WAPA–68.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm capacity and/or energy obligations, such overruns shall be billed at 10 times the above rate.

For Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor: None. The customer will normally be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

Department of Energy—Western Area Power Administration; Parker-Davis Project

[Rate Schedule PD–FT5 (Supersedes Schedule PD–FT4)]

Schedule of Rate for Firm Transmission Service

Effective: The first day of the first full billing period beginning October 1, 1995, and remaining in effect through September 30, 2000, or until superseded, whichever occurs first.

Available: Within the marketing area served by the Parker-Davis Project (P–DP).

Applicable: To firm transmission service customers where capacity and energy are supplied to the P–DP system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the P–DP system specified in the service contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate: October 1, 1995:

Transmission Service Charge: $11.51 per kilowatt per year for each kilowatt at the point of delivery, established by contract, payable monthly at the rate of $0.96 per kilowatt.

October 1, 1996, through September 30, 2000:

By October 1 of each year, a new rate for the following 5-year period will be determined and implemented as discussed in the rate design section of the rate order WAPA–68.

For Reactive Power: None. There shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points, except when such transfer may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses: Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at 10 time the above rate.

Department of Energy—Western Area Power Administration; Parker-Davis Project

[Rate Schedule PD–FCT5 (Supersedes Schedule PD–FCT4)]

Schedule of Rate for Firm Transmission Service of Salt Lake City Area Integrated Projects Power

Effective: The first day of the first full billing period beginning on or after October 1, 1995, and remaining in effect through September 30, 2000, or until superseded, whichever occurs first.

Available: Within the marketing area served by the Parker-Davis Project (P–DP) transmission facilities.

Applicable: To Salt Lake City Area/Integrated Projects (SLCA/IP) Southern Division Customers where SLCA/IP capacity and energy are supplied to the P–DP system by the Colorado River Storage Project (CRSP) at points of interconnection with the CRSP system and for transmission and delivery on a unidirectional basis, less losses, to Southern Division customers at points of delivery on the P–DP system specified in the service contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Monthly Rate: October 1, 1995:

Transmission Service Charge: $5.76 per kilowatt per season for each kilowatt at the point of deliver, established by contract.

October 1, 1996, through September 30, 2000:

By October 1 of each year, a new rate for the following 5-year period will be determined and implemented as discussed in the rate design section of the rate order WAPA–68.

For Reactive Power: None. There shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses: Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at 10 times that above rate.

Department of Energy—Western Area Power Administration; Parker-Davis Project

[Rate Schedule PD–NFT5 (Supersedes Schedule PD–NFT4]

Schedule of Rate for Nonfirm Transmission Service

Effective: The first day of the first full billing period beginning on or after October 1, 1995, and remaining in effect through September 30, 2000, or until superseded, whichever occurs first.

Available: Within the marketing area serviced by the Parker-Davis Project (P–DP) transmission facilities.

Applicable: To nonfirm transmission service customers where capacity and energy are supplied to the P–DP system at points of interconnection with other systems, transmitted subject to the availability of the transmission capacity, and delivered on a unidirectional basis, less losses, to points of delivery on the P–DP system specified in the service contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Monthly Rate: October 1, 1995:

Nonfirm Transmission Service Charge: 2.19 mills per kilowatthour of scheduled or delivered kilowatthours at point of delivery, established by contract, payable monthly.

October 1, 1996, through September 30, 2000:

By October 1 of each year, a new rate for the following 5-year period will be determined and implemented as discussed in the rate design section of the rate order WAPA–68.

For Reactive Power: None. There shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses: Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 95–25686 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–M

Stampede Division, Washoe Project Notice of Rate Order No. WAPA–67

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–67 and Rate Schedule SNF–4 placing the revised nonfirm energy rates for energy from the Stampede Division, Washoe Project (Stampede) of the Western Area Power Administration (Western) into effect on an interim basis. These rates are the interim rates, called the provisional rates, and they will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates.

Western has executed agreements with the Sierra Pacific Power Company (Sierra), the U.S. Department of the Interior, Fish and Wildlife Service (FWS) and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) to provide service to project use facilities. The costs associated with such service will be nonreimbursable, and will not be recovered through the power revenues. The remaining reimbursable costs and the energy remaining after meeting project use service are used to calculate the cost recovery rate. This rate ensures payment of all reimbursable expenses and investments within the required time frames. The cost recovery rate is above the current market price for nonfirm energy.

Under Rate Schedule SNF–4, nonfirm energy that is available after project use service has been met will be sold at a rate that is equal to or higher than the Stampede Energy Exchange Account (SEEA) rate but no greater than the cost recovery rate. Rate Schedule SNF–4 provides the formulae to determine the SEEA and cost recovery rates for Stampede nonfirm energy. These formulae are:

The SEEA rate will be 85 percent of the then-effective non-time differentiated rate as provided in Sierra's California Quarterly Short-Term Purchase Price Schedule for As-Available Purchases from Qualifying Facilities with Capacities of 100 kilowatts or less.

The cost recovery rate is calculated by dividing the revenue requirement needed to repay all reimbursable power costs by the nonfirm energy remaining after meeting project use service.

A comparison of existing and provisional rates follows:

	Existing rate as of July 1, 1994	Provisional rate October 1, 1995	Percentage of change
Rate Schedule	SNF–3	SNF–4	
Floor (SEEA) Rate (mills/kWh)	27.69	19.26*	−30.44
Ceiling (Cost Recovery) Rate (mills/kWh)	67.39	80.44**	19.36

*The average SEEA rate for FY 1995.
**The estimated cost recovery rate for FY 1996 through FY 2000.

Under the existing rate schedule, Stampede nonfirm energy is sold through an annual bidding process on a short-term nonfirm basis. A floor and ceiling rate for the bidding process is calculated each year. The floor rate is based on annual operation and maintenance expenses plus two mills per kilowatthour, and the ceiling rate is the rate required to repay annual expenses and investment within the required time frames.

DATES: Rate Schedule SNF–4 will be placed into effect on an interim basis on October 1, 1995, and will be in effect until FERC confirms, approves, and places the rate schedule in effect on a final basis, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630, (916) 353–4418

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy (Secretary) delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments are contained in 10 CFR Part 903.

These power rates were developed pursuant to section 302(a) of the DOE Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and Reclamation under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary.

Under Western's contract with Sierra, all Stampede nonfirm energy is debited to the SEEA, at the SEEA rate. The cost of project use service is then credited to the SEEA. Power remaining after meeting project use service will be offered to other entities, giving priority to preference customers, through an annual bidding process. Bids will be accepted only if the bid rate is equal to or higher than the SEEA rate, and less than the cost recovery rate. If no bid meets this criteria, the nonfirm energy will be deemed sold to Sierra at the SEEA rate.

If the SEEA arrangements with Sierra are terminated, Western will offer all available nonfirm energy for sale at the cost recovery rate, or the highest rate bid that is below the cost recovery rate.

Stampede power costs associated with providing project use service are nonreimbursable pursuant to Public Law 84–858 (70 Stat. 777) and Public Law 101–618 (104 Stat. 3289) and are not recovered through power revenues. The amount of the annual nonreimbursable costs is calculated by multiplying the total annual power costs by a ratio of the cost of providing project use service to the revenues from Stampede generation as recorded in the SEEA. The remaining reimbursable costs and energy remaining after project use service has been provided are used to calculate the cost recovery rate. The power repayment study and other analyses indicate the revised cost

recovery rate provides sufficient revenue to pay all reimbursable annual costs including interest expense, plus repayment of required investment within the allowable time period.

Rate Order No. WAPA–67 confirming, approving, and placing the proposed Stampede rate adjustment into effect on an interim basis, is issued, and the new Rate Schedule SNF–4 will be submitted promptly to FERC for confirmation and approval on a final basis.

Issued in Washington, DC, September 29, 1995.

Charles B. Curtis,

Deputy Secretary.

Department of Energy Deputy Secretary

In the matter of: Western Area Power Administration Rate Adjustment for Stampede Division, Washoe Project.

[Rate Order No. WAPA–67]

Order Confirming, Approving and Placing the Stampede Division, Washoe Project Nonfirm Power Rates Into Effect on an Interim Basis

October 1, 1995.

These power rates were developed pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments are contained in 10 CFR Part 903.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

DOE: U.S. Department of Energy
DOE Order RA 6120.2: A Department of Energy order dealing with power marketing administration financial reporting.
FERC: Federal Energy Regulatory Commission
FWS: U.S. Department of the Interior, Fish and Wildlife Service
FY: Fiscal Year
kW: Kilowatt
kWh: Kilowatthour
mills/kWh: Mills per kilowatthour
PRS: Power repayment study
Reclamation: U.S. Department of the Interior, Bureau of Reclamation
SEEA: Stampede Energy Exchange Account
Sierra: Sierra Pacific Power Company
Stampede: Stampede Division, Washoe Project
Western: U.S. Department of Energy, Western Area Power Administration

Effective Date

The rates will become effective on an interim basis on October 1, 1995, and will be in effect pending FERC's approval of them or substitute rates on a final basis for a 5-year period, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of these nonfirm power rates. Stampede is a power system which normally has annual sales less that 100 million kWh and an installed capacity of less than 20,000 kW; therefore this rate adjustment constitutes a minor rate adjustment as defined by 10 CFR Part 903.2(f). Since this is a minor rate adjustment, no public meetings were scheduled; however, Western accepted comments from interested parties.

The following summarizes the steps Western took to allow involvement of interested parties in the rate process:

1. A Federal Register notice was published on June 5, 1995 (60 FR 29586), officially announcing the proposed nonfirm power rate adjustment, initiating the public consultation and comment period.

2. On June 14, 1995 a letter was mailed from Western's Sacramento Area Office to all interested parties announcing the publication of the Federal Register notice on June 5, 1995.

3. On June 15, 1995 a rate adjustment brochure was available to all interested parties upon request.

4. The comment period ended on July 5, 1995; no comments or requests for information were received during the comment period.

Project History

The Stampede Dam was authorized under the Washoe Project Act of August 1, 1956 (70 Stat. 775). Power facilities were not constructed when Stampede Dam was built because the power function was determined not economically justified at the time. A re-evaluation of a powerplant at Stampede was conducted and published in a special Reclamation report, *Adding Powerplants at Existing Federal Dams in California*, in July 1976. Reclamation recommended construction of the Stampede powerplant, and construction was completed in 1987. Since 1988, energy produced at the Stampede powerplant has been sold to the highest bidder on a short-term nonfirm basis, as the preference entity, defined in the marketing plan for Stampede power, has been unable to contract for transmission from Stampede to their point of delivery. In addition, the Stampede floor and ceiling rates calculated in accordance with the existing rate schedule has been higher than the market rate for nonfirm energy.

FWS facilities at Stampede were authorized by the Washoe Project Act of August 1, 1956 (70 Stat. 775). Lahonton Fish Hatchery and the Marble Bluff Fish Facility were designated as project use facilities by Reclamation, but Western has been unable to provide project use service because transmission service was not available. On April 1, 1994 Western executed Contract No. 94–SAO–00010 with Sierra which established the SEEA and provides Western the mechanism necessary to provide project use power to FWS. Western entered into an agreement with FWS for project use service on June 29, 1994. Subsequently, on December 19, 1994, Western and Reclamation entered into Letter of Agreement No. 94–SAO–00036 which provides the method to determine the percentage of the annual costs of Stampede operation, maintenance, interest expense and capital cost repayment associated with providing project use service to be nonreimbursable. Nonreimbursable costs are not recovered through power revenues. The nonreimbursable costs are based on the ratio of the annual cost of project use service to the total annual revenue recorded in the SEEA from Stampede nonfirm energy. This percentage has been applied to all current and future year costs in the Stampede PRS.

Power Repayment Studies

A PRS is prepared each year to determine if power revenues will be sufficient to pay, within the prescribed time periods, all reimbursable costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA 6120.2, section 12b, requires that:

In addition to the recovery of the above costs (operation and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years.

Existing and Provisional Rates

A comparison of the existing and provisional rates follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES

	Existing rate as of July 1, 1994	Provisional rate October 1, 1995	Percentage of change
Rate Schedule	SNF–3	SNF–4	
Floor (SEEA) Rate (mills/kWh)	27.69	19.26 *	−30.44
Ceiling (Cost Recovery) Rate (mills/kWh)	67.39	80.44 **	19.36

* The average SEEA rate for FY 1995.
** The estimated cost recovery rate for FY 1996 through FY 2000.

The formula for the SEEA rate is:

The SEEA rate will be 85 percent of the then-effective non-time-differentiated rate as provided in Sierra's California Quarterly Short-Term Purchase Price Schedule for As-Available Purchases from Qualifying Facilities with Capacities of 100 kW or less.

The formula for the cost recovery rate is:

The cost recovery rate is calculated by dividing the revenue requirement needed to repay all reimbursable power costs by the nonfirm energy remaining after meeting project use service.

Under the existing rate schedule, Stampede nonfirm energy is sold through an annual bidding process on a short-term nonfirm basis. A floor and ceiling rate for the bidding process is calculated each year. The floor rate is based on annual operation and maintenance expenses plus two mills per kilowatthour, and the ceiling rate is the rate required to repay annual expenses and investment within the required time frames.

Certification of Rate

Western's Administrator has certified that the Stampede nonfirm power rates placed into effect on an interim basis herein are the lowest possible rates consistent with sound business principles. The rates have been developed in accordance with administrative policies and applicable laws.

Discussion

Sierra has agreed to purchase all Stampede generation at the SEEA rate. The dollar value from these sales are debited to the SEEA. Bills for project use service at Lahonton Fish Hatchery and Marble Bluff Fish Facility are then credited to the SEEA. During April of each year, any balance in the SEEA may be converted to an energy amount and offered to other entities, with priority given to preference customers.

The energy remaining after meeting project use service is calculated by dividing the dollar balance in the SEEA by 85 percent of the then-effective time-differentiated rate as provided in Sierra's California Quarterly Short-Term Purchase Price Schedule for As-Available purchases from Qualifying Facilities with Capacities of 100 kW or less. Power remaining after meeting project use service will be offered to interested parties and preference customers through an annual bidding process. Bids will be accepted only if the bid rate is equal to or higher than the SEEA rate and less than the cost recovery rate. If no bid meets this criteria, the nonfirm energy will be deemed sold to Sierra at the SEEA rate. If the SEEA arrangements with Sierra are terminated, Western will offer all available nonfirm energy for sale at the cost recovery rate, or the highest rate bid that is below the cost recovery rate.

Western prepared a PRS which identified power related costs for the study period. A percentage equal to the ratio of the estimated cost for project use service to the estimated revenue from Stampede generation recorded in the SEEA was applied to the power costs to determine the amount of nonreimbursable cost. The remaining reimbursable cost and the estimated energy remaining after meeting project use service were used to determine the cost recovery rate necessary for repayment of Stampede. The cost recovery rate was designed to allow repayment of the reimbursable portion of the plant investment, operation and maintenance expenses, capitalized deficits, interest expenses, and replacements based on the nonfirm energy available for sale after project use service has been met.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the 5-year proposed rate approval period.

Stampede Division, Washoe Project, 5-Year Rate Period, Revenues and Expenses

	Rate case PRS reimbursable revenue and expenses 1996–2000 *
Revenues	$1,357,713
Expenses:	
O&M	$324,749
Interest	900,120
Capitalized Expenses	132,844
Total	$1,357,713

* Data reflects costs remaining to be repaid through power revenues after applying nonreimbursable percentage.

Comments

During the 30-day comment period, Western did not receive any written comments either requesting information or commenting on the rate adjustment.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA

Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement. A categorical exclusion was issued on May 1, 1995.

Executive Order 12866

DOE has determined that this rate action is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 CFR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding this rate adjustment, including PRSs, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the nonfirm energy rate, is available for public review in the Sacramento Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 114 Parkshore Drive, Folsom, California 95630; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Room 8G–027 Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission

The rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective October 1, 1995, Rate Schedule SNF–4 for the Stampede Division, Washoe Project. The rate schedule shall remain in effect on an interim basis, pending FERC confirmation and approval or a substitute rate on a final basis, through September 30, 2000.

Issued in Washington, DC, September 29, 1995.

Charles B. Curtis,

Deputy Secretary.

Rate Schedule SNF–4

(Supersedes Schedule SNF–3)

United States Department of Energy, Western Area Power Administration, Stampede Division, Washoe Project

Schedule of Rate for Nonfirm Energy

Effective: October 1, 1995, through September 30, 2000.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: This rate is applicable to sales of nonfirm energy in excess of project use service. Sales shall be subject to terms and conditions among the respective entities specified at the time of sale.

Rate: The rate for nonfirm energy sales from Stampede will be equal to or greater than the Stampede Energy Exchange Account (SEEA) rate and less than the cost recovery rate. The SEEA rate is 85 percent of the then-effective non-time-differentiated rate as provided in the Sierra Pacific Power Company's California Quarterly Short-Term Purchase Price Schedule for As-Available Purchases from Qualifying Facilities with Capacities of 100 kilowatts or less.

The cost recovery rate is calculated by dividing the revenue requirement needed to repay all annual reimbursable power costs by the nonfirm energy remaining after providing project use service.

[FR Doc. 95–25687 Filed 10–16–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5315–9]

Notice of Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Federal Facilities, Environmental Restoration Dialogue Committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialogue Committee. Earlier notification was not possible due to Federal budget uncertainties which delayed final approval of the meeting date and location. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss improving Federal facilities environmental cleanup.

DATES: The meeting will be held on October 25–26, 1995, from 9 a.m. until 4 p.m. on each day.

ADDRESSES: The meeting will be held at the Ramada Hotel Old Town, located at 901 North Fairfax Street, Alexandria, VA, 22314 (phone: 703–683–6000, fax: 703–683–7957).

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the meeting or on the Federal Facilities Environmental Restoration Dialogue Committee should contact Sven-Erik Kaiser, Federal Facilities Restoration and Reuse Office (5101), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, (202) 260–5138.

Dated: October 11, 1995.

Sven-Erik Kaiser,

Designated Federal Official.

[FR Doc. 95–25741 Filed 10–16–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0332]

GE Silicones; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that GE Silicones has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polymethylsilsesquioxane as a surface lubricant or anti-blocking agent in polyolefin films for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by November 16, 1995.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4484) has been filed by GE Silicones,
c/o Hyman, Phelps & McNamara, P.C., 700 13th St. NW., suite 1200, Washington, DC 20005. The petition proposes to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of polymethylsilsesquioxane as a surface lubricant or anti-blocking agent in polyolefin films for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before November 16, 1995, submit to the Dockets Management Branch (address above) written comments. 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: October 3, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–25672 Filed 10–16–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Food Advisory Committee and Working Group

Date, time, and place. November 14, 1995, 12:30 p.m., November 15 and 16, 1995, 8:15 a.m., and November 17, 1995, 8:30 a.m., Holiday Inn, Eisenhower Metro Center, 2460 Eisenhower Ave., Alexandria, VA.

Type of meeting and contact person. Open working group committee discussion, November 14, 1995, 12:30 p.m. to 5 p.m.; open public hearing, 5 p.m. to 6 p.m., unless public participation does not last that long; open working group committee discussion, November 15, 1995, 8:15 a.m. to 6 p.m.; open working group committee discussion, November 16, 1995, 8:15 a.m. to 6 p.m.; additional brief opportunities for public hearings may be provided throughout the November 15 and 16, 1995, discussions; open committee discussion, November 17, 1995, 8:30 a.m. to 8:45 a.m.; open public hearing, 8:45 a.m. to 9:45 a.m., unless public participation does not last that long; open committee discussion, 9:45 a.m. to 4 p.m.; Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727, or Catherine M. DeRoever, Advisory Committee Staff (HFS–22), 202–205–4251, FAX 202–205–4970, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Food Advisory Committee, code 10564.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

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 by close of business November 8, 1995, 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. If necessary, comments may be limited to 5 minutes.

Open committee discussion. A working group of the Food Advisory Committee will undertake a scientific discussion of the safety review that has been conducted for olestra for its intended use as a fat replacer in savory snacks. Olestra is a sucrose polyester formed with long chain fatty acids. The working group will be asked to comment on whether all relevant issues associated with olestra have been addressed. The discussion will cover all aspects of the safety review, including nutrient effects and compensation, gastrointestinal tract effects, and labeling. The Food Advisory Committee will discuss the actions and recommendations of its ephedra and olestra working groups, which met on October 11 and 12, 1995, and which are scheduled to meet November 14 through 16, 1995, respectively. The recommendations of the working groups, together with any amendatory comments from the committee, will be formally referred to FDA. More detailed information regarding the meeting agenda that may become available prior to the meeting will be provided to the public via the 800 number given above.

FDA public advisory committee meetings 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. There are no closed portions

for the meetings announced in this notice. The dates and times reserved for the open 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.

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: October 12, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–25766 Filed 10–12–95; 4:41 pm]

BILLING CODE 4160–01–P

[Docket No. 95N–0281]

"Proceedings of the 1994 Vibrio Vulnificus Workshop;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of "Proceedings of the 1994 *Vibrio vulnificus* Workshop." The workshop was a scientific forum that was cosponsored by FDA, the National Marine Fisheries Service (NMFS), and the Interstate Shellfish Sanitation Conference (ISSC) to: Review the current information available on the epidemiology, ecology, and pathogenicity of *Vibrio vulnificus*, as well as industry practices affecting the levels of this pathogen in seawater and shellfish, ongoing educational efforts, and other related technical information obtained since the last *Vibrio vulnificus* workshop, held in March 1988; identify further critical information needs; and identify the kind of research that will best address these needs using available government and nongovernment resources most effectively.

ADDRESSES: Submit written requests for single copies of "Proceedings of the 1994 *Vibrio vulnificus* Workshop" to the Program and Enforcement Branch, Office of Seafood (HFS–417), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. "Proceedings of the 1994 *Vibrio vulnificus* Workshop" is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20875, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeanette B. Lyon, Center for Food Safety and Applied Nutrition, Office of Seafood (HFS–417), 200 C St. SW., Washington, DC 20204, 202–418–3177.

SUPPLEMENTARY INFORMATION: *Vibrio vulnificus* is a naturally-occurring marine bacterium which has been associated with human illness and death from the consumption of raw shellfish, primarily raw oysters. Federal and State government agencies, the ISSC, academia, and the shellfish industry have been monitoring these illnesses and deaths and have focused their research efforts on the development of effective controls to prevent *Vibrio vulnificus*-related illnesses from the consumption of shellfish. In 1988, a jointly sponsored *Vibrio vulnificus* workshop was held in Washington, DC, to identify the current state of knowledge and research needs at that time.

At the 1994 workshop, experts were invited to present scientific and technical updates on the epidemiology, pathogenicity, and ecology of *Vibrio vulnificus*; the effects of time-temperature factors on outgrowth; depuration, irradiation, and other intervening control measures; and the use and effectiveness of consumer education and health advisories. In addition to the invited speakers and representatives of the sponsors, other attendees included state public health officials, industry, consumer representatives, epidemiologists, and researchers. The workshop concluded with several panel discussions during which panel members discussed their views on unresolved information and research needs and mechanisms by which these might be attained.

A draft of the proceedings was published and distributed to the participants for comment in August, 1994. The current publication incorporates their comments.

Dated: September 28, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–25621 Filed 10–16–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Homoharringtonine as an Anticancer Agent

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a pharmaceutical company that can effectively pursue the clinical development of Homoharringtonine for the treatment of cancer. The National Cancer Institute has established that this agent may be effective in treating several types of cancers. The selected sponsor will be awarded a CRADA for the development of this agent.

The term of the CRADA is anticipated to be three (3) to five (5) years.

ADDRESSES: Questions about this opportunity may be addressed to Mike Christini, J.D. or Michelle Rhyu, Ph.D., Office of Technology Development, NCI, Building 31, Bethesda, Maryland 20892 (301) 496–0477, from whom further information including a summary copy of the preclinical and clinical data may be obtained.

DATES: In view of the important priority of developing new drugs for the treatment of cancer, proposals must be received at the above address by 5 pm December 18, 1995.

SUPPLEMENTARY INFORMATION: Cooperative Research and Development Agreement or ''CRADA'' means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below. Under the present proposal, the Government is seeking a pharmaceutical company, which in accordance with the requirements of the regulations governing the transfer of technology that the Government has taken an active role in developing (37 CFR 404.8), can further develop Homoharringtonine to a marketable status to best meet the needs of the public. The government does not hold any active patents for this compound.

Homoharringtonine is a cephalotaxine ester isolated from the cephalotaxus evergreen indigenous to China. It has shown promising activity in patients with chronic myelogenous leukemia (CML). Clinical development directed toward licensing includes confirmatory phase 2 trials of HHT in combination with other agents with demonstrated activity in CML and a phase 3 trial of HHT against standard therapy in refractory CML.

The Division of Cancer Treatment, NCI, is interested in establishing a CRADA with a pharmaceutical company to assist in the continuing development of the agent. The Government will provide all available expertise and information to date and will jointly pursue new clinical studies as required, giving the pharmaceutical company full access to existing data and data developed pursuant to the CRADA.

The successful pharmaceutical company will provide the necessary financial and organizational support to complete further development of this agent to establish clinical efficacy and possible commercial status.

The role of the Division of Cancer Treatment, NCI, includes the following:

1. The Government will provide information concerning pharmaceutical manufacturing and controls including dosage development data.

2. The Government will allow the pharmaceutical company to review and cross-file the Division's IND for the agent; it is likely that the pharmaceutical company would wish to undertake clinical studies independently, as well as jointly under the CRADA.

3. The Government will make the Division's IND for the agent proprietary under the terms of the CRADA and the IND data will be offered exclusively to the selected pharmaceutical company.

4. The DCT, NCI will make the collaborator its sole and exclusive commercialization partner for the development of this compound.

5. The Government will continue the preclinical and clinical development of this agent under its extramural clinical trials network.

The role of the successful pharmaceutical company for the agent under a CRADA will include the following:

1. Provide and implement plans to independently secure future supplies of the agent to assure continued preclinical and clinical development. The pharmaceutical company will provide for the costs of production of Homoharringtonine produced from the date of this Notice until such time as the company shall assume responsibility for satisfying the supplies required by the Division of Cancer Treatment, NCI.

2. Generate a plan and provide financial and regulatory support for the clinical development leading to FDA approval for marketing.

3. In the development of compounds derived from natural products, the NCI is concerned that the utilization of the plant material comport with all applicable laws and policies in the source country related to biodiversity. It is the responsibility of the CRADA partner to negotiate and enter into agreements with source country agencies as appropriate to address these concerns.

Criteria for choosing the pharmaceutical company include the following:

1. Experience in the preclinical and clinical development of anticancer agents.

2. Experience and ability to produce, package, market and distribute pharmaceutical agents in the United States.

3. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.

4. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication and maintenance of data from clinical trials of investigational agents.

5. A willingness to cost share in the development of the agent. This includes the acquisition of bulk material and formulation of clinical products in adequate amounts as needed for future clinical trials and marketing, as well as the partial funding of regulatory costs and personnel dedicated to completion of the CRADA research project.

6. An agreement to be bound by the DHHS rules involving human and animal subjects.

7. Formulation of an aggressive clinical development plan, including appropriate milestones and deadlines.

8. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an option to an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

9. Willingness and ability to acquire any necessary background patent rights.

10. Submission of an initial response to the NIH Model Clinical Trial CRADA boilerplate provisions.

Dated: October 6, 1995.

Thomas D. Mays,

Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.

[FR Doc. 95–25731 Filed 10–16–95; 8:45 am]

BILLING CODE 4140–01–P

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting Girish C. Barua, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext 263; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Antibacterial Therapy With Bacteriophage Genotypically Modified To Delay Inactivation by the Host Defense System

Carlton, R., Merril, C., Adhya, S.
Filed 5 Apr 94
Serial No. 08/222,956

The present invention is directed to bacteriophage therapy, using methods that enable the bacteriophage to delay inactivation by any and all parts of the host defense system (HDS) against foreign objects that would tend to reduce the numbers of bacteriophage and/or the efficiency of those phage at killing the host bacteria in an infection. Disclosed is a method of producing bacteriophage modified for anti-HDS purposes, one method being selection by serial passaging, and the other method being genetic engineering of a bacteriophage, so that the modified bacteriophage will remain active in the body for longer periods of time than the wild-type phage. [portfolio: Infectious Diseases—Therapeutics]

Dated: October 4, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–25730 Filed 10–16–95; 8:45 am]

BILLING CODE 4140–01–P

Notice of Meeting

Notice is hereby given of the meeting of the NIH AIDS Research Program Evaluation Working Group Area Review Panel on Clinical Trials on November 13–14, 1995 at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland. The meeting will be open to the public from 8:00 a.m. to 12:00 p.m. on November 13, and the closed portions will be from 1:00 p.m. to 5:30 p.m. on November 13, and 8:30 a.m. to 3:00 p.m. on November 14.

The NIH Revitalization Act of 1993 authorizes the Office of AIDS Research (OAR) to evaluate the AIDS research activities of NIH. The NIH AIDS Research Program Evaluation Working Group was established by the OAR to carry out this major evaluation initiative, reviewing and assessing each of the components of the NIH AIDS research endeavor to determine whether those components are appropriately designed and coordinated to answer the critical scientific questions to lead to better treatments, preventions, and a cure for AIDS. Six Area Review Panels were also established to address the following research areas: Natural History and Epidemiology; Etiology and Pathogenesis; Clinical Trials; Drug Discovery; Vaccines; and Behavioral and Social Sciences Research.

The purpose of the meeting is to seek input from individuals and organizations interested in the evaluation of AIDS research in the areas of therapeutics research as it pertains to clinical trials. Examples of areas under consideration by the panel include the effectiveness, efficiency, scientific productivity and clinical impact of NIH clinical trials programs in adults and children for HIV and its sequelae. This includes trials aimed at improving outcomes by limiting HIV replication and enhancing immune function as well as studies aimed at preventing and treating the complications of advanced HIV disease. The NIH Aids Research Program Evaluation Working Group will develop recommendations to be made to the Office of AIDS Research Advisory Council that address the overall NIH AIDS research initiatives, both intramural and extramural, and identify long-range goals in the relevant areas of science. These recommendations will provide the framework for future planning and budget development of the NIH AIDS research program.

There will be a closed session from 1:00 p.m. to 5:30 p.m. on November 13 and 8:30 a.m. to 3:00 p.m. on November 14, to update the Panel members on privileged information on institute and center grant and contract portfolios.

The open session from 8:00 a.m. to 12:00 p.m. will begin with a brief overview of panel activities by members of the panel. The remainder of the meeting will be devoted to presentations from individuals and organizations. The session is open to the public; however, attendance may be limited by seat availability.

Comments should be confined to statements related to the current status of NIH AIDS research in the areas of therapeutic clinical trials and recommendations for consideration by the panel in assessing and reviewing the relevant research in these areas.

Only one representative of an organization may present oral comments. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations must submit a letter of intent to present comments and three (3) typewritten copies of the presentation, along with a brief description of the organization represented, to the attention of Dr. Judith Feinberg, Office of AIDS Research, NIH, 31 Center Drive, MSC 2340, Building 31, Room 5C08, Bethesda, MD 20892–2340, (301) 496–0358, FAX: (301) 402–8638. Letters of intent and copies of presentations must be received no later than 5:00 p.m. on Monday, October 30.

Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make a brief oral presentation at the conclusion of the meeting, if time permits, and at the discretion of the Chairperson.

Individuals wishing to provide only written statements should send three (3) typewritten copies of their comments, including a brief description of their organization, to the above address no later than 5 p.m. on October 30. Statements submitted after that date will be accepted. They may not, however, be made available to the Area Review Panel prior to the meeting, though they will be provided subsequently as written testimony.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Feinberg in advance of the meeting.

Dated: October 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–25729 Filed 10–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: National Center for Research Resources Special Emphasis Panel—Biomedical Research Technology.

Dates: November 16–17, 1995.

Time: 8:00 p.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dr. Charles G. Hollingsworth, Scientific Review Administrator, 6705 Rockledge Drive, Room 6018, Bethesda, Maryland 20892–7965, (301) 435–0813.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.371, Biomedical Research Technology)

Dated: October 10, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–25738 Filed 10–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Deafness and Other Communication Disorders Special Emphasis Panel.

Date: November 7, 1995.

Time: 8 am to 5 pm.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD.

Contact Person: Mary Nekola, Ph.D., Scientific Review Administrator, NIH, NIDCD, EPS Suite 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate Small Grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: October 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–25733 Filed 10–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the review subcommittees of the National Institute of Child Health and Human Development Initial Review Group for November 1995.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Subcommittee: Mental Retardation Research Subcommittee.

Scientific Review Administrator: Dr. Norman Chang, 6100 Executive Boulevard—Rm 5E03, Telephone: 301–496–1485.

Date of Meeting: November 8, 1995.

Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Time: 8:00 am–adjournment.

Name of Subcommittee: Population Research Subcommittee.

Scientific Review Administrator: Dr. A.T. Gregoire, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1696.

Date of Meeting: November 9–10, 1995.

Place of Meeting: Hyatt Regency Hotel—Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Time: November 9—8:00 am–5:00 pm, November 10—8:00 am–adjournment.

Name of Committee: Maternal and Child Health Research, Subcommittee.

Scientific Review Administrator: Dr. Gopal Bhatnagar, 6100 Executive Boulevard—Rm 5E03, Telephone: 301–496–1485.

Date of Meeting: November 14, 1995.

Place of Meeting: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Time: 9:00 am–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: October 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

FR Doc. 95–25734 Filed 10–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 26, 1995.

Time: 1 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 3, 1995.

Time: 11 a.m.

Place: Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 10, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–25739 Filed 10–16–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: October 23, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 6170, Telephone Conference.
Contact Person: Dr. Dennis Leszczynski, Scientific Review Administrator, 6701 Rockledge Drive, Room 6170, Bethesda, Maryland 20892, (301) 435–1044.

Name of SEP: Biological and Physiological Sciences.
Date: November 3, 1995.
Time: 8:00 a.m.
Place: Marriott Suites, Bethesda, Maryland.
Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, Maryland 20892, (301) 435–1716.

Name of SEP: Clinical Sciences.
Date: November 3, 1995.
Time: 10:00 a.m.
Place: Marriott Residence Inn, Bethesda, Maryland.
Contact Person: Dr. Scott Osborne Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, Maryland 20892, (301) 435–1782.

Name of SEP: Biological and Physiological Sciences.
Date: November 3, 1995.
Time: 2:30 p.m.
Place: NIH, Rockledge II, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Clinical Sciences.
Date: November 6, 1995.
Time: 2:45 p.m.
Place: NIH, Rockledge II, Room 4106, Telephone Conference.
Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Biological and Physiological Sciences.
Date: November 8, 1995.
Time: 12:00 p.m.
Place: NIH, Rockledge II, Room 5198, Telephone Conference.
Contact Person: Dr. Peggy McCardle, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

Name of SEP: Microbial and Immunological Sciences.
Date: November 8, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Microbial and Immunological Sciences.
Date: November 8, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbial and Immunological Sciences.
Date: November 8, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge II, Room 4208, Telephone Conference.
Contact Person: Dr. Anita Weinblatt, Scientific Review Administrator, 6701 Rockledge Drive, Room 4208, Bethesda, Maryland 20892, (301) 435–1224.

Name of SEP: Microbial and Immunological Sciences.
Date: November 9, 1995.
Time: 10:00 p.m.
Place: NIH, Rockledge II, Room 4108, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4108, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbial and Immunological Sciences.
Date: November 9, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4108, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4108, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbial and Immunological Sciences.
Date: November 10, 1995.
Time: 10:00 p.m.
Place: NIH, Rockledge II, Room 4108, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4108, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbial and Immunological Sciences.
Date: November 15, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge II, Room 4194, Telephone Conference.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, Maryland 20892, (301) 435–1216.

Name of SEP: Microbial and Immunological Sciences.
Date: November 16, 1995.
Time: 3:00 p.m.
Place: NIH, Rockledge II, Room 4194, Telephone Conference.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, Maryland 20892, (301) 435–1216.

Name of SEP: Clinical Sciences.
Date: November 17, 1995.
Time: 10:00 p.m.
Place: NIH, Rockledge II, Room 4114, Telephone Conference.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435–1782.

Name of SEP: Multidisciplinary Sciences.
Date: November 21, 1995.
Time: 1:45 p.m.
Place: NIH, Rockledge II, Room 5106, Telephone Conference.
Contact Person: Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

Name of SEP: Clinical Sciences.
Date: November 30, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4114, Telephone Conference.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435–1782.

Name of SEP: Multidisciplinary Sciences.
Date: November 30–December 1, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Silver Spring, Maryland.
Contact Person: Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

Name of SEP: Multidisciplinary Sciences.
Date: December 3–5, 1995.
Time: 7:00 p.m.
Place: Boston Park Plaza, Boston, Massachusetts.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Behavioral and Neurosciences.
Date: December 8, 1995.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Behavioral and Neurosciences.
Date: November 3, 1995.
Time: 8:30 a.m.
Place: Double Tree Hotel, Rockville, Maryland.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5179, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Multidisciplinary Sciences.
Date: November 5, 1995.
Time: 5:00 p.m.
Place: Double Tree Hotel, Rockville, Maryland.
Contact Person: Dr. Elliot Postow, Scientific Review Administrator, 6701 Rockledge Drive, Room 5100, Bethesda, Maryland 20892, (301) 435–1750.

Name of SEP: Multidisciplinary Sciences.
Date: November 8, 1995.
Time: 10:00 a.m.
Place: NIH, Rockledge II, Room 5206, Telephone Conference.
Contact Person: Dr. Dharam Dhindsa, Scientific Review Administrator, 6701 Rockledge Drive, Room 5206, Bethesda, Maryland 20892, (301) 435–1174.

Name of SEP: Multidisciplinary Sciences.
Date: November 8–9, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Silver Spring, Maryland.
Contact Person: Dr. Anthony Carter, Scientific Review Administrator, 6701 Rockledge Drive, Room 5108, Bethesda, Maryland 20892, (301) 435–1167.

Name of SEP: Multidisciplinary Sciences.
Date: November 11, 1995.
Time: 11:00 a.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. Elliot Postow, Scientific Review Administrator, 6701 Rockledge Drive, Room 5100, Bethesda, Maryland 20892, (301) 435–1750.

Name of SEP: Multidisciplinary Sciences.
Date: November 13–14, 1995.
Time: 1:00 p.m.
Place: Double Tree Hotel, Rockville, Maryland.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Multidisciplinary Sciences.
Date: November 17, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, Maryland.
Contact Person: Dr. Eileen Bradley, Scientific Review Administrator, 6701 Rockledge Drive, Room 5120, Bethesda, Maryland 20892, (301) 435–1179.

Name of SEP: Multidisciplinary Sciences.
Date: November 20, 1995.
Time: 10:00 a.m.
Place: Holiday Inn-National Airport, Arlington, Virginia.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Multidisciplinary Sciences.
Date: November 20, 1995.
Time: 1:00 p.m.
Place: Holiday Inn, Crystal City, Virginia.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Multidisciplinary Sciences.
Date: November 30, 1995.
Time: 10:00 a.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. Paul Parakkal, Scientific Review Administrator, 6701 Rockledge Drive, Room 5118, Bethesda, Maryland 20892, (301) 435–1172.

Name of SEP: Behavioral and Neurosciences.
Date: December 1, 1995.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: October 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–25736 Filed 10–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Heart, Lung, and Blood Institute on December 7–8, 1995, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7S235, Bethesda, Maryland 20892.

This meeting will be open to the public from 8:30 to 9:00 a.m. on December 7 and from 8:30 to 9:00 a.m. on December 8 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provision set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9:00 a.m. to adjournment on December 7 and from 9:00 a.m. to adjournment on December 8, 1995 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301)496–4236, will provide a summary of the meeting and a roster of the Board members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Substantive program information may be obtained from Dr. Edward D. Korn, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496–2116.

Dated: October 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–25732 Filed 10–16–95; 8:45 am]

BILLING CODE 4140–01–M

Office of Research on Women's Health; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health (ACRWH) to be held November 14 and 15, 1995 in Conference Room 10, C Wing, 6th Floor, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting will be held from 1 pm to 5 pm on November 14 and from 8:30 am to 5 pm on November 15. The meeting is open to the public, with attendance limited to space available.

The purpose of the meeting will be for the Committee to provide advice to the Office of Research on Women's Health (ORWH) on its research agenda and to provide recommendations regarding ORWH activities. The agenda will include an update on ORWH activities and programs to meet the mandates of the Office and discussion of scientific issues.

Anne R. Bavier, M.N., F.A.A.N., Executive Secretary, ACRWH, and Deputy Director, Office of Research on Women's Health, OD, NIH, Building 1, Room 209, Bethesda, Maryland 20892, 301–402–1770, 301–402–1798 (FAX), will furnish the meeting agenda, roster of Committee members, and substantive program information upon request. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should contact Ms. Bavier in advance of the meeting.

Dated: October 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–25735 Filed 10–16–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbial and Immunological Sciences.
Date: October 24, 1995.
Time: 2:30 p.m.
Place: NIH, Rockledge II, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Biological and Physiological Sciences.
Date: October 27, 1995.
Time: 8:45 a.m.
Place: NIH, Rockledge II, Room 5204, Telephone Conference.
Contact Person: Dr. Robert Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, Maryland 20892, (301) 435–1261.

Name of SEP: Chemistry and Related Sciences.
Date: October 30, 1995.
Time: 2:00 p.m.
Place: NIH, Rockledge II, Room 5154, Telephone Conference.
Contact Person: Dr. Alex Liacouras, Scientific Review Administrator, 6701 Rockledge Drive, Room 5154, Bethesda, Maryland 20892, (301) 435–1740.

Name of SEP: Biological and Physiological Sciences.
Date: October 30, 1995.
Time: 3:00 p.m.
Place: NIH, Rockledge II, Room 4148.
Contact Person: Dr. Philip Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

Name of SEP: Biological and Physiological Sciences.
Date: October 31, 1995.
Time: 4:00 p.m.
Place: NIH, Rockledge II, Room 4148.
Contact Person: Dr. Philip Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

Name of SEP: Microbial and Immunological Sciences.
Date: November 2, 1995.
Time: 11:00 a.m.
Place: NIH, Rockledge II, Room 4190.
Contact Person: Dr. Garrett Keefer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4190, Bethesda, Maryland 20892, (301) 435–1152.

Name of SEP: Biological and Physiological Sciences.
Date: November 3, 1995.
Time: 8:30 a.m.
Place: American Inn, Bethesda, Maryland.
Contact Person: Dr. Nicholas Mazarella, Scientific Review Administrator, 6701 Rockledge Drive, Room 5128, Bethesda, Maryland 20892, (301) 435–1018.

Name of SEP: Biological and Physiological Sciences.
Date: November 3, 1995.
Time: 2:30 p.m.
Place: NIH, Rockledge II, Room 6168.
Contact Person: Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, Maryland 20892, (301) 435–1043.

Name of SEP: Clinical Sciences.
Date: November 7, 1995.
Time: 2:30 p.m.
Place: NIH, Rockledge II, Room 4106.
Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Biological and Physiological Sciences.
Date: November 7, 1995.
Time: 12:00 p.m.
Place: NIH, Rockledge II, Room 5198.
Contact Person: Dr. Peggy McCardle, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

Name of SEP: Biological and Physiological Sciences.
Date: November 9, 1995.
Time: 8:30 a.m.
Place: American Inn, Bethesda, Maryland.
Contact Person: Dr. Nicholas Mazarella, Scientific Review Administrator, 6701 Rockledge Drive, Room 5128, Bethesda, Maryland 20892, (301) 435–1018.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Multidisciplinary Sciences.
Date: November 5, 1995.
Time: 4:00 p.m.
Place: Doubletree Hotel, Rockville Maryland.
Contact Person: Dr. Elliot Postow, Scientific Review Administrator, 6701 Rockledge Drive, Room 5100, Bethesda, Maryland 20892, (301) 435–1750.

Name of SEP: Biological and Physiological Sciences.
Date: November 9, 1995.
Time: 1:00 p.m.
Place: American Inn, Bethesda, Maryland.
Contact Person: Dr. Nicholas Mazarella, Scientific Review Administrator, 6701 Rockledge Drive, Room 5128, Bethesda, Maryland 20892, (301) 435–1018.

Name of SEP: Biological and Physiological Sciences.
Date: November 10, 1995.
Time: 8:30 a.m.
Place: Holiday Inn-Chevy Chase, Chevy Chase, Maryland.
Contact Person: Dr. Peggy McCardle, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

Name of SEP: Multidisciplinary Sciences.
Date: November 14–16, 1995.
Time: 8:00 p.m.
Place: Hyatt Regency, Washington, DC.
Contact Person: Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

Name of SEP: Biological and Physiological Sciences.
Date: November 27–28, 1995.
Time: 8:30 a.m.
Place: Double Tree Hotel, Rockville, Maryland.
Contact Person: Dr. Peggy McCardle, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

Name of SEP: Multidisciplinary Sciences.
Date: November 30, 1995.
Time: 10:00 a.m.
Place: Georgetown Holiday Inn, Washington, DC.
Contact Person: Dr. Gerald Becker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5114, Bethesda, Maryland 20892, (301) 435–1170.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 10, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–25737 Filed 10–16–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

[Docket No. FR–3917–N–25]

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 18, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Request for Extension of Time.

OMB Control Number: 2502–0436.

Description of the need for the information and proposed use: Section 204 of the National Housing Act authorizes HUD to insure lenders against loss on approved single family housing mortgages. In the event of default and foreclosure of an insured mortgage the mortgagee is entitled to receive insurance benefits plus interest on such benefits from the date of default to the date of payment of the insurance benefits. HUD regulations require that the mortgage take certain actions within specific time limitations. Failure to meet such limitations may result in curtailment of interest on the insurance claim. The mortgagee may avoid the curtailment of interest by requesting an extension of time to complete an action before the time limit for the action expires. HUD may approve such request in writing.

Agency form numbers: HUD–50012.

Members of affected public: Mortgagees and lenders.

An estimation of the total numbers of hours needed to prepare the information collection is 1,800, the number of respondents is 4,000, frequency of response is submitted only when the mortgagee requires an extension of time, and the hours of response is 800.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 6, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing US-Federal Housing Commissioner.

[FR Doc. 95–25588 Filed 10–16–95; 8:45 am]

BILLING CODE 4210–27–M

Office of Assistant Secretary for Public and Indian Housing

[Docket Nos. FR–3769–N–03; FR–3774–N–04; FR 3832–N–04; FR–3841–N–05; FR–3867–N–04; and FR–3871–N–03]

Amendment to Notice of Impact of Rescissions Act on Availability of Funding for Fiscal Year 1995: Public Housing Development; Traditional Indian Housing Development; Demolition and Disposition; Public and Indian Housing Modernization Program; and Family Investment Centers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Amendment to September 7, 1995 Notice of Impact of Rescissions Act on Availability of Funding for Fiscal Year (FY) 1995 for public housing development, the Traditional Indian Housing Development Program, public housing demolition and disposition, the public and Indian housing modernization program, and Family Investment Centers.

SUMMARY: On September 7, 1995 (60 FR 46746), HUD published a notice in the Federal Register that described how the FY 1995 Rescissions Act affects certain public and Indian housing programs through rescinding funds and amending the U.S. Housing Act of 1937. The September 7, 1995 notice advised the public of the rescissions and their impact on Notices of Funding Availability (NOFAs) that have been issued, and also advised of changes to regulation requirements and program policies, implementing some, but not all, of the provisions of the Rescissions Act that amend the 1937 Act for FY 1995.

The purpose of this amendment to the September 7, 1995 notice is to provide additional categories of unobligated funds that are not rescinded.

DATES: This notice does not revise or extend any application deadlines, except with regard to demolition/disposition applications requesting replacement housing, as described in section I of this notice, under the heading **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For public housing programs, contact:* William Minning, Director of Policy and Evaluation Division, Room 4236. Telephone (202) 708–0713, or (202) 708–0850 (TDD).

For Indian housing programs, contact: Bruce Knott, Native American Programs Housing and Community Development Division, Room P8204. Telephone (202) 755–0068, or (202) 708–0850 (TDD).

The address for both individuals is: Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. The telephone numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION:

I. Public Housing Development

On September 7, 1995 (60 FR 46746), HUD published a notice in the Federal Register that described how the FY 1995 Rescissions Act affects certain public and Indian housing programs through rescinding funds and amending the U.S. Housing Act of 1937. This notice advises the public of the rescissions and their impact on Notices of Funding Availability (NOFAs) that have been issued. This notice also advises the public of changes to regulation requirements and program policies, implementing some, but not all, of the provisions of the Rescissions Act that amend the 1937 Act for FY 1995. The purpose of this amendment to the September 7, 1995 notice is to provide additional categories of unobligated funds that are not rescinded.

In the September 7, 1995 notice, in the second full paragraph in the third column on page 46747, HUD stated as follows:

Because of the enactment of the Rescissions Act, HUD is now able to address

only the first three categories of funding in the June 16, 1995 NOFA. To pay for the congressionally mandated FY 1995 funding actions under the first three NOFA categories, HUD will recapture prior year unobligated funds from funding awards not within congressionally protected categories.

* * * * *

This notice amends this second paragraph to add the following new third sentence so that the second full paragraph in the third column on page 46747 reads as follows:

Because of the enactment of the Rescissions Act, HUD is now able to address only the first three categories of funding in the June 16, 1995 NOFA. To pay for the congressionally mandated FY 1995 funding actions under the first three NOFA categories, HUD is recapturing prior year unobligated funds from funding awards not within congressionally protected categories. HUD is exempting from recapture prior awards (1) for new construction, to a PHA in an Empowerment Zone (but not to a PHA in any lesser category such as an Enterprise Community or Supplemental Empowerment Zone); (2) from Headquarters Reserve for natural disasters; or (3) where HUD determines, in its discretion, that a gross error by HUD prevented an ACC, that was fully executed and submitted to HUD by the PHA prior to June 30, 1995, from being executed by HUD prior to June 30, 1995.

No other changes are made to the notice published on September 7, 1995.

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Dated: October 2, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–25627 Filed 10–16–95; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of 11 Single Family Residences on 31.26 Acres Located 400 Feet East of Turtle Lane and Foundation Road, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Rustin Craig Andrus, *et al.*,(Applicants) have applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit numbers PRT–806828. The requested permit, which is for a period of 10 years, would authorize the incident take of the endangered golden-checked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of 11 single family residences locate 400 feet east of the intersection of Turtle Lane and Foundation Road, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take applications. A determination of jeopardy to the species of a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by no later than November 16, 1995.

ADDRESSES: Persons wishing to review the application of EA/HCP may obtain a copy by contacting Joseph E. Johnston or Sybil Vosler, Ecological Sciences Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Acting Field Supervisor, Ecological Field Office, Austin, Texas (see **ADDRESS** above). Please refer to permit number PRT–806828 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston or Sybil Vosler at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However,the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The action will eliminate less than 11 aces of land and indirectly impact less than 15 additional acres of golden-checked warbler habit. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by preserving 17 acres of habitat and providing funds to the Texas Nature Conservancy sufficient to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–25701 Filed 10–16–95; 8:45 am]

BILLING CODE 4510–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 7, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by November 1, 1995.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ALASKA

Skagway-Yakutat-Angoon Borough-Census Area, Alexander Lake Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001296

Beaver Lake Dam, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001295

Big Shaheen Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001292

Davidson Lake Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001303

Distin Lake Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001294

Hasselborg Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001291

Hasselborg Lake East Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001308

Hasselborg Lake North Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001307

Hasselborg Lake South Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001300

Lake Guerin East Shelter Cabin, (CCC Historic Properties in Alaska), Admiralty Island National Monument, Angoon vicinity, 95001306
Lake Guerin West Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001301
Mitchell Bay Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001302
Mole Harbor Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001297
Thayer Lake East Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001309
Thayer Lake North Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001304
Thayer Lake South Shelter Cabin, (CCC Historic Properties in Alaska MPS), Admiralty Island National Monument, Angoon vicinity, 95001298
Windfall Harbor Shelter Cabin, (CCC Historic Properties in Alaska), Admiralty Island National Monument, Angoon vicinity, 95001299

ARIZONA

Maricopa County

Azatlan Archeological Site, Address Restricted, Rio Verde Estates vicinity, 95001283

COLORADO

Delta County, Garnethurst, 509 Leon St., Delta, 95001245

El Paso County

Colorado Springs City Auditorium, 231 E. Kiowa St., Colorado Springs, 95001244

Las Animas County

First Christian Church, 200 S. Walnut St., Trinidad, 95001246

Montezuma County

Ertel Funeral Home, 42 N. Market St., Cortez, 95001248

Otero County

Carnegie Public Library, 1005 Sycamore Ave., Rocky Ford, 95001247

ILLINOIS

Fulton County

Oak Hill Cemetery, 1000 Blk. N. Main St. (IL 97 and 100), Lewistown, 95001240

Greene County

Hotel Roodhouse, 303 Morse St., Roodhouse, 95001238

Jo Daviess County

Warren Commercial Historic District, 102–165 E. Main St., 204–210 E. Bunett, 102–108 S. Railroad, Warren, 95001241

Lake County

Green Bay Road Historic District, Roughly, area surronding 10 S to 1596 N Green Bay Rd. and Ahwahnee Rd., Lake Forest, 95001235

La Salle County

Chicago, Rock Island and Pacific Railroad Depot, 150 Washington St., Marseilles, 95001239

Ogle County

Buffalo Township Public Library, 302 W. Mason St., Polo, 95001236

Saline County

Eldorado City Hall, 1604 Locust St., Eldorado, 95001237

Sangamon County

Miller, Bell, Apartments, 835 S. Second St., Spingfield, 95001242

Whiteside County

First Congregational Church of Sterling, 311 Second Ave., Sterling, 95001234

KENTUCKY

Rockcastle County

Lair, John, House and Stables, Jct. of US 25 and Hummel Rd., NE corner, Renfro Valley, 95001270

Woodford County

Clifton Country Club, 1190 Buck Run Rd., Versailles vicinity, 95001271
Labrot & Graham Distillery, 7855 McCracken Pike, Frankfort vicinity, 95001272

LOUISIANA

Natchitoches Parish

Carnahan Store, Main St. (LA 495), Cloutierville, 95001243

Vermilion Parish

Downtown Abbeville Historic District, Roughly bounded by State and First Sts., Vermilion Bayou, Pere Megret and Concord Sts., Abbeville, 95001261

MISSISSIPPI

Adams County

Woodlawn Historic District, Roughly bounded by Martin Luther King St., E. Stiers and Old College Lns., Elm and Bishop Sts., Natchez, 95001250

Hinds County

Houses at 500, 505, 512 and 513 North State Street, 500, 505, 512 and 513 N. State St., Jackson, 95001249

MONTANA

Lewis and Clark County

Appleton House No. 9, 1999 Euclid Ave., Helena, 95001264
Childs Carriage House, 318 E. Sixth Ave., Helena, 95001263

NEW JERSEY

Cumberland County

A.J. MEERWALD (Schooner), 22 Miller Ave. on Maurice River, Commercial Township, Bivalve, 95001256

Essex County

Canfield—Morgan House, 899–903 Pompton Ave. (NJ 23), Cedar Grove, 95001265

NEW YORK

Cayuga County

Moravia Union Cemetery, (Moravia MPS), NY 38, Moravia, 95001278

Monroe County

Chase Cobblestone Farmhouse, (Cobblestone Architecture of New York State MPS), 1191 Manitou Rd., Town of Parma, Hilton vicinity, 95001279
Covert, William, Cobblestone Farmhouse, (Cobblestone Architecture of New York State MPS), 978 N. Greece Rd., Greece, 95001280

Oneida County

Western Town Hall, Main St. at jct. with Stokes—Westernville Rd., Westernville, 95001277

Orange County

Dickerson, Abraham, Farmhouse, 171 W. Searsville Rd., Montgomery, 95001286
Pelton, Gideon, Farm, 250 Rockefellow Ln., Montgomery, 95001287
Waring, Daniel, House, 730 River Rd., Montgomery, 95001285

Otsego County

East Main Street Historic District, Roughly, E. Main St. from Church St. to the Richfield Springs reservoirs, Richfield Springs, 95001282

Suffolk County

Parsons, Ambrose, House, Springs—Fireplace Rd. at jct. with Old Stone Hwy., Town of East Hampton, Springs, 95001276

Wayne County

Baker, J. and E., Cobblestone Farmstead, 815 Canandaigua Rd., Macedon, 95001281

PENNSYLVANIA

Berks County

Morgantown Historic District, Roughly, area surrounding Main St. between Walnut and Washington Sts., Caernarvon Township, Morgantown, 95001255

Butler County

Butler County National Bank, 302 S. Main St., Butler, 95001251

Cambria County

Old Conemaugh Borough Historic District, Roughly bounded by Railroad, Adams, and Steel Sts., and Church Ave., Johnstown, 95001253

Somerset County

Uptown Somerset Historic District, Roughly bounded by N. Kimbery, Main, Columbia, and W. Catherine Sts., Somerset, 95001254

Westmoreland County

Warden, Samuel, House, 200 S. Church St., Mount Pleasant, 95001252

RHODE ISLAND

Kent County

Weaver, Clement—Daniel Howland House, 125 Howland Rd., East Greenwich, 95001266

Newport County

Clambake Club of Newport, 353 Tuckerman Ave., Middletown, 95001267

Washington County

Black Farm, Bounded by the Rockville—Alton Rd. (RI 112) and the Wood R., Hopkinton, 95001268

Westerly Downtown Historic District (Boundary Increase), Union St., Westerly, 95001288

TENNESSEE

Hamilton County

Missionary Ridge Historic District, N. and S. Crest Rd. from Delong Reservation to 700 S. Crest Rd., Chattanooga, 95001257

Wilson County

Cedars of Lebanon State Park Historic District, (State Parks in Tennessee Built by the CCC and WPA, 1934–1942 TR), Cedar Forest Rd., Cedars of Lebanon State Park, Lebanon vicinity, 95001274

Turner, Ida New and William Madison, Farm, (Historic Family Farms in Middle Tennessee MPS), 3964 Old Murfreesboro Rd., Lebanon vicinity, 95001275

TEXAS

Hidalgo County

Louisiana—Rio Grande Canal Company Irrigation System, S. 2nd St. at River Levee, Hidalgo vicinity, 95001284

UTAH

San Juan County

Bluff Historic District, Roughly bounded by Main St., US 191, 2nd E. St., and the bluffs, Bluff, 95001273

VERMONT

Addison County

Salisbury Town Hall, W of the jct. of Maple and Prospect Sts., Salisbury, 95001262

Chittenden County

Buell Street—Bradley Street Historic District, 2–71 Bradley St., 24–125 Buell St., 16–75 Orchard Terr., 9–96 S. Union St., 11–87 Hungerford Terr., Burlington, 95001260

Windham County

Rice Farm Road Bridge, (Metal Truss, Masonry, and Concrete Bridges of Vermont MPS), Town Hwy. 62, off VT 30, Dummerston, 95001259

Windsor County

Johnson, Wales N., House, 37 US 4, Woodstock, 95001258

VIRGINIA

Alleghany County

Old Friends Archeological Site, Restricted Address, Jamestown, 95001269

[FR Doc. 95–25727 Filed 10–16–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 513X)]

CSX Transportation, Inc.—Abandonment Exemption—in Ben Hill County, GA

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 0.48 miles of its line of railroad between milepost ANK–770.73 and milepost ANK–770.25 at the end of track, in Fitzgerald, Ben Hill County, GA.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 12, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by October 23, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 2, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave., NW., Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St. J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

CXST has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 18, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 11, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–25683 Filed 10–16–95; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–443 (Sub-No. 2X)]

Danbury Terminal Railroad Company—Discontinuance Exemption—Westchester and Putnam Counties, NY

Danbury Terminal Railroad Company (DTRR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue freight service over approximately 11.8 miles of the Harlem Line, between milepost 43.4 (Golden's Bridge) and milepost 55.2 (Dykemans), in Westchester and Putnam Counties, NY. The Harlem line is owned by American Premier Underwriters, Inc., and, after the proposed discontinuance, will continue to be used for rail passenger service by Metro North

Commuter Railroad Company, a subsidiary of the Metropolitan Transit Authority, the line's lessee.

DTRR has certified that: (1) No traffic has moved over the line for at least 2 years; (2) no formal compliant filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant with the 2-year period; and (3) the requirements at 49 CFR 1105.11 (transmittal letter) and 49 CFR 1152,50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 16, 1995, unless stayed pending reconsideration.[1] Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by October 27, 1995. Petitions to reopen must be filed by November 6, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert A. Wimbish, Suite 420, 1920 N Street NW., Washington, DC 20036.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Decided: October 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–25682 Filed 10–16–95; 8:45 am]

BILLING CODE 7035–01–M

[1] Because this is a discontinuance, and not an abandonment, and the right-of-way will continue to be used for passenger service, trail use/railbanking and public use conditions are not appropriate. Likewise no environmental or historical documentation is required. 49 CFR 1105.6(b)(3).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Asst.,* 4 I.C.C.2d 164 (1987).

Release of Waybill Data

The Commission has received a request from Hopkins & Sutter, for permission to use certain data from the Commission's 1994 I.C.C. Waybill Sample. A copy of the request (WB486—9/28/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Secretary.

[FR Doc. 95–25681 Filed 10–16–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulations Pursuant to the Clean Water Act, 33 U.S.C. 1251 et seq.

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that proposed stipulations in *United States* v. *City of Brook Park,* Civil Action No. 1:91CV1727, *United States* v. *City of Middleburg Heights,* Civil Action No. 1:91CV1722, *United States* v. *City of Berea,* Civil Action No. 1:91CV1726, and *United States* v. *City of Strongsville,* Civil Action No. 1:91CV1725 were lodged on September 28, 1995 with the United States District Court for the Northern District of Ohio. The stipulations settle actions brought concurrently under the Clean Water Act, 33 U.S.C. 1251, *et seq.,* (the ''Act'') to address the defendants' violations of the pollutant discharge limits set forth in the defendant cities' respective permits issued pursuant to Section 1342 of the Act. Each of the defendant cities is a suburb of Cleveland, Ohio, and located within the Rocky River Basin, which drains into Lake Erie. Since the complaints were filed on August 30, 1991, each of the defendant cities has ceased discharging their municipal wastewaters into navigable waterways of the United States by directing those wastewaters to a regional wastewater treatment plant owned and operated by the Northeast Ohio Regional Sewer District. Accordingly, the defendants are in compliance with the pollutant discharge limits of their respective permits. Each stipulation requires the defendants in that case to pay a civil penalty of $10,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed stipulations. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to: *United States* v. *City of Brook Park,* DOJ Ref. #90–5–1–1–3776; *United States* v. *City of*

Middleburg Heights, DOJ Ref. #90–5–1–1–3775; *United States* v. *City of Berea,* DOJ Ref. #90–5–1–1–3731; and *United States* v. *City of Strongsville* DOJ Ref. #90–5–1–1–3729.

The proposed stipulations may be examined at the office of the United States Attorney, 1800 Bank One Center, 600 Superior Avenue East, Cleveland, Ohio; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard Chicago, IL 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed stipulations may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–25708 Filed 10–16–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed *de minimis* consent decree in *United States* v. *Buffalo Air Handling et al.,* Civil Action No. *95–0053–L,* was lodged on September 29, 1995 with the United States District Court for the Western District of Virginia. The proposed consent decree resolves claims under Section 107 of CERCLA, 42 § 9607, against certain *de minimis* waste contributors for reimbursement of response costs incurred and to be incurred by the United States at the

Buckingham County Landfill Superfund Site in Buckingham County, Virginia. Between 1977 and 1982, each of the *de minimis* defendants arranged for the disposal at the Site of hazardous wastes, including paint wastes and other wastes containing toluene, chromium, arsenic, barium and other volatile organic compounds (''VOCs'') and metals. The proposed consent decree requires the *de minimis* defendants to pay the United States $471,042, which equals 100% of their share of past response costs at the Site, plus a 160% premium on these future costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Buffalo Air Handling el al.*, DOJ Ref. #90–11–2–900. In accordance with Section 7003(d) of the Resource Conservation and Recovery Act, 42 U.S.C. 6923(d), commenters can also request a public meeting in the affected area.

The proposed consent decree may be examined at the Office of the United States Attorney, 105 Franklin Road, S.W., Suite 1, Roanoke, Virginia 24011; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 for the Decree without Attachments, and $38.50 for the Decree plus Attachments (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–25705 Filed 10–16–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *CIW Company, et al.*, Case No. 95–73–845 (E.D. Mich.), entered into by the United States on behalf of U.S. EPA and five settling parties, was lodged on September 22, 1995, with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree resolves claims of the United States for past response costs and injunctive relief against the settling parties under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, relating to the CIW Superfund Site in Romulus, Michigan. Under the Consent Decree, five settling parties will pay to the United States the sum of $155,000.00.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *CIW Company, et al.*, D.J. Ref. No. 90–11–2–1058. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Michigan, 817 Federal Building, 2311 West Lafayette, Detroit, Michigan 48226; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the Consent Decree, please enclose a check in the amount of $6.50 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel, M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–25707 Filed 10–16–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Puerto Rico Aqueduct and Sewer Authority*, Civil Action No. 92–1511 (SEC), was lodged on September 28th, 1995 with the United States District Court for the District of Puerto Rico. Defendant Puerto Rico Aqueduct and Sewer Authority (''PRASA'') is the owner and operator of water filtration plants throughout Puerto Rico. In operating nine of these facilities, (La Plata Aibonito, Aguas Buenas, El Yunque, Guaynabo, Enrique Ortega, Ponce Nueva, Lajas, Sergio Cuevas, and Miradero), PRASA violated its National Pollutant Discharge Elimination System (''NPDES'') permits issued pursuant to the Clean Air Act.

Under the terms of the proposed decree, PRASA will pay the United States a civil penalty in the sum of $200,000. PRASA further agrees to construct necessary sludge facilities to achieve compliance for eight of its plants. In addition, PRASA will increase its credit line by $25 million to be used solely for similar capital improvements at 74 other water treatment plants throughout Puerto Rico. PRASA also agrees to remain in compliance with the Clean Air Act and is subject to stipulated penalties for any such violation.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Puerto Rico Aqueduct and Sewer Authority*, D.J. reference #90–5–2–1–1–3696.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Puerto Rico, Federal Office Building, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico; the Region II Office of the Environmental Protection Agency, 290 Broadway Avenue, New York, New York; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC. In requesting a copy, please enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environment Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–25706 Filed 10–16–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Harold Shane*, Civil Action No. C–3–89–383, was lodged on Sept. 29, 1995 with the United States District Court for the Southern District of Ohio. The proposed consent decree will resolve claims against sixteen parties for the recovery of response costs expended by the Environmental Protection Agency at the Acranum Iron and Metal Superfund Site in Arcanum, Ohio pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (''CERCLA''). EPA has determined that each of the settling parties qualifies for *de minimis* treatment in accordance with CERCLA Section 122(g), 42 U.S.C. 9622(g). The settlement requires the settling parties to make payments totalling $739,568.

The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973 (''RCRA'').

The Department of Justice will receive, until November 16, 1995, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Harold Shane*, Civil Action No. C–3–89–383, and the Department of Justice Reference No. 90–11–3–504. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney, Southern District of Ohio, 200 West Second Street, Dayton, Ohio, 45402; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–25704 Filed 10–16–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 14, 1995, and published in the Federal Register on April 27, 1995 (60 FR 20751), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066 (Johnson Matthey), made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Difenoxin (9168)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

Pursuant to 21 CFR 1301.43, any pending applicant or person currently registered with DEA to manufacture these controlled substances were invited to file comments or a written request for a hearing on Johnson Matthey's application. Two comments and several requests for hearing were received by DEA.

One comment requested denial of Johnson Matthey's application with respect to 2,5-dimethoxyamphetamine on the ground that adequate domestic supplies of that controlled substance exist. The second comment raised issues as to whether Johnson Matthey could maintain appropriate and effective safeguards to prevent theft and diversion of meperidine. The commenter further stated that it is Johnson Matthey's burden to prove that its registration as a bulk manufacturer of meperidine is in the public interest. Neither of these commenters requested a hearing.

The comments were considered, however, DEA has found that the firm does not constitute a new source of 2,5-Dimethoxyamphetamine for domestic supplies since the firm has been approved as a manufacturer of this controlled substance on previous applications. DEA has also reviewed the firm's safeguards to prevent the theft and diversion of meperidine and found that the firm has met the regulatory requirements of the Controlled Substances Act. Therefore, DEA has determined that the application should be approved for these controlled substances.

Written requests for hearing were filed with respect to methylphenidate, codeine, oxycodone, hydrocodone, morphine, oxymorphone, levorphanol, methadone, methadone intermediate, meperidine intermediate-A, meperidine intermediate-B and meperidine intermediate-C. By letter to the Deputy Assistant Administrator, Office of Diversion Control, DEA, dated July 27, 1995, Johnson Matthey withdrew its application for registration as a bulk manufacturer of all of these controlled substances, with the exception of methylphenidate. The request for a hearing on methylphenidate was docketed before Administrative Law Judge Mary Ellen Bittner as Docket No. 95–41.

On May 8, 1995, as a result of an earlier proceeding, the Deputy Administrator of the DEA issued a final order granting Johnson Matthey's prior application for registration as a bulk manufacturer of methylphenidate. 60 FR 26050. Due to the pending administrative proceeding concerning methylphenidate, Johnson Matthey will continue on a day-to-day registration to bulk manufacture methylphenidate pending resolution of Docket No. 95–41. Pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by Johnson Matthey for registration as a bulk manufacturer be granted for the following basic classes of controlled substances: 2,5-dimethoxyamphetamine, difenoxin, hydromorphone, diphenoxylate, meperidine, alfentanil, sufentanil, carfentanil and fentanyl.

Dated: October 20, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–25660 Filed 10–16–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–09973, et al.

Proposed Exemptions; Kay Alden, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Kay Alden, Inc. Money Purchase Plan (the Plan), Located in Chicago, Illinois

[Application No. D–09973]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the purchase of real property (the Purchase) by the Plan from Mr. Vernon Nelson (Nelson), a party in interest with respect to the Plan provided that: (a) The Purchase is a one time transaction for cash; (b) the Plan will pay no more than fair market value for the Property, as determined by an independent qualified real estate appraiser at the time of the transaction; (c) the fair market value of the Property represents no more than 25% of the value of the Plan's assets; (d) the Plan's interests with respect to the Purchase are represented by two independent fiduciaries (e) the Plan will pay no fees or commissions associated with the Purchase; and (f) all terms and conditions of the Purchase are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan having three participants and assets with a fair market value of $1,533,292 as of January 12, 1995. The trustees of the Plan are Nelson and Kay Alden Nelson. The Plan sponsor is in the business of script writing for day time soap operas.

2. The Property consists of eighteen undeveloped building sites located in Spyglass Hills, a subdivision in Hutchinson, Kansas. The Spyglass subdivision is located to the North and East of Hutchinson, Kansas. The sewer, natural gas, underground electrical and telephone wires are accessible to all lots. Over the last twenty years, the development in Hutchinson has been in the general area of Spyglass Hills. Spyglass Hills currently is the only development with growth potential which has sewer and utilities in place. Spyglass Hills should be completely developed within the next five to ten years.

In 1989, Nelson acquired twenty-five lots. During the past three years, Nelson has been preparing the subdivision for development. He has encouraged housing starts by working with developers and individuals willing to build homes. There is a fully occupied five unit luxury condominium in Spyglass Hills, and a townhouse complex is to be built within the next year.

3. The Property was appraised on October 31, 1994 by Ralph E. Gingerich, an independent and qualified real estate appraiser. Mr. Gingerich calculated that the fair market value of the Property to be $324,000 using the comparable sales approach. In his appraisal, he states that market conditions and growth potential are favorable, and new housing starts have increased sharply in the past two years causing values and sales of sites to increase rapidly.

4. The Plan is seeking a suitable replacement for an unrelated real estate holding it sold in August 1994 and therefore, proposes to purchase the Property. The Private Bank and Trust Company (the Bank) has been retained

to serve as independent fiduciary on behalf of the Plan. The Bank has reviewed the proposed transaction and represented that the Property is an appropriate investment for the Plan for the following reasons. First, even though the Property is not income producing, the economic attraction of the Property to the Plan is not diminished. All three Plan participants are relatively young, and not facing retirement in the near future. Thus, any possible illiquid characteristic of the investment would not prejudice the Plan. Secondly, following the Purchase, only 25% of the Plan's assets will be invested in real estate. Lastly, the Property consists of multiple lots that will be marketed individually providing a continuing cash flow as each lot is sold.

Central Bank and Trust Company (Central Bank) has also been retained to serve as independent fiduciary on behalf of the Plan. Central Bank represents that the appraisal is a fair representation of the current market. Further, Central Bank states that the new housing market in Hutchinson continues to be strong, and Spyglass Hills should benefit from this trend. Central Banks believes that the Property is an appropriate investment for the Plan. Lastly, Central Bank represents that at the time of the purchase of the Property, it will review the transaction and confirm that the Plan is paying no more than fair market value for the Property.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The terms of the purchase are as favorable as the Plan could obtain in an arm's length transaction with an unrelated party; (2) the fair market value of the Property has been established by an independent and qualified appraiser and represents no more than 25% of the value of the Plan's assets; (3) the Plan has retained an independent fiduciary who has reviewed the terms of the Purchase and has determined that the Purchase is in the Plan's interest; and (4) the Plan has retained a second independent fiduciary who will represent the interests of the Plan at the time of the Purchase to ensure that the Plan is not paying more than fair market value for the Property.

For Further Information Contact: Allison Padams of the Department, at (202)219–8971. (This is not a toll-free number.)

The Chase Manhattan Bank (National Association) Pooled Investment Trust for Employee Benefit Plans (the Trust) Located in New York, New York

[Exemption Application No. D–09983]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past cash sale of certain commercial paper notes (the Notes) for $25,129,748 by two collective investment funds in the Trust known as VAN 1 and VAN 18 (the VANs) to The Chase Manhattan Bank, N.A. (the Bank), a party in interest with respect to the employee benefit plans invested in the VANs at the time of the transaction; provided the following conditions were met:

(a) The sale of each of the Notes was a one-time cash transaction;

(b) The terms and conditions of the sale were at least as favorable to the VANs as those obtainable in an arm's-length transaction with an unrelated party;

(c) The VANs received an amount for the Notes that was equal to the greater of: (i) In the case of a Note that had a scheduled maturity after the date of the transaction, the original purchase price paid by the particular VAN for the Note plus interest at the imputed yield to maturity up to the date of sale, as calculated by the Bank; (ii) in the case of a Note that had a scheduled maturity on or before the date of the transaction, the value at maturity plus additional interest to the date of sale at the daily rates earned by the related VAN (exclusive of its holdings of the Notes) from the maturity date to the date of sale; or (iii) the fair market value of each Note as of the time of sale as determined by an independent, qualified appraiser;

(d) The VANs did not pay any commissions, costs or other expenses in connection with the sale of the Notes;

(e) If the exercise of any of the Bank's rights, claims or causes of action in connection with its ownership of the Notes results in the Bank recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the purchase price paid to the VANs by the Bank for the Notes (i.e. $25,129,748), the Bank will pay such excess amounts to the respective VANs within thirty (30) days of the receipt of such recovery amounts; and

(f) Each employee benefit plan with interests in the VANs received its proportionate share of the proceeds of the sale of the Notes to the Bank and receives its proportionate share of any recovery amounts obtained on the Notes in excess of the purchase price received by the VANs, as described in condition (e) above.

Effective Date: If granted, this proposed exemption will be effective as of December 19, 1994.

Summary of Facts and Representations

1. The Trust is a collective investment vehicle comprised of several separate collective funds maintained by the Bank for investment by employee benefit plans subject to the Act (the Plans) and governmental employee benefit plans. The Bank is a national banking association that serves as trustee to the Trust. The Trust includes VAN 1 and VAN 18 (i.e. the VANs), which are two separate collective investment funds that hold assets of various Plans. The VANs are short-term investment funds that are designed to be highly liquid. As of December 31, 1994, VAN 1 and VAN 18 had total assets in the amounts of $606,241,334 and $558,048,711, respectively.

2. The Bank, acting on behalf of the VANs as trustee of the Trust, purchased the Notes from the VANs on December 19, 1994. The Notes were short-term investments with maturities of five months or less that were issued by Confederation Life Insurance Co. (Confederation) with a total face amount of $25 million. The Bank states that the Notes, like most short-term commercial paper, were purchased at a discount with the face amount to be paid at maturity. No other interest payments were contemplated during the term of the Notes.

The Notes held by the respective VANs, including the original purchase price and date, value at maturity, and stated maturity date are as follows:

VAN	Original purchase price	Purchase date	Value at maturity	Maturity date
VAN 1	$4,943,750.00	6/09/94	$5,000,000	9/07/94

VAN	Original purchase price	Purchase date	Value at maturity	Maturity date
VAN 1	4,959,441.67	7/29/94	5,000,000	9/29/94
VAN 1	4,871,163.20	8/02/94	5,000,000	1/30/95
VAN 18	4,959,441.67	7/29/94	5,000,000	9/29/94
VAN 18	4,871,163.20	8/02/94	5,000,000	1/30/95

3. On August 11, 1994, the Canadian insurance regulatory authorities placed Confederation into a liquidation and winding-up process, and on August 12, 1994, the insurance authorities of the State of Michigan commenced legal action to place the U.S. operations of Confederation into rehabilitation proceedings. The Bank states that, as a result of these actions, the payments on the Notes were suspended.[1] The Bank states further that it appeared highly unlikely that the assets of Confederation would be sufficient to pay the Noteholders, including the VANs, to any significant extent.

4. The Bank represents that once it received notice of the seizure of Confederation, it segregated the Notes in separate liquidating accounts within the Trust. There were two liquidating accounts, one with respect to each of the VANs (the Liquidating Accounts). The proportional interest of each Plan in a Liquidating Account following the segregation equalled its proportional interest in the affected VAN immediately before the segregation. The estimated number of Plans participating in each of the Liquidating Accounts established with respect to VAN 1 and VAN 18 were 100 and 19, respectively. Among the Plans invested in one or both of the VANs were the Retirement and Family Benefit Plan of The Chase Manhattan Bank, N.A., and The Chase Manhattan Bank, N.A. Thrift Investment Plan.

5. The Bank represents that because it desired to make the Plans ''whole'' for the losses that would have occurred in connection with the Plans' investment in the Notes, the Bank purchased the Notes from the Liquidating Accounts on December 19, 1994 for the value the Notes would have had in the particular VAN at the time of the transactions but for the placement of Confederation in liquidation. The Bank entered into the transactions prior to the end of 1994 in response to the demands of Plan fiduciaries that the Plans be made ''whole'' on these investments and completely liquid for purposes of year-end valuations of the assets held by the VANs. Accordingly, the Bank requests a retroactive administrative exemption from the Department to permit the past sale of the Notes under the terms and conditions described herein.

6. The Bank paid to the Liquidating Accounts a total of $25,129,748 for the Notes. The Bank states that the sale price received by the VANs for the Notes was equal to: (i) In the case of a Note that had a scheduled maturity after the date of the transaction, the original purchase price paid by the particular VAN for the Note plus interest at the imputed yield to maturity up to the date of sale, as calculated by the Bank;[2] and (ii) in the case of a Note that had a scheduled maturity on or before the date of the transaction, the value at maturity plus additional interest to the date of sale at the daily rates earned by the related VAN (exclusive of its holdings of the Notes) from the maturity date to the date of sale. The Bank represents that the guiding principal in determining the price of the Notes for the transactions was to place the VANs in exactly the position they would have occupied on the date of the transactions if Confederation had not defaulted.

These calculations by the Bank resulted in VAN 1 receiving the following sale prices for the Notes on December 19, 1994, the date of sale: $5,073,286 for the Note which matured on 9/7/94; $5,058,484 for the Note which matured on 9/29/94; and $4,970,109 for the Note which was due to mature on 1/30/95. In addition, on such date, VAN 18 received $5,057,760 for the Note which matured on 9/29/94 and $4,970,109 for the Note which was due to mature on 1/30/95.

The VANs received such amounts in cash on the date of sale in exchange for the transfer to the Bank of all right, title and interest in the Notes, together with all causes of action, suits or other claims that the VANs may have against any person with respect to the Notes. The Bank states that each Plan with an interest in the respective VANs received its proportionate share of the proceeds of the sale of the Notes to the Bank.

7. The Bank engaged Deloitte & Touche (D&T), an independent, qualified appraiser in New York City, to determine the fair market value of the Notes. With respect to the independence of D&T, the Bank represents that D&T at times performs services for the Bank and its affiliates. However, the Bank states that payments made by the Bank and its affiliates for such services constitute less than one (1) percent of D&T's annual gross revenues.

On the basis of discussions with three independent brokers, D&T estimated the fair market value of the Notes at approximately ten cents for each one dollar of principal amount due on the Notes.[3] Thus, since each Note had a face value of $5 million, D&T concluded that each Note would be worth approximately $500,000 at the time of the transaction.

Based on the pricing information obtained from D&T, the Bank represents that the fair market value of the Notes was significantly below the purchase price paid by the respective VANs for the Notes (as noted below).

[1] The Department notes that the decisions made by the Bank on behalf of the VANs to acquire and hold the Notes were subject to the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this proposed exemption, the Department is not providing an opinion as to whether any violations of Part 4 of Title I may have arisen as a result of the acquisition and holding of the Notes by the VANs.

[2] The Bank represents that the imputed yield to maturity for the Notes held by the VANs, as listed above in Paragraph 2, was 4.5%, 4.71%, 5.125%, 4.71% and 5.125%, respectively, when calculated on an annualized basis. However, as noted above, the Notes bore no coupon or other current yield. The imputed yield consisted of the difference between the face amount due at maturity and the original discounted purchase price. The Bank states that the method used for calculating earnings on the non-matured Notes at the time of the transaction was consistent with the cost basis accounting rules permitted for short-term investment funds by the Office of the Comptroller of the Currency (see OCC Rule 9.18).

In addition, the Bank states that by selling the non-matured Notes to the Bank prior to their maturity dates (i.e. 1/30/95), the VANs were able to reinvest the proceeds of the sales as of the date of the transactions rather than as of the later maturity dates, a period of almost six weeks later. The VANs' earnings rate during that six-week period was higher than the imputed yield to maturity of the Notes that had not already matured. Thus, the Bank maintains that the sale of the non-matured Notes on December 19, 1994 was more financially advantageous to the VANs than if the sale had not occurred until January 30, 1995, the last maturity date of the Notes held by the VANs.

[3] D&T represents that its inquiry to establish the value of the Notes was intended to be consistent with the procedure for determining current market price under SEC Rule 17a–7(b) of the Investment Company Act of 1940.

Fund	Purchase date	Principal amount	Purchase price	Fair market value	Price red.'d
VAN 1	6/09/94	$5,000,000	$4,943,750	$500,000	$5,073,286
VAN 1	7/29/94	5,000,000	4,959,442	500,000	5,058,484
VAN 1	8/02/94	5,000,000	4,871,163	500,000	4,970,109
VAN 18	7/29/94	5,000,000	4,959,442	500,000	5,057,760
VAN 18	8/02/94	5,000,000	4,871,163	500,000	4,970,109

8. The VANs did not pay any commissions, costs or other expenses in connection with the sale. In addition, the Bank is willing to bear all costs and expenses associated with the transactions, including any expenses incurred in pursuing other claims with respect to the Notes. The Bank states that it will indemnify the VANs for any amounts recovered from Confederation, or any third party, in connection with the enforcement of the Bank's rights and remedies as owner of the Notes. In this regard, the Bank notes that it is unlikely that the proceeds from any such recoveries on the Notes will exceed the payments that the Bank made to the VANs. However, the Bank represents that if such recoveries ultimately exceed the purchase price paid by the Bank to the VANs for the Notes, the Bank will return any excess amounts to the respective VANs within thirty (30) days of the receipt of the recovery amounts. In addition, each employee benefit plan with interests in the VANs will receive its proportionate share of any recovery amounts obtained on the Notes in excess of the purchase price received by the VANs.

9. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act because: (a) The terms and conditions of the transaction were at least as favorable to the VANs as those which the VANs could have obtained in an arm's-length transaction with an unrelated party; (b) the sale of the Notes was a one-time cash transaction; (c) the VANs were not required to pay any commissions, costs or other expenses in connection with the sale; (d) the VANs received an amount for the Notes that was equal to the greater of: (i) in the case of a Note that had a scheduled maturity after the date of the transaction, the original purchase price paid by the particular VAN for the Note plus interest at the imputed yield to maturity up to the date of sale, as calculated by the Bank; (ii) in the case of a Note that had a scheduled maturity on or before the date of the transaction, the value at maturity plus additional interest to the date of sale at the daily rates earned by the related VAN (exclusive of its holdings of the Notes) from the maturity date to the date of sale; or (iii) the fair market value of each Note as determined by an independent, qualified appraiser at the time of the transaction; (e) if the exercise of any of the Bank's rights, claims or causes of action in connection with its ownership of the Notes results in the Bank recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the purchase price paid to the VANs by the Bank for the Notes (i.e. $25,129,748), the Bank will pay such excess amounts to the respective VANs within thirty (30) days of the receipt of such recovery amounts; and (f) each Plan with an interest in the VANs received its proportionate share of the proceeds of the sale of the Notes to the Bank and will receive its proportionate share of any recovery amounts obtained on the Notes in excess of the purchase price received by the VANs.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate plan fiduciaries for each employee benefit plan that had an interest in the Liquidating Accounts at the time of the transaction. Notice to the plan fiduciaries shall be made within fifteen (15) days following the publication of the proposed exemption in the Federal Register. This notice shall include a copy of the notice of proposed exemption as published in the Federal Register and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

WLI Industries, Inc. Employees' Stock Ownership Plan (the Plan) Located in Villa Park, IL

[Application No. D–09987]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed cash sale by the Plan of its interest (the Interest) in a limited partnership (the Partnership) to James Van DeVelde and Robert Van DeVelde, the general partners of the Partnership and parties in interest with respect to the Plan, provided (1) all terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; (4) the Plan receives a price for the Interest which is not less than the greater of: (i) $2,500 or (ii) the fair market value of the Interest as determined by a qualified, independent appraiser and; (5) within 30 days of the publication, in the Federal Register, of the notice granting this proposed exemption, WLI files a Form 5330 with the Internal Revenue Service (the Service) and pays all applicable excise taxes by reason of such prior or continuing prohibited transactions.

Summary of Facts and Representations

1. The Plan is an employee stock ownership plan with 116 participants and net assets available for benefits of $1,210,898 as of February 28, 1994. The trustees of the Plan and the decisionmakers with respect to the Plan's investments are James Van DeVelde, Robert Van DeVelde and Joseph S. Ott, Jr. These individuals also participate in the Plan.

2. WLI Industries, Inc. (WLI), the Plan sponsor, is engaged in the sale and/or rental of warning lights, signage, barricades and other materials utilized in connection with the construction and resurfacing of roads and highways. WLI maintains its principal place of business at 880 North Addison Road, Villa Park, Illinois (the North Addison Road Property). James Van DeVelde is the President of WLI. Robert Van DeVelde is the Executive Vice President and Secretary of WLI. Joseph S. Ott, Jr. is an employee of WLI.

3. Among the assets of the Plan is a 33 percent limited partnership interest in the J&R Limited Partnership. The Partnership holds 100 percent of the beneficial interest in an Illinois Land Trust which, in turn, holds fee simple title to a 10.38 acre parcel of real property. The property is located at the North Addison Road address and serves as the headquarters of WLI. The general partners of the Partnership are James Van DeVelde and Robert Van DeVelde. The Van DeVeldes each hold a 33.5 percent interest in the Partnership. It is represented that the subject property is not located near any other property that is owned by WLI.

4. As the general partners of the Partnership, the Van DeVeldes wished to obtain financing from the Small Business Administration (the SBA) in order to construct a building. However, as a precondition to obtaining such financing, the SBA required that all shareholders of WLI hold a percentage of the Partnership. Because the Plan owned approximately 41 percent of the outstanding stock of WLI, it was obliged to purchase a 33 percent limited partnership interest in the Partnership from the Van DeVeldes. Thus, on October 23, 1992, the Plan paid $1.00 to the Van DeVeldes in order to acquire the Interest. In December 1992, the SBA executed the construction loan with the Partnership. With the exception of the Plan, the Van DeVeldes were required to guarantee the SBA indebtedness. Currently, the Plan owns an equity interest in the Partnership which it holds without any liability to either the SBA or other parties.

5. On December 1, 1993, the Partnership commenced leasing an 84,943 square foot office building that it had constructed on the North Addison Road Property to WLI under the terms of a triple net lease. The lease has an initial term of 10 years and it requires WLI to pay the Partnership a rental of $35,259.57 per month.[4] Also during the term of the lease, WLI is required to pay the Partnership all taxes, utility expenses and casualty and liability insurance premiums.

6. The Partnership is using WLI's rental payments under the lease to amortize a loan made by Harriet Van DeVelde, the mother of James and Robert Van DeVelde, to the Partnership. The loan, which is evidenced by a promissory note dated August 30, 1991, is in the original principal amount of $900,000. The note was executed between Mrs. Van DeVelde and the Partnership to enable the Partnership to purchase the North Addison Road Property. The note carries interest at the rate of prime plus one percent over a five year period. The note requires both principal and interest payments on a quarterly basis. At the end of the loan term, a balloon payment of $600,000 will become due and payable. Then, it is anticipated that the loan will be refinanced through unrelated lenders. As of September 19, 1995, the applicants represent that the note had an outstanding principal balance of $824,687. The applicants also represent that the Partnership has made payments under the note in a timely manner.

7. James and Robert Van DeVelde request an administrative exemption from the Department in order that they may purchase the Interest from the Plan. The Van DeVeldes are aware that the purchase of the Interest by the Plan, the loan by Mrs. Van DeVelde to the Partnership and the leasing of the property by the Partnership to WLI have resulted in prohibited transactions in violation of the Act. Therefore, within 30 days of the publication, in the Federal Register, of the notice granting this proposed exemption, WLI will file a Form 5330 with the Service and pay all applicable excise taxes by reason of such prohibited transactions.

8. The Van DeVeldes propose to purchase the Interest from the Plan for cash at price that is not less than the greater of $2,500 or the fair market value of the Interest. In an independent appraisal report of the Partnership that is dated February 28, 1995, Ira D. Berk, CPA of Premiere Financial Consultants, Inc. of Northbrook, Illinois, a qualified, independent appraiser, determined that the Interest held by the Plan had no value as of February 28, 1995. In valuing the Partnership, Mr. Berk reviewed and relied upon an appraisal of the property that was performed by Kristy A. DeCleene, Staff Appraiser and Douglas X. Adams, of Adams Valuation Corporation. (This was the same independent appraisal firm that had valued the property prior to the inception of the lease.) In that appraisal, the appraisers placed the fair market value of a leased fee interest in the Property at $4,212,000 as of February 21, 1995. In addition, Mr. Berk indicated that he had reduced the appraised value of the property by estimated real estate commissions of $126,360 and by the Partnership's liabilities which totaled $4,225,554 as of December 31, 1994.[5]

These calculations resulted in equity positions of $0 for the Partnership, the general partners and the Plan. Accordingly, the Plan will sell its Interest to the Van DeVelde's for $2,500.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) All terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the sale will be a one-time transaction for cash; (c) the Plan will not be required to pay any commissions, costs or other expenses in connection with the sale; (d) the Plan will receive a price for the Interest which is not less than the greater of: (i) $2,500 or (ii) the fair market value of the Interest as determined by a qualified, independent appraiser; and (e) within 30 days of the publication, in the Federal Register, of the notice granting this proposed exemption, WLI will file a Form 5330 with the Service and pay all applicable excise taxes by reason of such prior or continuing prohibited transactions.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons by first-class mail within 30 days of the date of publication of the notice of pendency in the Federal Register. Such notice will include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment on and/or to request a hearing. Comments with respect to the notice of proposed exemption are due within 60 days after the date of publication of this

[4] According to the application file, the fair market rental value of the building was determined on March 15, 1993 by Michael R. Kay, Associate Appraiser, and Douglas X. Adams, MAI, qualified, independent appraisers who are affiliated with Adams Valuation Corporation of Elmhurst, Illinois. The appraisers determined that the fair market rental value of the building was $372,422 annually or $31,035 monthly.

[5] As of December 31, 1994, it is represented that the Partnership's liabilities consisted of the following: (a) the $854,686 outstanding principal balance of the loan from Mrs. Van DeVelde; (b) the $726,896 outstanding principal balance of the loan from the SBA; and (c) the $2,455,905 outstanding principal balance of a loan from Merchants Bank; and (d) $188,067 owed to WLI.

proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of October, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–25717 Filed 10–16–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–96; Exemption Application No. D–09953, et al.]

Grant of Individual Exemptions; PaineWebber Incorporated

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

PaineWebber Incorporated Located in New York, New York

[Prohibited Transaction Exemption 95–96; Exemption Application No. D–09953]

Exemption

PaineWebber Incorporated and each of its affiliates (collectively, PaineWebber), shall not be precluded from functioning as a ''qualified professional asset manager'' pursuant to Prohibited Transaction Class Exemption 84–14 (PTCE 84–14, 49 FR 9494, March 13, 1984) solely because of a failure to satisfy section I(g) of PTCE 84–14, as a result of General Electric Company's ownership interest in PaineWebber, including any current or future affiliate of PaineWebber which is, or in the future may become, eligible to serve as a QPAM under PTCE 84–14; provided the following conditions are satisfied:

(A) This exemption is not applicable to any affiliation by PaineWebber with any person or entity convicted of any of the felonies described in part I(g) of PTCE 84–14, other than G.E.; and

(B) This exemption is not applicable with respect to any convictions of G.E. for felonies described in part I(g) of PTCE 84–14 other than those involved in the G.E. Felonies, described in the Notice of Proposed Exemption.

Effective Date: This exemption is effective as of December 16, 1994.

Written Comments: The Department received one written comment, submitted by the applicant, PaineWebber, and no requests for a hearing. The comment addressed the fact that the Notice of Proposed Exemption did not include a proposed effective date for the exemption. The applicant requests that the exemption be effective as of December 16, 1994, the date on which General Electric Company became the owner of more than five percent of PaineWebber. In accordance with the applicant's request, the exemption includes an effective date of December 16, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 29, 1995 at 60 FR 33868.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

TSC International Ltd., Custom Marketing and Import Profit Sharing Plan (the Plan) Located in Kansas City, MO

[Prohibited Transaction Exemption 95–97; Exemption Application No. D–09956]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the (1) redemption by TSC International Merchandising Ltd., Custom Marketing and Import Company (TSC) of 19,000 shares of common stock issued by TSC and held by the Plan; and (2) the extension of credit by the Plan to TSC in connection with the redemption of the stock.[1]

The exemption is conditioned on the following requirements:

(1) The redemption price for the stock is determined by a qualified, independent appraiser.

(2) The note which evidences the redemption price for the stock represents not more than 25 percent of the Plan's assets.

(3) The terms of the note are based upon terms that are comparable to those that would be extended by a third party lender.

(4) The stock, which secures TSC's obligations under the note, at all times represents 200 percent of the outstanding balance of the note; however, if the value of the stock ever falls below the 200 percent level, TSC will pledge additional collateral.

(5) The Plan is not required to pay any fees or commissions in connection with the redemption of the stock or the administration of the note.

(6) Boatmen's First National Bank of Kansas City holds certificates representing the stock in an escrow account until TSC pays the redemption price in full.

(7) The Plan increases its liquidity and investment yield by disposing of an asset and receives cash to promote asset diversification.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 6, 1995 at 60 FR 46312.

[1] Because Mr. Jack Hardgree is the sole participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Boston Safe Deposit and Trust Company Located in Boston, Massachusetts

[Prohibited Transaction Exemption 95–98; Application No. D–09981]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply as of January 12, 1995, to the cash sale of certain commercial paper notes (the Notes) for $25,031,269 by the Common Trust Cash Investment Fund (the Fund) to Boston Safe Deposit and Trust Company (Boston Safe), a party in interest with respect to employee benefit plans invested in the Fund, provided that the following conditions are met:

(a) The sale was a one-time transaction for cash;

(b) The Fund received an amount which was equal to the greater of either (i) the amortized cost of the Notes, plus accrued but unpaid interest, as of the date of sale, or (ii) the fair market value of the Notes, as determined by an independent pricing service at the time of sale;

(c) The Fund did not pay any commissions or other expenses in connection with the sale;

(d) Boston Safe, as trustee of the Fund, determined that the sale of the Notes was appropriate for and in the best interests of the Fund, and the employee benefit plans invested in the Fund, at the time of the transaction;

(e) Boston Safe took all appropriate actions necessary to safeguard the interests of the Fund, and the employee benefit plans invested in the Fund, in connection with the transactions; and

(f) If the exercise of any of Boston Safe's rights, claims or causes of action in connection with its ownership of the Notes results in Boston Safe recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the sum of:

(1) the purchase price paid for the Notes by Boston Safe (i.e. $25,031,269);

(2) the original issue discount on the Notes which remained unamortized as of the date Boston Safe acquired the Notes from the Fund; and

(3) the interest due on the Notes from and after the date Boston Safe purchased the Notes from the Fund, at the rate specified in the Notes,

Boston Safe will refund such excess amounts promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery).

Effective Date: This exemption is effective as of January 12, 1995.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 9, 1995, at 60 FR 40615.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Times Mirror Savings Plus Plan (the Plan) Located in Los Angeles, California

[Prohibited Transaction Exemption 95–99; Exemption Application No. D–10019]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extensions of credit (the Loans) to the Plan by the Times Mirror Company (the Employer), the sponsor of the Plan, with respect to three guaranteed investment contracts issued by Confederation Life Insurance Company of Canada (Confederation); (2) the Plan's potential repayment of the Loans; and (3) the potential purchase of the GICs from the Plan by the Employer for cash; provided the following conditions are satisfied:

(a) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan could receive in arm's-length transactions with unrelated parties;

(b) No interest and/or expenses are paid by the Plan in connection with the transactions;

(c) Repayment of the Loans will be restricted to the GIC Proceeds, defined as cash proceeds obtained by the plan from Confederation, state guaranty funds, any successor to Confederation, or any other third party making payments with respect to the obligations of Confederation under the GICs;

(d) Repayment of the Loans will be waived to the extent that the Loans exceed the GIC Proceeds; and

(e) In any sale of the GICs to the Employer, the Plan will receive a purchase price which is the higher of (1) the fair market value of the GIC less any amounts previously received by the Plan with respect to the GIC, or (2) the value of the GIC as set forth in paragraph 6 of the Notice of Proposed

Exemption, with such purchase price determination to be made by the Bank of America, the Plan's Trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 9, 1995 at 60 FR 40618.

For Further Information Contact: Charles S. Edelstein of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 12th day of October 1995.

Ivan Strafeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–25716 Filed 10–16–95; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities Arts and Artifacts indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, in Room M–14, from 9:00 a.m. to 5:30 p.m., on Monday, November 6, 1995.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 1996.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Sharon I. Block, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, or call 202/606–8322.

Sharon I. Block,

Advisory Committee Management Officer.

[FR Doc. 95–25620 Filed 10–16–95; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L., 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (BIO) (1110).

Date and time: November 2, 1995; 8:45 a.m.–5:00 p.m.; November 3, 1995; 8:45 a.m.–12:00 noon.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of meeting: Open.

Contact person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 306–1400.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Short-term and longer term planning for BIO.

Dated: October 11, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–25618 Filed 10–16–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65, issued to the Northeast Nuclear Energy Company (NNECO/the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would revise the Technical Specifications (TS) 3.8.1.1, ''A.C SOURCES,'' by adding a footnote that, for Cycle 13 operation only, to extend the allowed outage time (AOT) of the offsite power source obtained from Millstone Unit 1 from 3 days to 7 days.

This proposed amendment is needed to avert an unnecessary Unit 2 shutdown should offsite power obtained from Unit 1 become unavailable for more than 72 hours when maintenance is performed on the Unit 1 Reserve Station Service Transformer (RSST) and cross-tie 14H bus during the upcoming Unit 1 outage.

The Unit 1 outage is currently scheduled to begin October 27, 1995, and work on the relevant electrical cross-tie equipment is scheduled to start on or about November 5, 1995. The licensee will take every effort to restore the Unit 1 electrical cross-tie equipment as soon as maintenance is completed. Since the completion time for this

maintenance activity cannot be assured, the licensee is requesting a license amendment change to extend the AOT beyond the present 72 hours. Exigent action is justified in order to avoid an unnecessary delay in reactor startup.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards (SHC) consideration, which is presented below:

* * * NNECO concludes that these changes do not involve a significant hazards consideration since the proposed changes satisfy the criteria in 10CFR50.92(c). That is, the proposed changes do *not*:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The offsite circuits emergency power system includes equipment required to support the safe shutdown and post-accident operations of Millstone Unit No. 2. The preferred off-site power supply is from the 345-kV switchyard, through the reserve station service transformer. The alternate source of off-site power is the 4160V tie to Millstone Unit 1 via bus 14H. These offsite circuits are not accident initiators. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

Although the offsite circuits provide power to components that help mitigate the consequences of accidents previously evaluated, the extension in the AOT does not affect any of the assumptions used in the deterministic evaluations of these accidents. Thus, this change will not increase the consequences of any accident previously analyzed.

A PRA [probabilistic risk analysis) analysis was performed to determine the impact on safety. That analysis examined the increase in core damage frequency (CDF) and the core damage probability and concluded that the impact is negligible. Further, the extended AOT, by itself, does not necessarily increase risk. The increase in the risk depends on the total time during which an offsite circuit (specifically, the Millstone Unit No. 2 electrical cross-tie from Millstone Unit No. 1) is unavailable and the other equipment that is concurrently out of service. The total risk increase due to the offsite circuit being out-of-service will not be significant since that risk increase is monitored and kept at acceptable levels in accordance with the risk monitor program.

Based on the above, the proposal to extend the AOT for one offsite circuits [sic] does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to extend the AOT for one offsite circuit does not alter the physical design, configuration, or method of operation of the plant. Therefore, the proposal does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed change to extend the AOT for one offsite circuit inoperable does not affect the Limiting Conditions for Operations or their bases. As a result, the deterministic analyses performed to establish the margin of safety are unaffected. Thus, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 16, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible

effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Phillip F. McKee: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 6, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document room, located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 12th day of October 1995.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–25659 Filed 10–16–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–390 and 50–391]

Watts Bar Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting an exemption from certain requirements of its regulations to Watts Bar Nuclear Plant, Units 1 and 2, located in Spring City, Tennessee. Operating licenses have not been issued for Watts Bar; Units 1 and 2 are currently under Construction Permits CPPR–91 and CPPR–92, respectively.

Environmental Assessment

Identification of Proposed Action

By letter dated July 19, 1995, as supplemented by letters of July 26 and September 6, 1995, Tennessee Valley Authority (TVA) requested an exemption from the ingestion pathway portion of the requirement in 10 CFR Part 50, Appendix E, Section IV.F.2(a), which states that a full-participation exercise shall be conducted within 2 years before the issuance of the initial operating license for full power (authorizing operation above 5 percent of rated power) of the first reactor and shall include participation by each State and local government within the plume exposure pathway emergency planning zone (EPZ) and each State within the ingestion exposure pathway EPZ. Specifically, TVA requested relief from the requirement to include participation of each State within the ingestion exposure pathway EPZ during the Watts Bar exercise scheduled for November 1995, because in 1992 and 1993 the State of Tennessee participated in full-participation exercises which included the ingestion pathway EPZs at Sequoyah and Watts Bar, respectively. The State of Tennessee supported TVA's request for an exemption because it would encounter financial hardship if it has to participate.

The Need for the Proposed Action

The NRC may grant exemptions from the requirements of 10 CFR Part 50 which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2)

present special circumstances. Section 50.12(a)(2) of 10 CFR Part 50 describes the special circumstances for an exemption. Special circumstances are present when the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule [10 CFR 50.12(a)(2)(ii)]. The underlying purpose of Appendix E, Section IV.F.2(a) is to demonstrate the integrated capabilities of appropriate local and State authorities and licensee personnel to adequately assess and respond to an accident at a commercial nuclear power plant within 2 years before the issuance of the initial operating license for full power (authorizing operation above 5 percent of rated power) of the first reactor on a site. Special circumstances are also present when compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted [10 CFR 50.12(a)(2)(iii)]. Additionally, special circumstances are present when the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation [10 CFR 50.12(a)(2)(v)].

Environmental Impacts of the Proposed Action

The applicant's request for exemption involves aspects of the upcoming full-participation emergency exercise, but does not involve any design or construction activity. The proposed action will not increase the probability or consequences of accidents, makes no changes in the types of any effluents that may be released offsite, and does not increase the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any activity that results in release of any nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the Commission considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement and Supplement 1 related to operation of the Watts Bar Nuclear Plant, dated December 1978 and April 1995, respectively.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Tennessee State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

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. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the request for exemption dated July 26, 1995, 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.

Dated at Rockville, Maryland, this 2nd day of October 1995.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–25657 Filed 10–16–95; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 1, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: Wednesday, November 1, 1995—12:00 noon until 1:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 11, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–25655 Filed 10–16–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–289 and 50–320; Docket Nos. 50–171, 50–277 and 50–278]

GPU Nuclear Corporation; Three Mile Island Nuclear Station; Philadelphia Electric Company; Peach Bottom Atomic Power Station; Temporary Reduction in Local Public Document Room Services

Notice is hereby given that the stack areas of the State Library of Pennsylvania, Harrisburg, Pennsylvania, which serves as the Nuclear Regulatory Commission (NRC) local public document room (LPDR) for Philadelphia Electric Company's Peach Bottom Atomic Power Station and GPU Nuclear Corporation's Three Mile Island Nuclear Station will be closed to the public for six months to one year so that lead can be removed from the building. The stack areas contain NRC records through mid-1995.

During the lead removal project, every effort will be made to meet the informational needs of LPDR patrons. NRC records from mid-1995 forward will be available on microfiche in an accessible part of the State Library. Library staff will continue to perform online searches in NRC's NUDOCS database to help patrons identify agency records. The locations of other LPDRs that maintain records on Peach Bottom and Three Mile Island can be obtained by contacting the NRC LPDR staff. Their toll-free telephone number is (800) 638–8081. Requests for records may also be addressed to the NRC's Public Document Room (PDR), 2120 L Street NW., Lower Level, Washington, DC 20555–0001. The PDR's toll-free telephone number is (800) 397–4209.

Persons interested in using the Harrisburg LPDR collection while the stack areas are closed are asked to contact the State Library of Pennsylvania at (717) 787–2327, or the NRC LPDR staff at their toll-free telephone number listed above.

Questions concerning the NRC's LPDR program or the availability of agency documents in the Harrisburg area should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone number (800) 638–8081.

Dated at Rockville, Maryland, this 10th day of October, 1995.

For the Nuclear Regulatory Commission.

Carlton C. Kammerer,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 95–25656 Filed 10–16–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–390 and 50–391]

Tennessee Valley Authority; Availability of Safety Evaluation Report Supplement Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission has published the Safety Evaluation Report, Supplement 17 (NUREG–0847, Supp. 17) related to the operation of Watts Bar Nuclear Plant, Units 1 and 2, Docket Nos. 50–390 and 50–391.

Copies of the report have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, D.C. 20555, and in the Local Public Document Room, Chattanooga-Hamilton Library, 1001 Broad Street, Chattanooga, Tennessee 37402, for review by interested persons. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7082. GPO deposit account holders may charge orders by calling 202–512–2249 or 2171. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland this 6th day of October, 1995.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Regulatory Commission.

[FR Doc. 95–25658 Filed 10–16–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21405; File No. 812–9458]

Franklin Life Variable Annuity Fund A, et al.

October 10, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Franklin Life Variable Annuity Fund A (''Fund A''), Franklin Life Variable Annuity Fund B (''Fund B''), Franklin Life Money Market Variable Annuity Fund C (''Fund C'', collectively, with Fund A and Fund B, the ''Funds''), and The Franklin Life Insurance Company (''The Franklin'').

RELEVANT 1940 ACT SECTIONS: Conditional order requested under Section 6(c) of the 1940 Act for exemption from Section 15(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit The Franklin to have served as investment advisor, without formal approval by the contract owners of the Funds, pursuant to interim investment management agreements (the ''Interim Agreements''). The conditional order would cover the period from January 31, 1995 until April 17, 1995 (the ''Interim Period'') and would permit The Franklin to receive from the Funds fees earned under the Interim Agreements.

FILING DATE: The application was filed on January 31, 1995 and amended and restated on March 16, 1995 and on August 10, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 6, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, Stephen P. Horvat, Jr., Esq., The Franklin Life Insurance Company, #1 Franklin Square, Springfield, Illinois 62713.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Counsel, or Wendy Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Funds are registered open-end management investment companies. The Funds serve as the funding vehicles for variable annuity contracts issued by The Franklin. The Franklin is registered as an investment advisor under the Investment Advisers Act of 1940, as amended. Prior to the Interim Period, The Franklin served as the investment advisor to the Funds and received investment advisory fees from the Funds pursuant to investment advisory contracts (the ''Prior Agreements'') approved by the contract owners of the Funds (the ''Owners'') in accordance with Section 15(a) of the 1940 Act.

2. On November 29, 1994, American Brands Inc. (''American Brands'') entered into a stock purchase agreement with American General Corporation (''American General'') which provided for the sale by American Brands, the indirect parent corporation of The Franklin, to American General, through its wholly owned subsidiary, AGC Life Insurance Company, of all of the outstanding common stock of the immediate parent corporation for The Franklin. The sale closing occurred on January 31, 1995, and, as a result of that sale, American General became the indirect parent corporation of The Franklin. The change in control resulted in the assignment of the Prior Agreements, thus terminating such agreements in accord with their terms and the provisions of Section 15(a) of the 1940 Act.

3. Applicants state that the stock purchase agreement contemplated that approval by the Owners of the Interim Agreements would be obtained at the regularly scheduled annual meetings of the Owners. Applicants state that they anticipated that state insurance department approvals required for the closing of the sale would take sufficient time that the Owners' vote on the Interim Agreements would occur prior to the closing of the sale. Applicants represent that the required state insurance department approvals were obtained in a more timely manner than anticipated. Applicants further represent that only shortly before the approvals were received did it become clear that such approvals would be received prior to the end of January. Applicants filed the application on the date of the closing of the sale, January 31, 1995.

4. On January 16, 1995, the board of directors of each of the Funds, including a majority of the members who were not ''interested persons'' of the Funds or of The Franklin as that term is defined in the 1940 Act, voted to approve the Interim Agreements and to submit the Interim Agreements to the Owners for approval. On March 3, 1995, the boards of the Funds again considered the Interim Agreements in light of certain changes to The Franklin's investment functions and personnel. The boards, including a majority of the members who were not ''interested persons'' of the Funds or of The Franklin as that term is defined in the 1940 Act, determined to continue the Interim Agreements and to submit the Interim Agreements to the Owners for approval.

5. During the meetings of the boards held on January 16 and March 3 of 1995, Applicants represent that the boards fully evaluated, with the advice and assistance of counsel, the Interim Agreements in accordance with Section 15(c) of the 1940 Act. The boards considered several factors in evaluating whether the Interim Agreements were in the best interests of the Funds and the Owners. Applicants state that the boards considered that the Interim Agreements contained substantially identical terms and conditions, including identical advisory fees, as the Prior Agreements. Further, the boards noted that the obligations and duties of The Franklin to provide investment management and other services to the Funds would continue unaffected by the anticipated changes in the investment functions and personnel of The Franklin. The boards also considered The Franklin's assurance that the Funds would receive the same quality of advisory services under the Interim Agreements as had been received under the Prior Agreements. The boards further determined that the transaction which caused the assignment and concurrent termination of the Prior Agreements would have no material adverse effect on The Franklin's ability to provide services to the Funds under the Interim Agreements.

6. Applicants state that the boards concluded that the payment of investment advisory fees earned during the Interim Period would be appropriate and fair considering that: (a) The sale arose primarily out of business considerations unrelated to the relationship between the Funds and The Franklin; (b) seeking the Owners' approval of the Interim Agreements prior to the assignment of the Prior Agreements would entail, in Applicants' estimation, considerable expense; (c) the nonpayment of investment advisory fees during the Interim Period would be unduly harsh in light of the services provided by The Franklin to the Funds during the Interim Period; and (d) the investment advisory fees to be paid pursuant to the Interim Agreements would be unchanged from the fees paid pursuant to the Prior Agreements. Applicants also placed the fees paid pursuant to the Interim Agreement in escrow until approval of the Interim Agreement by the Owners.[1]

Applicants' Legal Analysis

1. Applicants request an order of the Commission pursuant to Section 6(c) of the 1940 Act exempting them from the provisions of Section 15(a) of the 1940 Act. The order would permit The Franklin to have served as investment advisor, without formal approval by the Owners, pursuant to the Interim Agreements. The order would cover the Interim Period and would permit The Franklin to receive from the Funds fees earned under the Interim Agreement.

2. Section 6(c) provides, in pertinent part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act. Section 15(a) prohibits an investment advisor from providing investment advisory services to an investment company except pursuant to a written contract that has been approved by a majority of the voting securities of such investment company. Section 15(a) further requires that such written contract provide for its automatic termination in the event of an assignment. Under Section 2(a)(4) of the 1940 Act, an assignment includes any direct or indirect transfer of a contract by the assignor or any direct or indirect transfer of a controlling block of the assignor's voting securities.

3. On January 31, 1995, pursuant to the terms of the sale, American General became the indirect parent corporation of The Franklin. The sale therefore resulted in an ''assignment'' of the Prior

[1] On April 17, 1995, the Interim Agreements were approved by a vote of a majority in interest of the contract owners, as defined in the 1940 Act, of the Funds. On April 25, 1995, the fees earned under the Interim Agreements for the period from January 31, 1995 to March 31, 1995, were released to The Franklin. Fees earned from April 1, 1995 through April 17, 1995 were paid directly to The Franklin on May 1, 1995. Applicants acknowledge that the April 25 release and the May 1 payment were both made in error because the Commission had not granted the order requested in the application. On August 2, 1995, The Franklin returned to an escrow account the previously released funds plus $63.12, an amount representing interest that would have been earned between the dates of payment and release and August 2, 1995. Applicants represent that the escrowed funds will not be released until issuance by the Commission of the order requested in the application.

Agreements within the meaning of Section 2(a)(4) of the 1940 Act. Upon assignment, each of the Prior Agreements terminated by its own terms and pursuant to Section 15(a).

4. Rule 15a–4 under the 1940 Act provides, in pertinent part, that if an investment advisor's investment advisory contract is terminated by assignment, the investment advisor may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company, and if the investment advisor or a controlling person of the investment advisor does not directly or indirectly receive money or other benefit in connection with the assignment. Applicants concede that they may not rely on Rule 15a–4 because American Brands, a controlling person of The Franklin, received a benefit in connection with the assignment of the Prior Agreements because American Brands received substantial consideration from American General for the sale of the stock of the indirect parent of The Franklin.

Conditions for Relief

1. Applicants represent that the Interim Agreements have substantially identical terms and conditions, including identical investment management fees, as the Prior Agreements.

2. Applicants represent that to mitigate the erroneous release and payment of the escrowed funds to The Franklin following the Owners' approval of the Interim Agreements, The Franklin repaid to an escrow account the amount released and paid plus an amount representing interest that would have been earned on the funds between the dates of payment and release and the date of the funds were repaid to the escrow account. Applicants further represent that the funds will not be released from the escrow account until two conditions are met: approval by the Owners of the Interim Agreements; and granting by the Commission of the order sought in the application.

3. The Franklin will pay all costs of preparing and filing the application and the costs of holding all annual meetings of the Owners at which approval of the Interim Agreements was sought, including the costs of proxy solicitation.

4. The Franklin will take all appropriate steps to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the boards of the Funds, to the scope and quality of services previously provided. In the event of any material change during the Interim Period in the manner of or the personnel providing services pursuant to the Interim Agreements, The Franklin will apprise and consult with the boards of the Funds to ensure the boards are satisfied that the services provided will not be diminished in scope or quality.

5. Applicants represent that, pursuant to the terms of the stock purchase agreement, American General and American Brands agreed to: (a) Use, and to cause The Franklin to use, reasonable efforts, for a period of three years after the sale, to have boards, 75% of which are comprised of persons who are not ''interested persons'', within the meaning of the 1940 Act, of The Franklin, American General or American Brands; and (b) to refrain from any transaction that would impose an unfair burden on the Funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25624 Filed 10–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36361; International Series Release No. 866; File No. SR–CBOE–95–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to the Rebalancing Date for the Japanese Export Stock Index

October 11, 1995.

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 October 11, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its policy concerning the date of the annual rebalancing of the Japanese Export Stock Index (''Japan Export Index'' or ''Index'') such that the Index will be rebalanced as of the last trading day of March each year. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange recently received approval from the Commission to list and trade index warrants on the Japan Export Index.[3] In that filing, the Exchange proposed to rebalance the Index on the last trading day of the calendar year. The Exchange now proposes to rebalance the Index on the last trading day of March, and not the last trading day of the calendar year. The Exchange believes that this change will better correlate the Index rebalancing with the fiscal year end for the majority of the Index components. The majority of the Japanese public companies comprising the Index have a fiscal year from April 1 to March 31. The Exchange also notes that as of the date of this filing, warrants on the Index have not yet begun trading.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 26253 (September 19, 1995), 60 FR 49654 (September 26, 1995) (SR–CBOE–95–41).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–95–57 and should be submitted by November 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[4] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25663 Filed 10–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36354; File No. CBOE–95–28]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Responsibility for Performing Functions of the ITS Clerks

October 10, 1995.

On May 19, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend one of its Intermarket Trading System (''ITS'' or ''System'') rules, CBOE Rule 30.75, which relates to the exchange trading of stocks, warrants and other non-option securities. The Exchange subsequently filed Amendment No. 1 to the proposed rule change on July 6, 1995.[3] Notice of the proposed rule change and Amendment No. 1 was published for comment and appeared in the Federal Register on August 17, 1995.[4] No comment letters were received on the proposal. This order approves the CBOE proposal as amended.

Description of the Proposal

CBOE Rule 30.75 (''Transmission and Reception of System Messages; Exchange Liability''), governs the transmission and reception of obligations and commitments to trade, pre-opening notifications, and responses thereto over the ITS.[5] Currently, Exchange Rule 30.75 requires the Exchange to provide ITS Clerks to send and receive ITS messages. The Exchange proposes to amend Paragraph (a) of the Rule to clarify that the Exchange will not be obligated to provide ITS Clerks, except as provided in the interpretations to the Rule.

Proposed interpretation .01 to Exchange Rule 30.75 would require employees of Designated Primary Market-Makers (''DPMs'')[6] to send and receive commitments and obligations to trade, pre-opening notifications, and responses thereto over the System. Further, the interpretation makes it clear that the Exchange will not be liable for the acts, errors, or omissions of these DPM employees.[7]

A second interpretation to the Rule makes it clear that the Exchange will provide Exchange-employed ITS Clerks for products that are traded at posts that have order book officials (''OBOs''), and will not provide ITS Clerks for products for which a DPM has been appointed. The Exchange also would be required to provide the services of ITS Clerks for products for which DPMs make markets when the circumstances (such as fast markets) warrant. Two Floor Officials would be able to require the Exchange to provide its ITS Clerks for particular circumstances.

The Exchange believes this rule change is warranted because it is possible that some of its Chapter 30 products, which the Exchange may trade in the future, may be assigned to DPMs. As such, the Exchange believes it would be most efficient for the DPM that is assigned to the product that is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrects a typographical error in the defined term ''ITS Clerk'' as it appears in Rule 30.75 and in the two proposed interpretations and policies thereunder, and clarifies the use of that term in proposed Interpretation and Policy .02 under Exchange Rule 30.75. The purpose of this amendment is to make it clear that the defined term ''ITS Clerk'' refers only to Exchange employees acting as such, and not to employees of a Designated Primary Market-Maker who may be performing the functions of ITS Clerks as contemplated by proposed Interpretation and Policy .01 under Exchange Rule 30.75. See Letter from Michael L. Meyer, Esq., Schiff Hardin & Waite, to James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated July 6, 1995 (''Amendment No. 1''). August 17, 1995. No comment letters were received on the proposal. This order approves the CBOE proposal as amended.

[4] See Securities Exchange Act Release No. 36085 (August 10, 1995), 60 FR 42927 (August 17, 1995).

[5] ITS is a subsystem of the National Market System approved by the Commission pursuant to Section 11A of the Act, 15 U.S.C. 78k–1. ITS facilities intermarket trading in exchange-listed equity securities based on the current quotation information emanating from the linked markets. Participants of ITS include the American Stock Exchange, the Boston Stock Exchange, CBOE, the Chicago Stock Exchange, the Cincinnati Stock Exchange, the New York Stock Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, and the National Association of Securities Dealers.

[6] A DPM is a member or member organization which has been appointed by the Exchange's Modified Trading System (''MTS'') Committee to perform market-making and certain other functions with respect to a designated options class or classes or with respect to a product traded on the Exchange pursuant to Chapter 30. Among other things, a DPM is required to disseminate accurate market quotations, honor market quotations, be regularly present at the trading post, and perform the functions of an Order Book Official, *i.e.,* he must maintain and keep current the customer limit order book.

[7] Rule 30.75 currently does provide for limited liability of the Exchange for losses caused by the errors or omissions of the Exchange's own employees, *i.e.,* ITS Clerks.

subject to the ITS rules to employ its own employees to perform the functions of the ITS Clerks. Because a DPM runs his own business, he is in the best position to make the business determination concerning how many employees are needed to perform the various functions assigned to him, including the ITS functions. Requiring the DPM to provide employees to perform these functions, therefore, should limit the resources the Exchange will be required to provide to perform this function and thus, reduce overall costs to the Exchange and its members. Customers of the Exchange and the DPMs would be protected from interruption of service in the system, however, because the Exchange will have employees available to perform the ITS function when the circumstances warrant.

Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[8] in that it is designated to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in clearing and facilitating transactions in securities, and to protect investors and the public interest. Specifically, the Commission believes that the proposed rule change will result in a more efficient allocation of Exchange resources by requiring the DPMs assigned to particular products to provide their own employees to perform the ITS functions. The proposed change will shift the responsibility for providing ITS employees from the Exchange to the primary users of the ITS system, thus creating a more economically efficient operation for the Exchange. This will become particularly important if trading volume in Chapter 30 products on the Exchange increases.

Additionally, the Commission notes that the proposed change is consistent with the goals of the ITS plan. One of the goals of the ITS plan, and Section 11A of the Act, is to link effectively all markets for qualified securities through data processing and communication facilities, and to assure fair competition among Exchanges.[9] The proposed rule change merely shifts the responsibility for performing the functions of ITS Clerks from the Exchange to DPMs assigned to a particular product, and will have no negative impact on CBOE's ability to remain linked to the other participants of ITS. Moreover, the change will not provide CBOE with any unfair competitive advantage over the other participants in the ITS plan.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–95–28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25625 Filed 10–16–95; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b)(5).

[9] See Securities Exchange Act Release No. 28874 (February 12, 1991), 56 FR 6889 (February 20, 1991) (order approving ninth amendment to ITS to include CBOE as a participant in the ITS plan).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[Release No. 34–36359; International Series Release No. 865; File No. SR–NASD–95–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Extension of the Nasdaq International Service Pilot Program

October 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 4, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

The NASD proposes to extend for two years: (i) The pilot term of the Nasdaq International Service (''Service''); and (ii) the effectiveness of certain rules (''International Rules'') that are unique to the Service. This rule change does not entail any modification of the International Rules. The present authorization for the Service and the International Rules expires on October 11, 1995; therefore, with this filing, the pilot period for the Service and the International Rules would be extended until October 11, 1997.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD proposes to extend for two years, until October 11, 1997, the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The existing pilot operation of the Service and the International Rules was authorized by the SEC in October 1991[1] and the Service was launched on January 20, 1992. In October 1993, the SEC approved a two-year extension of the pilot program for the Service through October 11, 1995.[2]

The Service supports an early trading session running from 3:30 a.m. to 9:00 a.m. Eastern Time on each U.S. business day (''European Session'') that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. The Service also has a variable opening feature that permits Service market makers to elect to participate starting from 3:30 a.m., 5:30 a.m. or 7:30 a.m., Eastern Time. The election is required to be made on a security-by-security basis at the time a firm registers with the NASD as a Service market maker.[3] At present, there

[1] *See* Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52082 (SR–NASD–90–33).

[2] *See* Securities Exchange Act Release No. 33037 (October 8, 1993), 58 FR 53752 (SR–NASD–93–50).

[3] Regardless of the opening time chosen by the Service market maker, the Service market maker is required to fulfill all the obligations of a Service market maker from that time (*i.e.,* either 3:30 a.m., 5:30 a.m. or 7:30 a.m.) until the European Session

are no Service market makers participating in the Service.

As noted above, the NASD is seeking to extend the pilot term for two more years. During this period, the NASD plans to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market maker participation. The NASD views the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by The Nasdaq Stock Market, Inc. Accordingly, the NASD believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractivensess to the investment community.[4]

The NASD believes that the proposed rule change is consistent with Sections 11A(a)(1) (B) and (C) and 15A(b)(6) of the Act. Subsections (B) and (C) of Section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The NASD believes that the proposed extension of the Service and the International Rules is fully consistent with these statutory provisions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

closes at 9:00 a.m., Eastern Time. See Securities Exchange Act Release No. 32471 (June 16, 1993), 58 FR 33965 (SR–NASD–92–54).

[4] Assuming that the pilot term is extended, the NASD will continue to supply the Commission with the statistical reports prescribed in the initial approval order for the Service order at six month intervals.

III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Action

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that it is appropriate to approve on an accelerated basis the two year extension of the Nasdaq International Service, until October 11, 1997, to ensure the continuous operation of the Service, which is set to expire on October 11, 1995.

The Commission believes that the proposed rule change is consistent with Sections 11A(a)(1)(B) and (C) and 15A(b)(6) of the Act. The Commission believes that, in connection with the globalization of securities markets, the service provides an opportunity to advance the statutory goals of: (1) Achieving more efficient and effective market operations; (2) broader availability of information with respect to quotations for securities; (3) the execution of investor orders in the best market through the use of advanced data processing and communications techniques; and (4) fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The Commission continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by The Nasdaq Stock Market, Inc. The Service is intended to promote additional commitments of merger firms' capital to market making and to attract commitments from firms based in Europe that currently do not function as Nasdaq market makers. Although there are no Service market makers participating in the Service, the NASD plans to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market maker participation. Accordingly, the Commission believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community. Any changes to the operation of the Service will be filed pursuant to Section 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–95–46 and should be submitted by November 7, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–46 be, and hereby is, approved through October 11, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25664 Filed 10–16–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2267]

International Telecommunications Advisory Committee (ITAC) Standardization Sector U.S. ITAC–T Study Group A; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector (ITAC–T) Study Group A will meet on the following dates, times and venue in Washington, DC.:

ITAC–T Study Group A, November 30, 1995, 9:30 a.m.–4:00 p.m. at Bellcore, 6th Floor, 2101 L Street NW., Washington, DC.

ITAC–T Study Group A, November 30, 1995, 1:00–5:00 p.m., at Bellcore, 6th Floor, 2101 L Street NW., Washington, DC.

ITAC–T Study Group A, January 9, 1995, 9:30 a.m.–4:00 p.m., Room 1205, U.S. Department of State, 2101 C Street NW., Washington, DC.

Detailed agendas will be provided prior to the meetings to the most recent

[5] 17 CFR 200.30–3(a)(12) (1989)

attendees of ITAC–T Study Group A. In general, Study Group A will include a debrief of the September 19–29, Geneva meeting of the ITU–T Study Group 2; the continuation of the work of the Study Group A's ad hoc group for Numbering; and preparations for, and development of any U.S. contributions for upcoming meetings of CITEL's PCC–I working groups; ITU–T Study Group 2 and its Working Party meetings in January 1966; ITU–T Study Group 3's March 1996 and ITU–T Study Group 1's February meetings.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled and number of attendees for the two meetings at Bellcore is also desired. If you wish to attend please send a fax to 202–647–7407 not later than 5 days before the scheduled meetings. For the meeting at the Department of State, please include your Social Security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: October 3, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 95–25702 Filed 10–16–95; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice No. 2268]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea; Notice of Meeting

The Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Monday, November 6, 1995 in Room 2415 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to prepare and coordinate U.S. positions for the International Safety of Life at Sea (SOLAS) Conference on Roll-on/Roll-off (Ro-Ro) Ferry Safety, to be held November 20–28, 1995, at the International Maritime Organization (IMO) Headquarters in London. The Conference will consider and adopt amendments to the Safety of Life at Sea Convention with respect to safety measures for new and existing ro-ro passenger ferries. Specific items under consideration include:

—Stability in damaged condition, including the need for bulkheads on the ro-ro decks, and criteria for withstanding water on the ro-ro deck
—Watertight integrity, including standards for bow and stern doors, interior barriers, and preventing water from entering spaces below the ro-ro deck
—Phasing out of one-compartment passenger ro-ro ferries
—Adoption of operational limitations
—Compliance with the requirements of the Global Maritime Distress and Safety System
—Passenger evacuation arrangements, including escape routes, muster stations, and lifesaving appliances
—Fire safety measures
—Helicopter landing and pickup areas
—Standards for high speed ro-ro craft.

Because of the potential impact of the work of the Conference on U.S. regulations and standards, the Subcommittee on Safety of Life at Sea serves as an excellent forum for the U.S. maritime industry to express their views on the issues to be considered by the Conference. Members of the public may attend this meeting up to the seating capacity of the room.

For further information contact Mr. Robert L. Markle at (202) 267–1444, U.S. Coast Guard Headquarters (G–MMS–4), 2100 Second Street SW., Washington, DC 20593–0001.

Dated: October 5, 1995.

Richard T. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 95–25703 Filed 10–16–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–046]

Proposed Closure of Coast Guard Facilities on Governors Island, New York, and Relocation of Coast Guard Facilities; Finding of No Significant Impact

AGENCY: Coast Guard, DOT

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard (USCG) has prepared a Finding of No Significant Impact (FONSI) to guide its decision-maker on the proposed closure of Coast Guard facilities on Governors Island and relocation of Coast Guard operations and facilities to several receiving sites within the New York Harbor region (''proposal''). No decision has been made. There would be no significant impact on the environment, and preparation of an Environmental Impact Statement would not be necessary. This notice announces the availability of the FONSI.

FOR FURTHER INFORMATION CONTACT: CDR Takasugi, Executive Officer, Civil Engineering Unit Providence, (401) 736–1776, [FAX] (401) 736–1704. Copies of the FONSI, Environmental Assessment, and Public Comment Report are available from him.

Background

Governors Island is located in New York Harbor, south of Manhattan and west of Brooklyn. It houses Support Center New York and a number of tenant commands. The 172-acre island is surrounded by a seawall and is accessible by ferry from Manhattan.

The USCG is looking for a means to reduce its annual operating costs by $400 million, and closure of the Governors Island facilities is intended to partially fulfill that goal. The USCG functions at Governors Island would be relocated off the island.

The USCG prepared an Environmental Assessment (EA) pursuant to the National Environmental Policy Act of 1969 and implementing regulations and procedures. The EA evaluated the potential environmental impacts—on land use, infrastructure (traffic and utilities), public services, public health and safety, noise, air quality, geology and soils, water resources, biological resources, socioeconomics, and cultural resources—of closure of USCG facilities at Governors Island. The EA also evaluated the potential environmental impacts of relocating these facilities to other sites within the New York Harbor region.

On June 1, 1995, the USCG published [60 FR 28642] a notice announcing the availability of an EA and of a draft FONSI, comments on which documents would be due on or before July 3, 1995. The USCG received 24 comments. These comments are addressed in the Public Comment Report and will be provided to the decision-maker with the EA and FONSI before deciding on the proposal.

Those facilities on Governors Island that serve the New York Harbor region would be relocated to the Battery Building, the Military Ocean Terminal Bayonne, Rosebank, Wadsworth, and Sandy Hook.

(a) The Battery Building: The proposal would relocate various local functions including offices for the Coast Guard Auxiliary, Recruiting, Marine Safety, Law Enforcement, Licensing and

Inspection, and the Automated Mutual Assistance Vessel Rescue System to the Battery Building in Manhattan. It would not relocate any vessels to this site. The Battery Building would be renovated, but no building demolition or construction would be involved.

(b) The Military Ocean Terminal Bayonne: The proposal would relocate the Aids to Navigation Team (ANT) and several USCG vessels to Bayonne, New Jersey. The vessels are the USCG Cutter (USCGC) RED BEECH, a 157-foot buoy tender; the USCGC PENOBSCOT BAY, a 140-foot cutter; the USCGC STURGEON BAY, also a 140-foot cutter; two 65-foot tugboats; two 46-foot buoy tenders; and tow 21-foot boats. Construction would involve wharf improvements, new floating docks, a new fuel system, and new shore ties. A new building for the ANT would contain modern facilities, parking, and storage. The storage would accommodate hazardous materials (batteries, paints, solvents, and lubricants), vehicles, trailer-mounted vessels (in addition to the USCG vessels discussed above), and ANT supplies.

(c) Rosebank: The proposal would relocate Station New York to Rosebank on Staten Island. Six search-and-rescue vessels and related equipment would be relocated to this site. Construction would include the replacement of existing piers, the addition of wave screens, and the addition of a new fueling system for these vessels. The buildings would be demolished and replaced, and housing in two other buildings would be renovated.

(f) Wadsworth: The proposal would relocate administrative offices for Group New York, the control room for Vessel Traffic Service, and the Marine Safety Office to Wadsworth on Staten Island. It would not relocate any vessels to this site. Construction would include the renovation of one building and of part of another, and the demolition of three buildings for parking.

(e) Sandy Hook: The proposal would relocate engineering functions of Group New York to Sandy Hook, in New Jersey. It would not relocate any vessels to this site. Construction would include the renovation of the administrative building and boathouse, the demolition of the maintenance-and-repair building, the erection of an engineering building for the Group, and improvements to parking.

The EA on which the final FONSI rests discusses two alternatives to no closure of USCG facilities at Governors Island: closure with standard maintenance, and closure with basic maintenance. (The relocation of tenant commands would be the same under the one alternative as under the other.) The standard-maintenance alternative would provide utility maintenance, full-time fire and security service, and full building maintenance, consistent with the historic-maintenance plan. The basic-maintenance alternative would limit governmental maintenance expenditures to the least amount feasible. (No closure, or *no action*, assumes the continued operation of Support Center New York with tenant commands on Governors Island; it does not meet the purpose and need for the proposal: to reduce costs given straitened budgets.)

Closure with standard maintenance is the preferred alternative. This alternative would have no significant environmental impacts. Consequently, preparation of an Environmental Impact Statement is not required.

Dated: October 12, 1995.

T. W. Josiah,

Rear Admiral, U.S. Coast Guard, Director of Resources.

[FR Doc. 95–25712 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–049]

Proposed Consolidation of U.S. Coast Guard Training Centers; Environmental Assessment and Finding of No Significant Impact

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard is proposing to consolidate its training centers and, as a result, some of its centers could be expanded, realigned, or closed. Based on comments received to a proposed Environmental Assessment (referred to as a Programmatic Environmental Assessment (PEA)) and a Proposed Finding of No Significant Impact (FONSI), the Coast Guard supplemented the PEA with a ''Summary of Public Comments and Responses'' and revised the FONSI. This notice announces the availability of the PEA and FONSI, as adopted by the Coast Guard. The Coast Guard has not determined how it will consolidate its training centers but has determined that no significant impacts on the environment would result from the implementation of several alternatives under consideration and that the preparation of an environmental impact statement is not necessary.

ADDRESSES: Copies of the PEA, FONSI, and ''Summary of Public Comments and Responses'' may be obtained from Ms. Susan Boyle, NEPA Branch Chief, U.S. Coast Guard Maintenance and Logistics Command Pacific, Coast Guard Island, Building #54D, Alameda, CA 94501–5100. Copies of these documents were sent to the following libraries: Petaluma Library, 100 Fairgrounds Drive, Petaluma, CA; Cape May Public Library, 110 Ocean Street, Cape May, NJ; Pasquotank-Camden Library, 205 East Main Street, Elizabeth City, NC; Newport News Public Library, 2400 Washington Avenue, Newport News, VA; and the New London Public Library, 63 Huntington Street, New London, CT.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Boyle, NEPA Branch Chief, U.S. Coast Guard Maintenance and Logistics Command Pacific, Coast Guard Island, Building #54D, Alameda, CA 94501–5100, at (510) 437–3626.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1995, the Coast Guard announced the availability of the proposed PEA and FONSI in the Federal Register [60 FR 31529] and solicited comments. The public was also informed of opportunities to comment through legal notices in 10 newspapers, and through press releases and public meetings at each of the potentially affected communities. The 30-day comment period ended on July 17, 1995, and the Coast Guard accepted comments until July 25.

The Coast Guard received 54 verbal comments and over 470 written comments. Approximately 70% of the written comments were form letters. The Coast Guard considered all the comments. These are documented and addressed in the ''Summary of Public Comments and Responses'' which supplements the PEA. The analysis of public comments did not reveal any significant environmental concerns.

In the notice, the Coast Guard announced that it was considering consolidating its training activities throughout the country to reduce operational expenditures and achieve long-term savings. The five Coast Guard training centers that might be directly affected by the proposed action include: Training Center (TRACEN) Petaluma, California; TRACEN Cape May, New Jersey; Aviation Technical Training Center (ATTC) Elizabeth City, North Carolina; Reserve Training Center (RTC) Yorktown, Virginia; and the Coast Guard Academy in New London, Connecticut. Under the consolidation proposals, some installations could be expanded, some could be realigned, and some could be closed.

The PEA, as adopted, evaluates the potential environmental and

socioeconomic impacts related to the possible alternatives and addresses broad program level issues rather than site-specific effects. It will be used in the process of selecting an alternative. The four alternatives evaluated in the PEA are summarized below.

1. No Action: The Coast Guard would continue to operate the training centers as they currently exist.

2. Consolidate East Coast: TRACEN Petaluma would close and its training functions would be relocated to RTC Yorktown, TRACEN Cape May, and the Coast Guard Academy.

3. Consolidate Tidewater Area: TRACEN Petaluma and TRACEN Cape May would close and their functions would be relocated to RTC Yorktown and ATTC Elizabeth City.

4. Consolidate to a DOD facility: TRACEN Petaluma, TRACEN Cape May, and ATTC Elizabeth City would close. RTC Yorktown would continue to remain a Coast Guard facility but would not continue to be a training center. The other training functions from the four training centers would be transferred to an undetermined Department of Defense (DOD) installation. Other tenant commands at the four Coast Guard installations would remain, with RTC Yorktown being reused by other Coast Guard activities. The impacts at TRACEN Petaluma and TRACEN Cape May for this alternative are the same as those under Alternative 3.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (40 CFR Part 15), and the Coast Guard Implementing Procedures and Policies (COMDTINST M16475.1B), the Coast Guard found that Alternatives 1, 2, and 3 will have no significant environmental effects and, therefore, adopting any of these alternatives will not require an environmental impact statement. If Alternative 4 is selected, a specific DOD facility will be considered and an appropriate NEPA analysis will be conducted to address environmental impacts at that DOD facility.

The PEA evaluates the potential environmental impacts of each alternative, including: land use; infrastructure and transportation; hazardous materials and waste management; biological resources; cultural resources; air quality; noise; and water resources. Socioeconomic issues are also evaluated. Other environmental impacts, including impacts on geology, soils, and bathymetry, are not expected to be affected from the action and are not evaluated in detail. Environmental impacts related to potential reuse and disposal of facilities will be the subject of subsequent NEPA analyses.

As revised, the PEA lists specific planning tasks to be implemented subsequent to approval of one of the alternatives. Compliance with all applicable federal, state, and local regulations and Coast Guard policy will be carried out at every training facility.

Dated: October 12, 1995.

Approval Signature:

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Director of Resources.

[FR Doc. 95–25713 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Noise Certification Issues—Revised Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of revised task assignment for the Aviation Rulemaking Advisory Committee.

SUMMARY: Notice is given of a change in the task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Dykeman, Assistant Executive Director for Noise Certification, Deputy Director, Office of Environment and Energy (AEE–2), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3577; FAX: (202) 267–5594.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993) to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area of the ARAC deals with noise certification issues. These issues involve the harmonization of part 36 of the Federal Aviation Regulations (14 CFR part 36) with Joint Aviation Requirements (JAR) part 36, their associated guidance material including equivalent procedures, and the interpretation of the regulations. The FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

The Revised Task

This notice is to inform the public that the FAA has revised a task previously assigned to ARAC. The revised task has been accepted by ARAC. The FAA has asked ARAC to provide advice and recommendation on the following revised task:

Specifically, the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes is charged with reviewing the applicable provisions of subparts A, B, C, and D, appendices A, B, and C of the 14 CFR part 36 and harmonizing them with the corresponding applicable provisions of the 14 CFR 21 subpart D. Any recommendation on noise issues should consider harmonization with respect to corresponding JAR to the extent practicable. The FAA recommends that any proposed recommendations be coordinated among other working groups to ensure consistency in proposed regulatory language, advisory and guidance material, and any other collateral documents developed by the working groups.

ARAC should consider the current international standards and recommended practices, as issued under the International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. ARAC should also consider recommending a process whereby subsequent ICAO Annex 16 changes are properly incorporated into JAR and FAR 36.

ARAC Acceptance of Revised Task

ARAC has accepted the revised task and has chosen to assign it to the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activities

The FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

(a) Recommend a work plan for completion of the task and subtasks, including the rationale supporting the plan, for consideration at the meeting of the ARAC to consider noise certification issues held following publication of this notice;

(b) Give a detailed conceptual presentation on the proposed recommendation to the ARAC before proceeding with the work stated in item (c) below;

(c) If considered appropriate, develop NPRM(s) proposing the revised rules for aircraft noise certification, a supporting economic and other required analyses, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition; and

(d) Give a status report on the task at each meeting of the ARAC held to consider noise certification issues.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of the ARAC to consider noise certification issues will be open to the public, except as authorized by Section 10(d) of the Federal Advisory Committee Act. Meetings of the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on October 10, 1995.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–25677 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Noise Certification Issues—Revised Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of revised task assignment for the Aviation Rulemaking Advisory Committee.

SUMMARY: Notice is given of a change in the task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Dykeman, Assistant Executive Director for Noise Certification, Deputy Director, Office of Environment and Energy (AEE–2), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3577; FAX: (202) 267–5594.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993) to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area of the ARAC deals with noise certification issues. These issues involve the harmonization of part 36 of the Federal Aviation Regulations (14 CFR part 36) with Joint Aviation Requirements (JAR) part 36, their associated guidance material including equivalent procedures, and the interpretation of the regulations. The FAR/JAR Harmonization Working Group for Helicopters will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

The Revised Task

This notice is to inform the public that the FAA has revised a task previously assigned to ARAC. The revised task has been accepted by ARAC. The FAA has asked ARAC to provide advice and recommendation on the following revised task:

Specifically, the FAR/JAR Harmonization Working Group for Helicopters is charged with reviewing the applicable provisions of subparts A and H and appendices H and J of the 14 CFR part 36 and harmonizing them with the corresponding applicable provisions of JAR 36. The review should also include a review of the acoustical change provisions of the 14 CFR 21 subpart D. Any recommendation on noise issues should consider harmonization with respect to corresponding JAR to the extent practicable. The FAA recommends that any proposed recommendations be coordinated among other working groups to ensure consistency in proposed regulatory language, advisory and guidance material, and any other collateral documents developed by the working groups.

ARAC should consider the current international standards and recommended practices, as issued under the International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. ARAC should also consider recommending a process whereby subsequent ICAO Annex 16 changes are property incorporated into JAR and FAR 36.

ARAC Acceptance of Revised Task

ARAC has accepted the revised task and has chose to assign it to the FAR/JAR Harmonization Working Group for Helicopters. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activities

The FAR/JAR Harmonization Working Group for Helicopters is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

(a) Recommend a work plan for completion of the task and subtasks, including the rationale supporting the plan, for consideration at the meeting of the ARAC to consider noise certification issues held following publication of this notice;

(b) Give a detailed conceptual presentation on the proposed recommendation to the ARAC before proceeding with the work stated in item (c) below;

(c) If considered appropriate, develop NPRM(s) proposed the revised rules for aircraft noise certificate, a supporting economic and other required analyses, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition; and

(d) Give a status report on the task at each meeting of the ARAC held to consider noise certification issues.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of the ARAC to consider noise certification issues will be open to the public, except as authorized by Section 10(d) of the Federal Advisory Committee Act. Meetings of the FAR/JAR Harmonization Working Group for Helicopters will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on October 10, 1995.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–25678 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Noise Certification Issues—Revised Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of revised task assignment for the Aviation Rulemaking Advisory Committee.

SUMMARY: Notice is given of a change in the task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Dykeman, Assistant Executive Director for Noise Certification, Deputy Director, Office of Environment and Energy (AEE–2), 800 Independence Avenue, SW., Washington, DC 20591, Telephone (20) 267–3577; FAX: (202) 267–5594.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993) to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area of the ARAC deals with noise certification issues. These issues involve the harmonization of part 36 of the Federal Aviation Regulations (14 CFR part 36) with Joint Aviation Requirements (JAR) part 36, their associated guidance material including equivalent procedures, and the interpretation of the regulations. The FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

The Revised Task

This notice is to inform the public that the FAA has revised a task previously assigned to ARAC. The revised task has been accepted by ARAC. The FAA has asked ARAC to provide advice and recommendation on the following revised task:

Specifically, the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes is charged with reviewing the applicable provisions of subparts A and F and appendices F and G of the 14 CFR part 36 and harmonizing them with the corresponding applicable provisions of JAR 36. The review should also include a review of the acoustical change provisions of the 14 CFR 21 subpart D. Any recommendation on noise issues should consider harmonization with respect to corresponding JAR to the extent practicable. The FAA recommends that any proposed recommendations be coordinated among other working groups to ensure consistency in proposed regulatory language, advisory and guidance material, and any other collateral documents developed by the working groups.

ARAC should consider the current international standards and recommended practices, as issued under the International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. ARAC should also consider recommending a process whereby subsequent ICAO Annex 16 changes are properly incorporated into JAR and FAR 36.

ARAC Acceptance of Revised Task

ARAC has accepted the revised task and has chosen to assign it to the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activities

The FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

(a) Recommend a work plans for completion of the task and subtasks, including the rationale supporting the plan, for consideration at the meeting of the ARAC to consider noise certification issues held following publication of this notice;

(b) Give a detailed conceptual presentation on the proposed recommendation to the ARAC before proceeding with the work stated in item (c) below;

(c) If considered appropriate, develop NPRM(s) proposing the revised rules for aircraft noise certification, a supporting economic and other required analyses, advisory and guidance materials, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition; and

(d) Give a status report on the task at each meeting of the ARAC held to consider noise certification issues.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of the ARAC to consider noise certification issues will be open to the public, except as authorized by Section 10(d) of the Federal Advisory Committee Act. Meetings of the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issed in Washington, DC, on October 10, 1995.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–25679 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Security Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: Notice is hereby given of a rescheduling of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held November 14, 1995, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7451.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held November 14, 1995, in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. The agenda for the meeting will include reports on the Universal Access System, Rewrites of FAR 107 and 108, Contingency Measures, Container Hardening, Screener Proficiency Evaluation and Reporting System, Unescorted Access Privilege Rule. Attendance at the November 14, 1995, meeting is open to the public but is limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time. Persons wishing to present statements or obtain information should contact the Office of the Associate Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7451.

Issued in Washington, DC on October 11, 1995.

Ross Hamory,

Director of Civil Aviation Security Policy and Planning.

[FR Doc. 95–25674 Filed 10–16–95; 8:45 am]

BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 200
Tuesday, October 17, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Deletion of agenda item from October 12th open meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the October 12, 1995, Open Meeting and previously listed in the Commission's Notice of October 5, 1995.

Item No., Bureau, and Subject

1—Wireless Telecommunications—Title: Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services. Summary: The Commission will consider proposing expansion of the scope of permissible communications for providers of Personal Communications Services and other specified CMRS services to include fixed services.

Dated October 12, 1995.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–25815 Filed 10–13–95; 2:10 pm]
BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m. on Wednesday, October 11, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's supervisory activities.
Recommendations regarding administrative enforcement proceedings.
Reports of the Office of Inspector General.
Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechther (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9) (A)(ii), and (c)(9) (B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9) (A)(ii), and (c)(9) (B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, DC.

Dated: October 12, 1995.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 95–25792 Filed 10–13–95; 9:53 am]
BILLING CODE 6714–01–M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM*

TIME AND DATE: 2:30 p.m., Friday, October 20, 1995.

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. Review of the 1996 budget for the Office of Employee Benefits.
2. Any items carried forward from a previously announced meeting.

*The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for Employees of the Federal Reserve System.

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, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 13, 1995.

William W. Wiles,
Secretary of the Board.
[FR Doc. 95–25808 Filed 10–13–95; 2:10 pm]
BILLING CODE 6210–01–P

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM*

TIME AND DATE: Approximately 2:45 p.m., Friday, October 20, 1995, 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. Proposals relating to the Federal Reserve System's retirement benefits.
2. Any items carried forward from a previously announced meeting.

* The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for Employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 13, 1995.

William W. Wiles,
Secretary of the Board.
[FR Doc. 95–25809 Filed 10–13–95; 2:10 pm]
BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 23, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review of a Federal Reserve Board program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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: October 13, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–25865 Filed 10–13–95; 4:00 pm]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, October 24, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6520A—Aviation Accident Report—Controlled Collision With Terrain, Flagship Airlines, Inc., dba Amercian Eagle Flight 3379, BAe Jetstream 3201, Morrisville, North Carolina, December 13, 1994

5894B—Response to Petition for Reconsideration of Marine Accident Report: RMS QUEEN ELIZABETH 2 Grounding Near Cuttyhunk Island, Vineyard Sound, Massachusetts, August 7, 1992

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: October 13, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–25811 Filed 10–13–95; 2:10 pm]

BILLING CODE 7533–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Managing Human Fatigue in Transportation: A Multimodal Symposium

A multimodal symposium on fatigue in transportation, its effects on safety, and fatigue countermeasures co-sponsored by the National Transportation Safety Board and NASA Ames Research Center will be held on November 1 and 2, 1995, at the Sheraton Premiere Hotel, Tysons Corner, Virginia (near Dulles Airport). For more information, contact the Office of Public Affairs, Washington, D.C. 20594, telephone (202) 382–0660.

Dated: October 12, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–25789 Filed 10–13–95; 9:53 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 16, 23, 30, and November 6, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of October 16

There are no meetings scheduled for the Week of October 16.

Week of October 23—Tentative

There are no meetings scheduled for the Week of October 23.

Week of October 30—Tentative

There are no meetings scheduled for the Week of October 30.

Week of November 6—Tentative

Monday, November 6

9:30 a.m.

Briefing on Risk Harmonization Recommendations (Public Meeting)
(Contact: Mike Weber, 301–415–7297)

Thursday, November 9

2:00 p.m.

Briefing on Browns Ferry 3 Restart (Public Meeting)
(Contact: William Russell, 301–415–1270)

ADDITIONAL INFORMATION: Affirmation of ''Application of Citizens Awareness Network (CAN) v. NRC to Decommissioning Activities at the Trojan and Yankee Facilities'' (Public Meeting) was held on October 12.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: October 13, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–25867 Filed 10–13–95; 4:00 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 60, No. 200
Tuesday, October 17, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. 26763; Amendment Nos. 107-7, 108-12]

RIN2120-AE14

Unescorted Access Privilege

Correction

In rule document 95–24546 beginning on page 51854 in the issue of Tuesday, October 3, 1995 make the following corrections:

1. On page 51861, middle column, fourteenth line, ''suggest'' should read ''suggests''.
2. On page 51865, third column, last paragraph, sixth line, ''1995'' should read ''1996''.

BILLING CODE 1505–01–D

federal register

Tuesday
October 17, 1995

Part II

Securities and Exchange Commission

17 CFR Part 240

Ownership Reports and Trading by Officers, Directors, and Principal Security Holders; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34–36356; 35–26389; IC–21406; File No. S7–21–94]

RIN 3235–AF66

Ownership Reports and Trading by Officers, Directors and Principal Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rule; Extension of Comment Period and Further Request for Comment.

SUMMARY: In connection with proposals issued on August 10, 1994, Release No. 34–34514 [59 FR 42449] (the ''Proposing Release'') and the request for further comment issued on September 16, 1994, Release No. 34–34681 [59 FR 48579] (the ''Cash-Only Release'') regarding the treatment of compensatory cash-only instruments under its rules regarding the filing of ownership reports by officers, directors, and principal security holders, the Commission today is issuing an alternative proposal. This proposal would amend the rule that exempts certain employee benefit plan transactions from the short-swing profit recovery provisions of Section 16(b) of the Securities Exchange Act of 1934 (''Exchange Act'') by broadening the exemption and extending it to other transactions between issuers and their officers and directors. There is also a proposal to amend the rule exempting transactions in dividend or interest reinvestment plans to reduce regulatory burdens. Comment also is solicited on other issues related to Section 16, including the manner in which exempt transactions should be reported and possible legislative rescission of Section 16(b). In addition, the comment periods for the Proposing Release and Cash-Only Release are extended until December 15, 1995.

DATES: Comments should be received on or before December 15, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters should refer to File No. S7–21–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C., 20549.

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf, Office of Chief Counsel, at (202) 942–2900, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On August 10, 1994, the Commission released for public comment proposals to amend certain of its rules under Section 16 [1] of the Exchange Act.[2] On September 16, 1994, the Commission solicited additional comment with respect to the Section 16 treatment of cash-only instruments. The Commission now proposes an alternative scheme to amend Rule 16b–3 [3] (the ''Alternative Proposal'') that differs from the amendments to Rule 16b–3 that were proposed in the Proposing Release. All rule proposals, including proposed amendments to Rule 16b–3, and requests for comment made in both the Proposing Release and the Cash-Only Release (the ''1994 proposals'') remain under consideration, and the Commission may adopt any combination of the 1994 proposals and the Alternative Proposal. However, it is contemplated that if the Alternative Proposal is adopted in its entirety, the exclusion from the definition of ''derivative security'' for cash-only instruments provided by the current rules [4] would be rescinded, and the Section 16 status of such instruments would be governed by the Section 16(a) reporting rules and Rule 16b–3 as amended by the Alternative Proposal.

I. Summary

The strict liability and short-swing profit recovery provisions of Section 16(b) [5] and the exemptive rules thereunder have been criticized as unnecessarily complex, unduly burdensome with respect to innocent transactions, and inappropriately intrusive in the area of corporate governance. Rule 16b–3 has generated the most significant controversy with respect to these issues. In the Proposing Release, the Commission published numerous proposed amendments to the Section 16 rules in an attempt to simplify and clarify this subject. In particular, amendments were proposed to Rule 16b–3 that responded to objections that the conditions of that rule applicable to broad-based plans are difficult to administer and unduly restrictive, given the lack of opportunity for speculative abuse in connection with most plan transactions. Although public comment on the 1994 proposals generally was favorable, the Commission has continued to consider whether issues arising from the treatment of employee benefit plan transactions, as well as other officer and director transactions, could be better resolved through a simpler and more flexible approach that fully serves the policy underpinnings of the Section 16 regulatory scheme.

To this end, the Commission has focused on the distinction between market transactions by officers and directors (''insiders''), [6] which present opportunities for profit based on non-public information that Section 16(b) is intended to discourage, and transactions between an issuer and its officers and directors, which typically constitute a legitimate and increasingly popular mechanism for an issuer to compensate persons in its service. The Commission is of the view that the inherent differences in the usual purpose and effects of these two classes of transactions may establish a more cogent rationale upon which to base an exemption from the strict liability, short-swing profit recovery provisions of Section 16(b).[7]

Congress adopted Section 16(b) in 1934 ''to deter insiders from using inside information to aid them in their trading activities.'' [8] According to the relevant legislative history, the drafters intended specifically to target ''directors and officers of corporations who used their positions of trust and the confidential information which came to them in such positions, to aid them in their market activities.'' [9] To ameliorate the potential harshness of applying strict liability to classes of transactions that are not susceptible to insider misuse of non-public corporate information, the Commission was

[1] 15 U.S.C. 78p (1988).

[2] 15 U.S.C. 78a *et seq.* (1988).

[3] Rule 16b–3 [17 CFR 240.16b–3].

[4] Rule 16a–1(c)(3) [17 CFR 240.16a–1(c)(3)].

[5] 15 U.S.C. 78p(b) (1988).

[6] Like current Rule 16b–3, the Alternative Proposal would not exempt transactions with persons who beneficially own greater than ten percent of a class of an issuer's equity securities.

[7] Although some transactions between officers or directors and issuer-sponsored employee benefit plans technically are not transactions with the issuer, such transactions should be within the scope of an exemption premised on the compensatory nature of insiders' transactions with issuers. Employee benefit plans are the most common vehicle by which issuers provide for securities-based compensation of employees, including officers and directors.

[8] P. Romeo and A. Dye, *Section 16 Treatise and Reporting Guide* § 1.03[b][i], at 1–23 (1994) (hereinafter ''Romeo and Dye'') (discussing the legislative history of Section 16(b)).

[9] S. Rep. No. 1455, 73d Cong., 2d Sess. 55 (1934). Congress also was concerned about ''the unscrupulous employment of inside information by large stockholders who, while not directors and officers, exercised sufficient control over the destinies of their companies to enable them to acquire and profit by information not available to others.'' *Id.*

granted express exemptive authority under Section 16(b).[10]

Generally, transactions between issuers and their officers or directors do not appear to present the same opportunities for insider profit on the basis of non-public information. Typically, where the company, rather than the trading markets, is on the other side of an insider transaction in that company's securities, any profit obtained is not at the expense of uninformed shareholders and other market participants of the type contemplated by the statute.[11] This may be the case even if the insider is in possession of confidential company information that otherwise might permit him or her to reap unfair gains from a *market* transaction.

Nevertheless, the Commission believes that imposition of traditional state-law procedural protections can be useful in further ensuring compliance with the underlying purposes of Section 16 by creating effective prophylactics against possible insider trading abuses. Consequently, as is the case with respect to the existing rules and the 1994 Proposals, this Alternative Proposal retains the concepts, where applicable, of approval by shareholder vote or non-employee directors.[12]

Through the Alternative Proposal, the Commission has sought to craft a rule that, consistent with the statutory purpose of Section 16(b), erects meaningful safeguards against the abuse of inside information by officers and directors without impeding their participation in legitimate compensatory transactions that do not present the possibility of such abuse, and facilitates compliance. In so doing, the Commission has recognized that most, if not all, transactions between an issuer and its officers and directors are intended to provide a benefit or other form of compensation to reward service or to incentivize performance. Shareholders, economists, compensation experts and others increasingly have been urging public companies to compensate their officers and directors in stock rather than cash, in order to align more closely the interests of management and shareholders.[13] Many companies have begun to use stock and stock-based instruments in lieu of traditional cash incentives to encourage managers to adopt a longer-term perspective by sharing the risks and rewards of equity ownership.

At the same time, the Commission's exemptive rules under Sections 16(a) and 16(b), including the regulatory exclusion of SARs payable solely in cash and other cash-only derivative securities from *both* statutory provisions, have been criticized for creating an undue regulatory bias in favor of cash compensation. The restrictions, complexity and uncertainties attendant to compliance with Rule 16b–3 tend to discourage the use of equity and thus further bias compensation arrangements toward cash. Additionally, some believe that the current exclusion from treatment as ''derivative securities'' of cash-only instruments promotes issuer use of such instruments, rather than the identical instruments payable in stock, to compensate their insiders.

In proposing to bring within the definition of derivative security cash-only instruments that are the economic equivalents of derivative securities payable in stock,[14] the Commission has sought, in part, to reduce this bias. Today's proposal reflects an approach that recognizes that companies could just as easily compensate their insiders through cash or other non-equity instruments to avoid compliance with the perceived burdens of the Section 16(b) exemptive rules.

In brief, the Alternative Proposal would exempt, subject to certain conditions, most transactions—both acquisitions and dispositions—between an officer or director and the issuer. *First*, the Alternative Proposal would exempt without condition almost all transactions pursuant to plans that satisfy specified provisions of the Internal Revenue Code, such as thrift and stock purchase plans, and certain related plans. Since volitional intra-plan transfers involving issuer equity securities funds and cash distributions funded by volitional dispositions of issuer equity securities are the equivalent of discretionary purchase and sale transactions, these transactions would be exempt only if effected pursuant to an election by the insider made at least six months after an election pursuant to which the last such transaction was effected.[15] Except for the foregoing transactions, the anti-discrimination provisions of the tax laws applicable to broad-based plans should suffice to minimize the potential for insider profit through unfair use of confidential corporate information. An acquisition pursuant to a plan or transaction that satisfies the conditions applicable to performance-based compensation imposed by Section 162(m) of the Internal Revenue Code[16] also would be exempt without further condition on the basis that the tax conditions applicable to such transactions (some of which such conditions closely mirror the first two conditions specified in the next paragraph describing part of the Alternative Proposal) provide an adequate safeguard for Section 16(b) purposes.

Second, with respect to grants and awards of issuer equity securities, whether made pursuant to an employee benefit plan or directly by an issuer, the Alternative Proposal would provide three alternative conditions to exemption: (1) Prior approval of the transaction by the issuer's board of directors or a committee comprised solely of two or more non-employee directors; (2) shareholder approval (or subsequent ratification) of the transaction; or (3) satisfaction of a six-month holding period.

Third, the Alternative Proposal would provide a general exemption for insider dispositions to the issuer, provided the terms of the disposition are approved in advance by the board of directors, a non-employee director committee, or shareholders.

As noted above, cash-only instruments whose value is derived from the market value of an issuer equity security no longer would be excluded from the coverage of Section 16 in a manner different from

[10] *See* Section 16(b) (''This subsection shall not be construed to cover any transaction * * * which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection[;]'' *i.e.*, ''[f]or the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship with the issuer. * * *''); *see also Romeo and Dye, supra* n. 8, § 1.03[b][i], at 1–24.

[11] An insider's breach of fiduciary duty to profit from self-dealing transactions with the company is a concern of state corporate law; most states have created potent deterrents to insider self-dealing and other breaches of fiduciary duty. *See generally* 3 Fletcher Cyc. Corp. § 837.60 (Perm. ed. 1994); D. Block, S. Radin and N. Barton, *The Business Judgment Rule: Fiduciary Duties of Corporate Directors* 124–137 (4th ed. 1993). There are also potential considerations under Rule 10b–5 [17 CFR 240.10b–5].

[12] *Cf.* Del. Gen. Corp. Law §§ 144 (a)(1) and (a)(2); N.Y. Bus. Corp. Law § 713; Model Business Corp. Act §§ 8.60(1), 8.62 and 8.63. *See also Oberly* v. *Kirby*, 592 A.2d 445, 466–67 (Del. 1991) (dictum).

[13] *See, e.g.*, Report of the NACD Blue Ribbon Commission on Director Compensation (1995); M. Klein, *Top Executives Pay for Performance* (Conference Board 1995); Loucks, ''An Equity Cure for Managers,'' Wall St. J., Tues., Sept. 26, 1995.

[14] *See* the Cash-Only Release.

[15] Volitional intra-plan transfers and cash distributions funded by issuer equity securities that are in connection with a participant's death, disability, retirement or termination of employment, or are required to be made available to participants pursuant to a provision of the Internal Revenue Code would not be subject to this proviso, but instead would be exempt without condition.

[16] 26 U.S.C. 162(m) (1993).

instruments that can be settled in such securities. Thus, cash-only instruments would be subject to Section 16(a) reporting, but usually would be exempt from Section 16(b) in accordance with Rule 16b–3, as amended by the Alternative Proposal.

The Alternative Proposal would eliminate:

- General written plan conditions,[17] including specification of the basis on which insiders may participate, specification of the price or amount of the securities to be offered, and the restriction prohibiting transferability of derivative securities;
- Shareholder approval as a general condition for plan exemption;[18]
- The six-month holding period as a general condition for the exemption of grant and award transactions;[19]
- The disinterested administration requirement with respect to grant transactions;[20]
- The formula plan requirement with respect to grant transactions, both as a substitute for disinterested administration and as a means by which administrators may receive securities awards while remaining disinterested;[21]
- Any conditions with respect to any transaction in a broad-based plan other than a volitional intra-plan transfer or a cash distribution funded by a volitional disposition of an issuer equity security;[22] and
- The current public information, disinterested administration, window period and six-month holding period conditions with respect to the exercise of stock appreciation rights for cash.[23]

As a corollary to adoption of the Alternative Proposal, the Commission contemplates modifying the Section 16(a) reporting system so that most transactions exempt pursuant to Rule 16b–3 would be required to be reported on a *current* basis on Form 4,[24] rather than *annually* on Form 5, as now permitted for transactions exempt under current Rule 16b–3, and certain other exempt transactions. However, reporting no longer would be required for routine transactions pursuant to broad-based plans, dividend or interest reinvestment plan transactions, gifts, and transactions pursuant to qualified domestic relations orders.

In addition, the Commission proposes to make the exemption for reinvestment transactions pursuant to dividend and interest reinvestment plans[25] more readily available by amending the rule so that it no longer requires the plan to be available to all holders of the class of securities. Finally, public comment is solicited as to the merit of legislative rescission of Section 16(b).

II. Transactions Between an Issuer and its Officers or Directors

A. Tax-Conditioned and Related Plans

As discussed in the Proposing Release,[26] one of the principal objections raised to current Rule 16b–3 has been that the treatment of thrift, stock purchase and other broad-based, tax-qualified plans is unduly cumbersome, presents significant record-keeping problems, and discourages insiders from participation in plan funds holding issuer equity securities. The proposals set forth in the Proposing Release would streamline the treatment of such plans, and the Alternative Proposal goes still further.

Specifically, under the Alternative Proposal, any acquisition or disposition of issuer equity securities, other than a volitional intra-plan transfer involving an issuer equity securities fund or a cash distribution funded by a volitional disposition of an issuer equity security, would be exempt without condition if made pursuant to a plan that satisfies the definition of a ''Qualified Plan,'' an ''Excess Benefit Plan,'' or a ''Stock Purchase Plan.''[27] The broad-based, non-discriminatory character of these plans, together with their relatively inflexible administrative requirements, indicate that transactions pursuant to such plans are strictly for compensatory purposes and are not amenable to the type of abuse that Section 16(b) was intended to proscribe.

A volitional intra-plan transfer involving an issuer equity securities fund or a cash distribution involving a volitional disposition of an issuer equity security[28] would be exempt only if effected pursuant to an election made at least six months following the date of the election that effected the most recent prior transaction subject to the same condition.[29] Assuming satisfaction of this condition, an insider participant would be able to dispose of his or her entire interest in a plan's issuer equity securities fund for cash.

However, only transactions that arise solely from an insider's volitional investment decision would be subject to this condition. In contrast, transactions resulting from an election to receive, or to defer the receipt of, securities and/or cash in connection with death, disability, retirement or termination of employment,[30] as well as transactions that effect a diversification or distribution which the Internal Revenue Code requires an employee plan to make available to a participant,[31] would be exempt without regard to this condition. Although such transactions may be volitional to the insider, the insider's opportunity to speculate in the context of a death, disability, retirement or termination would seem well circumscribed, as is also the case with regard to the specified diversification and distribution elections.

Just as with the tax code provisions relating to Qualified Plans and Stock Purchase Plans, as discussed above, Section 162(m) of the Internal Revenue

[17] Such conditions are set forth in current Rule 16b–3(a). Instead, the Alternative Proposal focuses on the inherently compensatory nature of transactions between the issuer and its officers and directors, and does not require that such transactions occur pursuant to an employee benefit plan as a condition for exemption.

[18] This condition is set forth in current Rule 16b–3(b). However, shareholder approval would be retained as an alternative basis for exempting grants or awards.

[19] This condition is set forth in current Rule 16b–3(c)(1). However, a six-month holding period would be proposed as an alternative basis for exempting a grant or award.

[20] This condition is set forth in current Rule 16b–3(c)(2)(i). However, approval by the full board or a committee comprised solely of two or more non-employee directors would be retained as an alternative basis for exempting grants or awards.

[21] These standards are set forth in current Rules 16b–3(c)(2)(ii) and 16b–3(c)(2)(i)(A), respectively.

[22] These conditions are set forth in current Rules 16b–3(d)(2)(i) (B), (C) and (D) and 16b–3(d)(2)(ii).

[23] These conditions are set forth in current Rules 16b–3(e) (1), (2), (3) and (4), respectively. It should be noted that these conditions do not currently apply at all to cash-only instruments that satisfy the conditions of Rule 16a–1(c)(3) and are thus excluded from the definition of ''derivative security.''

[24] For example, grants and awards under Section 162(m)-eligible plans that would be exempted by Alternative Proposed Rule 16b–3 would be required to be reported on current Forms 4.

[25] Rule 16b–2 [17 CFR 240.16b–2].

[26] *See* Proposing Release at Section II.A.

[27] Alternative Proposed Rule 16b–3(b)(1). Definitions of these terms would be provided in Alternative Proposed Rule 16b–3(b)(4). Note that the plan itself would not be required to be tax-qualified, but would need to satisfy specified conditions applicable to tax-qualified plans.

[28] A loan funded by the disposition of issuer equity securities would be considered a cash distribution involving a volitional disposition of an issuer equity security unless the insider continued to bear the risk of loss with respect to such issuer equity securities during the term of the loan. Involuntary distributions of cash for the purpose of satisfying the limitations on employee elective contributions and employer matching contributions imposed by the Internal Revenue Code would be exempt without condition because such transactions do not occur at the insider's volition.

[29] Alternative Proposed Rule 16b–3(b)(2). Because it is anticipated that the actual date on which such a plan transaction occurs will be outside the control of an insider participant, the proposed rule is premised on a six-month interval between the date of subsequent elections. The proposed rule does not require that such an election be made six months in advance of the related transaction.

[30] Such transactions are exempted by current Rule 16b–3(d)(1)(ii).

[31] Such transactions would include diversification elections and distributions provided for by Internal Revenue Code Section 401(a)(28), and distributions required by Internal Revenue Code Section 401(a)(9).

Code and the regulations thereunder[32] impose conditions that may serve as an effective safeguard for Section 16(b) purposes. Accordingly, it appears appropriate to exempt, without further condition, an acquisition pursuant to a plan or transaction that satisfies these conditions.[33] The Section 162(m) provisions require that compensation be paid solely on the attainment of one or more performance goals, such goals be established by a compensation committee consisting solely of two or more outside directors,[34] the terms of the plan be disclosed to and approved by shareholders, and the compensation committee certify that the performance goals were satisfied prior to making payment. With respect to options and stock appreciation rights, these provisions require that the grant be made by the compensation committee, the plan state the maximum number of shares for which options or rights may be granted during a specified period to any employee, and the terms of the option or right provide that the amount of compensation to be received be based solely on an increase in the value of the stock after the date of grant.[35] Because a substantial number of plans must satisfy Section 162(m) in order to obtain a tax deduction, this would appear to provide a simple method for exempting grants and awards from Section 16(b) without the need to satisfy additional Commission-imposed requirements.[36]

Commenters are asked to address the proposed unconditional general exemption for transactions pursuant to Qualified Plans, Excess Benefit Plans and Stock Purchase Plans. Do the proposed references to the objective standards of the Internal Revenue Code adequately define classes of plans that, by virtue of their broad-based character and/or specific administrative requirements, do not present opportunities for the abuse of inside information that Section 16(b) was crafted to prevent?[37] Should the exemption for Excess Benefit Plans be revised to require that transactions in such plans must be in tandem with transactions pursuant to a related Qualified Plan?

Is the proposed exemptive condition that volitional intra-plan transfers and cash distributions resulting from a volitional disposition of an issuer equity security be effected pursuant to elections at least six months apart an appropriate requirement? Should an insider be permitted to cash-out his or her entire interest in an issuer equity securities fund in reliance on satisfaction of this condition? Should the proposed condition also apply to such a transaction that is expressly authorized by the Internal Revenue Code or that otherwise implements a retirement planning decision? Would the proposed condition be easier to administer than the current window-period requirement? Should the proposed condition only apply if the transaction would be opposite way (*e.g.*, purchase vs. sale) to the prior transaction? Should a quarterly window period requirement be included in the rule as an alternative basis for exemption, with or without an additional requirement that elections take place in window periods that are at least six months apart?

Comment also is solicited on whether the conditions of Section 162(m) provide an appropriate basis for an exemption from Section 16(b), and whether there are other types of compensation and/or transactions involving issuer equity grants to insiders that should be exempt from Section 16(b) because of protections afforded by provisions of the Internal Revenue Code. To what extent are plans operated in a manner that satisfies the conditions of Internal Revenue Code Section 162(m) with respect to grants to persons other than the issuer's chief executive officer and four other most highly compensated officers?

B. Grants and Awards

The Alternative Proposal would provide three alternative bases for exempting the grant or award of issuer equity securities (including derivative securities). The first two prongs would exempt an award if the specific award is either: (i) approved in advance by the board of directors or a committee of the board comprised solely of two or more ''Non-Employee Directors;'' or (ii) or approved in advance or subsequently ratified[38] by the affirmative vote or written consent of the holders of the majority of the issuer's securities entitled to vote, solicited in compliance with Section 14 of the Securities Exchange Act.[39] The purpose of these prongs is to ensure that appropriate company gate-keeping procedures are in place to monitor any grants or awards and to ensure acknowledgement and accountability on the part of the company when it makes such grants or awards. Finally, a grant or award that did not satisfy any of these exemptive conditions would become exempt if the securities awarded were held by the insider for six months following the grant, or in the case of a derivative security, at least six months had elapsed between the grant of the derivative security and the disposition of the underlying security.[40]

- With respect to the first basis for exemption, a ''Non-Employee Director'' would be defined simply as a director who is not currently an officer of, or otherwise employed by or a consultant to, the issuer, its parent or its subsidiary.[41] This definition differs from the requirements of the current ''disinterested director'' standard in that any employment or consulting relationship with the issuer expressly

[32] Proposed Regulation § 1.162–27(e). It is contemplated that this prong of Alternative Proposed Rule 16b–3 will function in tandem with final tax regulations that contain provisions substantially similar to Proposed Regulation § 1.162–27(e). If a substantially different tax regulation is adopted, the Commission may revisit this prong of the Alternative Proposal.

[33] Alternative Proposed Rule 16b–3(b)(3).

[34] As defined in Proposed Regulation § 1.162–27(e)(3), a director is an outside director if the director (i) is not a current employee of the company; (ii) is not a former employee of the company who receives compensation for prior services; (iii) has not been an officer of the company; and (iv) does not receive remuneration from the company, either directly or indirectly, in any capacity other than as a director. This definition is somewhat different from the proposed definition of Non-Employee Director set forth in the Alternative Proposal.

[35] Proposed Regulation § 1.162–27(e)(2)(vi). Alternatively, if the compensation to be received is not based solely on an increase in the value of the stock after the date of grant, the grant nevertheless may be considered performance-based compensation if it is made on account of attainment of a performance goal that otherwise satisfies the requirements of Proposed Regulation § 1.162–27(e)(2), or the vesting or exercisability of the grant is contingent on attainment of such a performance goal.

[36] The scope of this proposed condition would not be limited to persons who are ''covered employees'' for purposes of the $1,000,000 deduction limit of Section 162(m), *i.e.*, the issuer's chief executive officer and four other most highly compensated officers under Item 402 of Regulation S–K [17 CFR 229.402], but would be available to exempt grants to any officer or director, provided that all Section 162(m) regulatory conditions applicable to performance-based compensation are met with respect to the individual grant. Of course, grants that do not satisfy this condition would be eligible for exemption pursuant to the proposed specific conditions applicable to grants and awards discussed in Section II.B, below.

[37] Although Excess Benefit Plans by their terms are not broad-based, they have not been viewed under current staff interpretations or the 1994 proposals as susceptible to abuse because they are operated in a manner that replicates tax-qualified plans.

[38] Such ratification would be required to be obtained not later than the date of the next annual meeting of shareholders.

[39] 15 U.S.C. 78n. Alternative Proposed Rules 16b–3(c)(1)(i) and 16b–3(c)(1)(ii).

[40] Alternative Proposed Rule 16b–3(c)(1)(iii).

[41] Alternative Proposed Rule 16b–3(c)(2). For purposes of this proposed rule, ''consultant'' would include attorneys, accountants or others who indirectly receive compensation from the issuer through firms that provide services to the issuer.

would be precluded.[42] Further, as an alternative to approval by Non-Employee Directors, approval by the full board would constitute a basis for exemption.[43]

• It should be noted that the first two bases for exemption would require approval of specific transactions, not merely approval of a plan in its entirety, as is sufficient for the current shareholder approval requirement. This is because approval of a specific grant appears to provide a more effective procedure, which may be appropriate when approval is a stand-alone basis for exemption rather than a condition imposed in combination with other conditions. However, it is contemplated that approval of a plan pursuant to which the terms and conditions of each grant are fixed in advance, such as a formula plan, would satisfy this basis for exemption, and the exemption also would be available for a plan with an attachment providing for specific grants to specific individuals. Of course, the transaction approval only relates to Section 16 insiders. Transactional approval of grants to other persons would not be required for the purpose of obtaining the exemption under Alternative Proposed Rule 16b–3. Comment is solicited as to whether there are any other circumstances under which whole-plan approval, standing alone, would be a sufficient safeguard.

• Finally, the six-month holding period exemption would be available to exempt grants that, for reasons of timing or otherwise, fail to satisfy any of the other alternative conditions.

Commenters are asked to address whether approval by shareholders should be required in advance of a grant or award, or would subsequent ratification be sufficient, provided that such ratification is obtained not later than the date of the next annual meeting of shareholders? Comment is solicited on whether full board approval, as an alternative to Non-Employee Director approval, would be useful to issuers and whether it would provide an adequate standard. Should a director who is hired as a consultant to the issuer be considered an employee of the issuer, and hence be ineligible to serve as a Non-Employee Director?

Should equity grants received by Non-Employee Directors be required to be made pursuant to a formula plan, as is currently required, or is satisfaction of any of the other alternatives an adequate standard to assure impartiality?[44] Why would equity grants be treated differently for this purpose than any other arrangement pursuant to which a Non-Employee Director is compensated? If formula plan grants are required as such a condition, should there be a separate exemption for formula plans, or should such plans be subjected to shareholder approval as a condition to exemption? As a general matter, is either (i) administration by the board of directors or Non-Employee Directors or (ii) shareholder approval, standing alone, effective to prevent abuse of the type addressed by Section 16(b) when only transactions with the issuer are included, or must either of such procedures be coupled with a six-month holding period to be effective with respect to such transactions? Is satisfaction of a six-month holding period, absent *any* other condition, an adequate procedure on which to premise an exemption for grants?

Should a grant or award that satisfies any of the proposed alternative conditions be exempt only if the officer or director to whom the award is made had not disposed of issuer equity securities on a non-exempt basis during the previous six months at a price higher than the price at which such grant or award is made? Would such a timing condition, which is not present in either current Rule 16b–3 or the 1994 proposals, be necessary in order to preclude the use of the proposed broader exemptive rule, which would eliminate significant conditions attached to the current exemption for grants and awards, as a vehicle for abuse?

C. Dispositions to the Issuer

Consistent with its focus on the compensatory nature of transactions between an issuer and its officers and directors, the Commission is of the view that transactions pursuant to which an insider is deemed to have made a disposition of issuer equity securities to the issuer under appropriate conditions may merit exemption from the short-swing profit recovery provisions of Section 16(b). Accordingly, the Alternative Proposal would exempt any transaction involving a disposition to the issuer, provided that such disposition is approved in advance by the board of directors, a committee of Non-Employee Directors, or the shareholders.[45] This provision would provide for the flexibility to redeem issuer equity securities from insiders in connection with non-exempt replacement grants, and in such discrete compensatory situations as individual buy-backs in connection with estate planning. As drafted, this provision also would exempt the exercise of out-of-the-money options, provided that the requisite approval is obtained.[46] The shareholder approval prong could provide exemptive relief in such scenarios as mergers that had received majority shareholder approval that specifically addressed such disposition.

Should a disposition that satisfies either condition be exempt only if the officer or director making the disposition has not acquired issuer equity securities on a non-exempt basis during the previous six months at a price lower than the price at which such disposition is made? Would such a timing condition be necessary to preclude the use of this proposed exemption as a vehicle for abuse?

It should be noted that the Alternative Proposal does not separately address dispositions pursuant to: (1) the right to have securities withheld, or to deliver securities already owned, either in payment of the exercise price of an option or to satisfy the tax withholding consequences of an option exercise or the vesting of restricted securities, (2) the expiration, cancellation, or surrender to the issuer of a stock option or stock appreciation right in connection with the grant of a replacement option or right, or (3) the election to receive, and the receipt of, cash in complete or partial settlement of a stock appreciation right. As proposed, all of these transactions would automatically satisfy the exemptive condition of prior approval by the board of directors, a committee of Non-Employee Directors or shareholders if the grant that contained these

[42] Additionally, the proposed definition would not include the current requirement that, during the one year prior to service as a ''disinterested director,'' the director not be granted issuer equity securities other than pursuant to a formula plan, participation in a broad-based securities acquisition plan, or an election to receive an annual retainer in an equivalent amount of securities.

[43] Current Rule 16b–3(c)(2)(i) provides for administration by the full board of directors if all members are disinterested.

[44] Although the Alternative Proposed Rule would not expressly forbid Non-Employee Directors from awarding themselves grants of issuer equity securities, such grants would need to be reviewed in the context of state laws governing corporate self-dealing.

[45] Alternative Proposed Rule 16b–3(d). Unlike the exemption for grants and awards, subsequent ratification by shareholders would not be included as an alternative condition to the exemption for dispositions. Because such transactions are more likely to be at the volition of the insider and thus more susceptible to abuse with respect to timing, prior approval is considered necessary. Commenters should address whether subsequent shareholder ratification of a disposition would provide an effective procedure.

[46] Reliance on this proposed exemption would not be necessary with respect to the exercise or conversion of a derivative security that is at- or in-the-money because such transactions would continue to be exempt pursuant to Rule 16b–6(b) [17 CFR 240.16b–6(b)].

provisions had been so approved. Commenters are asked to address whether additional and/or different conditions would be more appropriate to exempt these transactions.

III. Dividend or Interest Reinvestment Plans

Rule 16b–2 exempts from the short-swing profit recovery provisions of Section 16(b) the acquisition of issuer equity securities resulting from reinvestment of dividends or interest on securities of the same class, if made pursuant to a plan, available on the same terms to all holders of that class of securities, providing for regular reinvestment of dividends or interest. Companies have raised concerns that the requirement that the plan be made available to all holders of the class can impose significant burdens on companies that wish to allow for officer and director participation. For example, companies have indicated that because of this requirement, they may have to spend potentially significant sums to comply with foreign laws relating to the offering of securities to shareholders in foreign jurisdictions if they want to have Rule 16b–2 available to their officers and directors.

The requirement to include all shareholders does not appear necessary to address Section 16(b) concerns—that is, to assure that these plans do not provide an opportunity for speculative abuse by officers and directors. Consequently, the Commission is proposing to tailor the dividend reinvestment plan exemptive rule to address concerns about possible opportunities for abuse, while removing unnecessary burdens. As proposed to be amended, Rule 16b–2 would be available to exempt acquisitions resulting from reinvestment of dividends or interest on securities of the same class if made pursuant to a plan that meets three conditions. First, it must provide for the regular reinvestment of dividends or interest. Second, the plan must be broad-based and not discriminate in favor of employees of the issuer.[47] Third, the plan must operate on substantially the same terms for all plan participants. These proposed standards should assure that officers and directors do not use the plan in a manner inconsistent with the purposes of Section 16(b).

If Rule 16b–2 is amended as proposed, companies would have more flexibility to structure their dividend reinvestment plans. Commenters are asked to address whether the proposed standards are appropriate and serve the intended goals of reducing burdens while retaining protections against possible speculative abuse, or whether the current standard should be retained. Would it be consistent with the purposes of Section 16(b) to provide an exemption for officers and directors participating in plans that exclude certain holders, as would be permissible under the proposed amendments? Would such exclusions permit opportunities for speculative abuse in a manner inconsistent with Section 16(b)? Should there be a limitation on the ability to exclude certain shareholders, as permitted under this proposal, such as those with small holdings or those residing in foreign jurisdictions or certain states? Are there other standards that are consistent with Section 16(b) that should be considered, such as exempting transactions in plans that permit certain holders to be excluded only if their inclusion would impose unreasonable burdens and expense?

IV. Reporting

In the interest of establishing the least burdensome reporting system that effectively will achieve the disclosure purposes of Section 16(a),[48] the Proposing Release, without endorsing a specific proposal, solicited comment on various alternative schemes to modify the reporting of exempt transactions. In addition to the alternatives discussed there, which remain under consideration, the Commission contemplates a different reporting treatment with respect to transactions that would be exempted pursuant to the Alternative Proposal.

In order to simplify the reporting scheme while assuring that adequate and timely public information is provided with respect to these transactions, it is anticipated that essentially all reporting be done on a current basis; that is, on a Form 4 no later than ten days following the close of the month in which a transaction occurs. Since the Alternative Proposal would exempt a greater variety of transactions than either current Rule 16b–3 or the 1994 proposals, it would be appropriate to provide the public with information about these transactions on a more timely basis than if annual reporting on Form 5 were permitted. Such transparency would help the markets monitor Section 16(b) compliance on a real-time basis. At the same time, officers and directors subject to reporting, many of whom now voluntarily file reports on a current basis, would benefit from the simplicity of the proposed revised reporting system, as well as from the broader exemptive provisions of the Alternative Proposal.

Generally, it is contemplated that exempt grants and awards, as well as dispositions, would be reportable on Form 4 no later than ten days following the close of the month in which the grant or award is made to the insider. Exercises of options[49] that are exempt pursuant to Rule 16b-6(b) either would remain reportable on the earlier of the next otherwise due Form 4 or Form 5, or simply would be required to be reported on Form 4.[50]

In recognition of the practical difficulties presented by requiring Form 4 reporting of transactions in Qualified Plans, Excess Benefit Plans and Stock Purchase Plans, as well as the relatively lesser public need for this information to be reported, most of these transactions no longer would be required to be reported. However, intra-plan transfers and cash distributions would be reportable on Form 4 no later than ten days following the close of the month in which such transaction occurs.[51] Assuming that the Alternative Proposal is adopted in its entirety, gifts, transactions pursuant to dividend or

[47] This standard would be evaluated by reference to all shareholders of the class. For example, the requirement would not be satisfied merely by making the plan available to all employees of the issuer. Consistent with current interpretation, the rule as amended would exempt only the reinvestment of dividends or interest. Additional securities acquired through voluntary cash contributions to such plans would not be exempt pursuant to this rule, but could be exempt under Alternative Proposed Rule 16b–3, assuming other conditions are met. *See* Release 34–28869, n. 89.

[48] To facilitate the filing of Section 16(a) reports and encourage the speedy dissemination of information considered valuable by many members of the investment community, the Commission has announced its intention to expand the capacity of the EDGAR system to accommodate the electronic filing of ownership and transaction reports pursuant to both Section 16(a) of the Exchange Act and Rule 144 [17 CFR 230.144] under the Securities Act [15 U.S.C. 77a *et seq.*]. *See* Release No. 33–7231 (October 5, 1995). The necessary programming already has been initiated, and filers should be able to file these documents electronically on a voluntary basis by late 1995 or early 1996. A further announcement will be made when the effective date is determined.

[49] To the extent withholding or surrender rights are exercised in conjunction with the exercise or conversion of a derivative security, they would be reported at the same time as such exercise or conversion. The exercise of a tax-withholding right in connection with vesting of a security would be reported on Form 4. Similarly, the exercise of a stock appreciation right to receive cash, the exercise of an out-of-the-money option, and any other disposition transaction that would be exempted under the Alternative Proposal also would be reported on Form 4.

[50] Comment previously was solicited concerning this potential revision to the reporting system. *See* Proposing Release at Section III.B.

[51] Form 4 reporting thus would be required for all transactions exempt under Alternative Proposed Rule 16b-3 except for those exempted pursuant to Alternative Proposed Rule 16b-3(b)(1).

interest reinvestment plans and transactions pursuant to qualified domestic relations orders (''QDROs''), all of which would remain exempt from the short-swing profit recovery provisions of Section 16(b) pursuant to other rules,[52] also would be exempted from reporting.

Commenters are asked to address whether these modifications to the reporting scheme would be appropriate. With respect to transactions that would be exempted from reporting, to what extent, and for what purposes, is there a public need for such information? In lieu of eliminating any reporting requirement for these transactions, should they be reported on an annual basis on Form 5, as currently required? Alternatively, should Form 5 be rescinded, with annual reporting, where permitted, accomplished on Form 4? Assuming Form 5 is rescinded, how would the current requirement to report on Form 5 all holdings and transactions that should have been, but were not, previously reported [53] be revised? Should such holdings and transactions be reported on the last Form 4 filed with respect to the calendar year?

Would accelerated reporting for other transactions that would be exempted by the Alternative Proposal, but currently may be reported on an annual basis, impose significant burdens on insiders and/or issuers, or provide significant benefits to users of the reported information? Would such accelerated reporting simplify the overall reporting system by eliminating the need to keep track of exempt transactions during the year in anticipation of filing the Form 5? Commenters are requested to address these questions from the viewpoint of users of the information that would be reported, as well as from the viewpoint of filing parties.

V. Request For Comment

Any interested person wishing to submit written comments on the Alternative Proposal, the Proposing Release, the Cash-Only Release, and any other matters that might have an impact on such proposals, is requested to do so. Comment is requested specifically from persons subject to Section 16; issuers whose officers, directors and ten percent shareholders are subject to Section 16; and persons using the information afforded by the Section 16(a) reports.

Commenters should address whether the Alternative Proposal, as drafted, is easy to understand and practicable to implement. Commenters also should address whether the Alternative Proposal would be preferable to the proposed amendments to Rule 16b-3 set forth in the Proposing Release. The Commission also requests comment on whether the Alternative Proposal, if adopted, would have an adverse impact on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act.

Finally, commenters are asked to consider the on-going merit of the strict liability short-swing profit recovery provisions of Section 16(b), and whether the Commission should recommend that Congress rescind this section of the statute. Some have suggested that the prohibitions of Exchange Act Rule 10b-5, as interpreted by case law, adequately address the abuse of inside information and obviate the need for a strict liability statute. Others point out that the scienter and other standards of the Rule 10b-5 remedy suggest the contrary. Assuming Congress, which has the sole authority to do so, were to rescind Section 16(b), would insider trading and market manipulation adequately be deterred by Rule 10b-5, or does Section 16(b) continue to serve a useful purpose? In the absence of Section 16(b), would state laws establishing a fiduciary duty on the part of officers and directors adequately protect the interests of public company shareholders?

Comments responsive to these inquiries will be considered by the Commission in complying with its responsibilities under Section 23(a) [54] of the Exchange Act. In order to give commenters sufficient time to consider this Alternative Proposal and request for further comment, the comment periods on the Proposing Release and the Cash-Only Release are extended to December 15, 1995.

VI. Transition To New Rules

Upon adoption of the Alternative Proposal, the 1994 proposals, or any combination thereof, provisions for a transition from the current rules will be necessary. Although the Commission's current intent regarding transition to the proposed revised rules remains as expressed in the Proposing Release,[55] this schedule is subject to modification. Most recently, the Commission has extended the phase-in period for current Rule 16b-3 until September 1, 1996, or such different date as set in further rulemaking.[56] Current and former Rule 16b-3 would remain available until September 1, 1996,[57] unless a different date is set by the Commission in the adopting release. Comment is solicited on how long a transition period issuers and insiders would need, assuming adoption of the Alternative Proposal. Of course, issuers continue to be permitted to convert their plans to current Rule 16b-3 at any time, or to convert back to the former exemptions, provided that all plans of the issuer are so converted. After the phase-in date, issuers and insiders no longer will be able to rely on the former exemptions, but instead will be required to comply with Rule 16b-3 as amended.

VII. Cost-Benefit Analysis

The Alternative Proposal is intended to simplify the conditions under which insider's transactions in issuer equity securities are deemed to be exempt from the short-swing profit recovery provisions of Section 16(b), while ensuring that the statutory purposes continue to be served. The Commission views this as a way of correcting unintended consequences of the present regulatory scheme in terms of creating a bias against equity-based compensation and insider participation in broad-based plans, and significantly reducing the compliance burden imposed on persons subject to Section 16 without undercutting the statutory objectives of disclosing information concerning insider trading and discouraging speculative short-term insider trading. Although some reporting would be accelerated under the Alternative Proposal, other reporting requirements would be eliminated. Even where accelerated reporting might increase compliance costs, these costs may be outweighed by the benefit of having the information available to the public on a more timely basis, as well as the ease of compliance with a simpler reporting scheme.

In order to assist the Commission in assessing the costs and benefits of the Alternative Proposal, commenters are requested to provide their views and data on the following issues. In addressing these issues, commenters should be as specific and detailed with their views and data as possible, and quantify the costs and benefits to the extent practicable.

[52] Dividend or interest reinvestment plan transactions would continue to be exempt pursuant to Rule 16b-2. Gifts (currently exempt pursuant to Rule 16b-5 [17 CFR 240.16b-5]) and QDRO transactions (currently exempt pursuant to current Rule 16b-3(f)(3) [17 CFR 240.16b-3(f)(3)]) would remain exempt pursuant to Rule 16b-5 as proposed to be amended. *See* Proposing Release at Section IV.A.

[53] Rule 16a-3(f)(1)(i) and (ii) [17 CFR 240.16a-3(f)(1)(i) and (ii)].

[54] 15 U.S.C. 78w(a).

[55] *See* Proposing Release at Section VI.

[56] *See* Release 34–36063 [60 FR 40994].

[57] The exemptions afforded by former Rules 16a-8(b) [17 CFR 240.16a-8(b)] and 16a-8(g)(3) [17 CFR 240.16a-8(g)(3)] also would remain available.

(1) To what extent would the newly proposed exemptive conditions increase or decrease the compliance burden imposed on persons subject to Section 16?

(2) Could any of the exemptive provisions be crafted in a manner that would further reduce compliance burdens, consistent with the statutory objectives of Section 16? If so, how could that be done?

(3) What would be the costs and benefits of the proposed accelerated reporting of transactions on Form 4, together with the elimination of reporting of certain other transactions? In particular, to what extent do insiders currently choose voluntarily to report exempt transactions on Form 4 rather than annually on Form 5?

(4) Could the reporting requirements be crafted in a manner that would further reduce compliance burdens, consistent with the statutory objectives of Section 16? If so, how could that be done?

VIII. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 concerning the Alternative Proposal. The analysis notes that the Alternative Proposal is intended to simplify the Section 16 regulatory scheme with respect to employee benefit plans.

As discussed more fully in the analysis, most of the reporting persons the Alternative Proposal would affect are small entities, as defined by the Commission's rules. The Alternative Proposal would decrease the compliance requirements imposed upon corporate insiders subject to Section 16.

The analysis discusses several possible alternatives to the Alternative Proposal. As discussed more fully in the analysis, implementation of any of these alternatives either would be duplicative of the Alternative Proposal or the Prior Proposals, or would be inconsistent with the Exchange Act.

Comments are encouraged on any aspect of the analysis. A copy of the analysis may be obtained by contacting Elizabeth Murphy, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

IX. Statutory Basis

The amendments to the Section 16 rules are being proposed by the Commission pursuant to Exchange Act Sections 3(a)(11),[58] 3(a)(12),[59] 3(b),[60] 9(b),[61] 10(a),[62] 12(h),[63] 13(a),[64] 14, 16, and 23(a). As the Section 16 rules relate to the Investment Company Act and the Public Utility Holding Company Act, they also are proposed pursuant to Investment Company Act Sections 30[65] and 38,[66] and Public Utility Holding Company Act Sections 17[67] and 20,[68] respectively.

List of Subjects in 17 CFR 240

Reporting, Recordkeeping requirements, and Securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. By revising § 240.16b–2 to read as follows:

§ 240.16b–2 Dividend or interest reinvestment plans.

Any acquisition of securities resulting from the reinvestment of dividends or interest on securities of the same issuer shall be exempt from Section 16(b) of the Act if made pursuant to a plan providing for the regular reinvestment of dividends or interest, if the plan provides for broad-based participation, does not discriminate in favor of employees of the issuer and operates on substantially the same terms for all plan participants.

3. By revising § 240.16b–3 to read as follows:

§ 240.16b–3 Transactions between an issuer and its officers or directors.

(a) *General.* A transaction between the issuer (including an employee benefit plan sponsored by the issuer) and an officer or director of the issuer that involves issuer equity securities shall be exempt from Section 16(b) of the Act if the transaction satisfies the applicable conditions set forth in this section.

Note to Paragraph (a): The exercise or conversion of a derivative security that has a fixed exercise price and is not out-of-the-money is eligible for exemption from Section 16(b) of the Act to the extent that the conditions of Rule 16b–6(b) are satisfied.

(b) *Tax-conditioned and related plans.*

(1) Any transaction pursuant to a Qualified Plan, an Excess Benefit Plan, or a Stock Purchase Plan shall be exempt without condition, except as provided in paragraph (b)(2) of this section.

(2) A transaction pursuant to a Qualified Plan, an Excess Benefit Plan, or a Stock Purchase Plan that is at the volition of a plan participant; is not made in connection with the participant's death, disability, retirement or termination of employment; is not required to be made available to a plan participant pursuant to a provision of the Internal Revenue Code; and results in either: an intra-plan transfer involving an issuer equity securities fund, or a cash distribution funded by a volitional disposition of an issuer equity security, shall be exempt only if effected pursuant to an election made at least six months following the date of the most recent election that effected a transaction subject to this paragraph (b)(2).

(3) An acquisition pursuant to a plan or transaction that satisfies the conditions applicable to performance-based compensation imposed by Section 162(m) of the Internal Revenue Code and the regulations thereunder shall be exempt without condition.

(4) *Definitions.*

(i) A *Qualified Plan* shall mean an employee benefit plan that satisfies the coverage and participation requirements of Sections 410 and 401(a)(26) of the Internal Revenue Code of 1986, or any successor provisions thereof.

(ii) An *Excess Benefit Plan* shall mean an employee benefit plan that is operated in conjunction with a Qualified Plan, and provides only the benefits or contributions that would be provided under a Qualified Plan but for the limitations of Sections 401(a)(17), 415 and any other applicable contribution limitation set forth in the Internal Revenue Code, or any successor provisions thereof.

(iii) A *Stock Purchase Plan* shall mean an employee benefit plan that satisfies the coverage and participation standards of Sections 410, 423(b)(3) and

[58] 15 U.S.C. 78c(a)(11).
[59] 15 U.S.C. 78c(a)(12).
[60] 15 U.S.C. 78c(b).
[61] 15 U.S.C. 78i(b).
[62] 15 U.S.C. 78j(a).
[63] 15 U.S.C. 78l(h).
[64] 15 U.S.C. 78m(a).
[65] 15 U.S.C. 80a–29.
[66] 15 U.S.C. 80a–37.
[67] 15 U.S.C. 79q.
[68] 15 U.S.C. 79t.

423(b)(5) of the Internal Revenue Code of 1986, or any successor provisions thereof.

(c) *Grant and Award Transactions.*

(1) *General.* A grant or award transaction shall be exempt if:

(i) The transaction is approved by the board of directors of the issuer, or a committee of the board of directors that is comprised solely of two or more Non-Employee Directors;

(ii) The transaction is approved or ratified by the affirmative vote or written consent of the holders of the majority of the securities of the issuer entitled to vote, in compliance with Section 14 of the Act, provided that such ratification occurs no later than the date of the next annual meeting of shareholders; or

(iii) The issuer equity securities so awarded are held by the officer or director for a period of six months following the date of such grant or award, provided that this condition shall be satisfied with respect to a derivative security if at least six months elapse from the date of acquisition of the derivative security to the date of disposition of the derivative security (other than upon exercise or conversion) or its underlying equity security.

(2) *Definition.* A *Non-Employee Director* shall mean a director who is not currently an officer (as defined in § 240.16a–1(f)) of the issuer or a parent or subsidiary of the issuer, or otherwise currently employed by or a consultant to the issuer or a parent or subsidiary of the issuer.

(d) *Dispositions to the issuer.* Any transaction involving the disposition to the issuer of issuer equity securities shall be exempt from Section 16(b) of the Act, provided that the terms of such disposition are approved in advance in the manner prescribed by either paragraph (c)(1)(i) or paragraph (c)(1)(ii) of this section.

Dated: October 11, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–25626 Filed 10–16–95; 8:45 am]

BILLING CODE 8010–01–P

federal register

Tuesday
October 17, 1995

Part III

The President

Proclamation 6840—White Cane Safety Day, 1995

Order of October 13, 1995—National Security Information

Federal Register
Vol. 60, No. 200
Tuesday, October 17, 1995

Presidential Documents

Title 3—

The President

Proclamation 6840 of October 13, 1995

White Cane Safety Day, 1995

By the President of the United States of America

A Proclamation

As Americans, we take pride in the diversity that allows us to appreciate the world from many standpoints, and we draw our vitality from the contributions made by people of all experiences, talents, and backgrounds. Long dedicated to the goal of independence, America's blind and visually impaired citizens have enriched our history, inspiring others to join their efforts to further integration and inclusion.

The majority of blind and visually impaired people use the white cane to facilitate their travel. This remarkably simple instrument provides tactile, kinesthetic, and auditory signals to its users, allowing them to detect obstacles, steps up and down, and changes in surface texture. Enhancing motivation and confidence, the white cane has empowered countless blind and visually impaired individuals to gain freedom of movement and to flourish in society. For those of us who are not blind or visually impaired, it signals us to exercise extra caution and to be courteous drivers and pedestrians.

As our Nation observes this special day, the white cane is a symbol of strength and a reminder of the tremendous potential available within each person. We must continue to work for full implementation of the Americans With Disabilities Act, which protects people with disabilities from discrimination in the workplace, mandates access to public and private services and accommodations, and promotes equal opportunity. The American Dream is an inspiration to us all—let us work to ensure that every person can realize its promise.

To honor the numerous achievements of blind and visually impaired citizens and to recognize the significance of the white cane in advancing independence, the Congress, by joint resolution approved October 6, 1964, has designated October 15 of each year as ''White Cane Safety Day.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 15, 1995, as White Cane Safety Day. I call upon government officials, educators, and all the people of the United States to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–25921
Filed 10–16–95; 11:15 am]
Billing code 3195–01–P

Presidential Documents

Order of October 13, 1995

National Security Information

Pursuant to the provisions of Section 1.4 of Executive Order No. 12958 of April 17, 1995, entitled ''Classified National Security Information,'' I hereby designate the following officials to classify information originally as ''Top Secret'', ''Secret'', or ''Confidential'':

TOP SECRET

Executive Office of the President:

The Vice President

The Chief of Staff to the President

The Director, Office of Management and Budget

The Assistant to the President for National Security Affairs

The Director, Office of National Drug Control Policy

The Chairman, President's Foreign Intelligence Advisory Board

Departments and Agencies:

The Secretary of State

The Secretary of the Treasury

The Secretary of Defense

The Secretary of the Army

The Secretary of the Navy

The Secretary of the Air Force

The Attorney General

The Secretary of Energy

The Chairman, Nuclear Regulatory Commission

The Director, United States Arms Control and Disarmament Agency

The Director of Central Intelligence

The Administrator, National Aeronautics and Space Administration

The Director, Federal Emergency Management Agency

SECRET

Executive Office of the President:

The United States Trade Representative

The Chairman, Council of Economic Advisers

The Director, Office of Science and Technology Policy

Departments and Agencies:

The Secretary of Commerce

The Secretary of Transportation

The Administrator, Agency for International Development

The Director, United States Information Agency

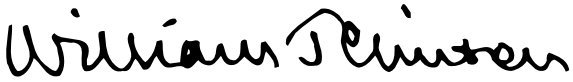
CONFIDENTIAL

The President, Export-Import Bank of the United States

The President, Overseas Private Investment Corporation

Any delegation of this authority shall be in accordance with Section 1.4(c) of Executive Order No. 12958.

This Order shall be published in the Federal Register.



THE WHITE HOUSE,
Washington, October 13, 1995.

[FR Doc. 95–25922
Filed 10–16–95; 11:14 am]
Billing code 3195–01–P

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